

Circuit Court for Montgomery County
Case Nos. 453447V & 460333V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
CONSOLIDATED

Nos. 0155 & 0767

September Term, 2019

JRK CONTRACTOR, LLC

v.

BOARD OF REGISTRATION OF MONTGOMERY
COUNTY

MONTGOMERY COUNTY, MARYLAND

v.

JRK CONTRACTOR, LLC

Arthur,
Leahy,
Gould,

JJ.

Opinion by Arthur, J.

Filed: April 27, 2020

*This is an unreported opinion, and it may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The Montgomery County Board of Registration revoked JRK Contractor LLC's license to construct new homes in the County. JRK responded by filing, among other things, an untimely appeal to the Montgomery County Board of Appeals and a premature petition for judicial review in the Circuit Court for Montgomery County.

The circuit court (Burrell, J.) dismissed JRK's petition for judicial review because it had failed to exhaust its administrative remedies. JRK appealed that decision to this Court (*JRK Contractor, LLC v. Board of Registration of Montgomery County*, No. 0155).

The Board of Appeals dismissed JRK's appeal as untimely. The circuit court (Cho, J.) reversed the Board of Appeals' decision and remanded the matter to the Board for further proceedings. The County appealed (*Montgomery County v. JRK Contractor, LLC*, No. 0767).

We have consolidated the two related appeals in this opinion. For the reasons that follow, we affirm the circuit court's dismissal of JRK's petition for judicial review, but we reverse the reversal of the Board of Appeals' dismissal of JRK's untimely appeal. The circuit court correctly dismissed the petition for judicial review because of JRK's failure to exhaust its administrative remedies, and the Board of Appeals correctly dismissed JRK's appeal as untimely.

FACTUAL AND PROCEDURAL BACKGROUND

A. Statutory Framework

Chapter 31C of the Montgomery County Code governs the licensing of homebuilders. Builders that wish to construct homes in the County must obtain a license from the Montgomery County Office of Consumer Protection. *See* Montgomery County

Code § 31C-2 (2014, as amended).¹ The Office of Consumer Protection oversees the licensure process in conjunction with a five-member Board of Registration.

The Office of Consumer Protection investigates complaints against licensed homebuilders. Mont. Cty. Code § 31C-8(a)(1). If the complaints are found to have merit, the Office of Consumer Protection notifies the Board of Registration. The Board of Registration evaluates the qualifications of license applicants (*see* Mont. Cty. Code § 31C-2(a)(4)) and may deny, suspend, refuse to renew, or revoke a builder's license on the grounds set forth in the County Code. *See* Mont. Cty. Code § 31C-8(b). The Board of Registration may revoke a builder's license only after affording the builder an evidentiary hearing on the issue of revocation. *See* Mont. Cty. Code §§ 31C-8(b), (c)(1).

If the Board of Registration enters an order revoking a builder's license, a builder has three administrative routes to challenge the order: it may (1) file a motion to reconsider with the Board of Registration *within 10 days* from the final decision (Mont. Cty. Code § 2A-10(f)); (2) file an appeal to the County Board of Appeals (*see* Mont. Cty. Code § 31C-8(c)(2)) *within 30 days* after the decision is mailed (Mont. Cty. Bd. of Appeals Rule 2.1); or (3) file a motion to reconsider with the Board of Registration *at any time* on the limited grounds of fraud, mistake, or irregularity. Mont. Cty. Code § 2A-10(f). If a party follows the first or third route and moves for reconsideration, it may

¹ After the events at issue in this appeal, the County Council, by Bill 31-18, enacted substantial revisions to Chapter 31C of the County Code and a minor change to the County's Administrative Procedures Act in Chapter 2A. Those revisions took effect on May 16, 2019. All references to Chapter 31C and Chapter 2A in this opinion are to those provisions in effect before Bill 31-18.

appeal the denial of the motion to the County Board of Appeals (*See* Mont. Cty. Code § 31C-8(c)(2)) within 30 days after the decision is mailed. Mont. Cty. Bd. of Appeals Rule 2.1.

The decisions of the Board of Appeals are subject to judicial review by the circuit court. *See* Mont. Cty. Code § 2A-11(a).

B. Revocation of JRK’s Building Contractor’s License

In April 2015, the Office of Consumer Protection issued a building contractor’s license to JRK. The Board of Registration conditionally renewed the license in April 2017.

In 2018 the Office of Consumer Protection received complaints from three different homeowners about JRK. The Office investigated the complaints and found merit in them. Accordingly, the Director of the Office “certified” the complaints to the Board of Registration for a public hearing.

The Board of Registration reviewed the Office of Consumer Protection’s investigative information and on March 21, 2018, designated the Office of Zoning and Administrative Hearings to serve as the hearing examiner in the matter of JRK’s license revocation. *See* Mont. Cty. Code § 2-113A; § 31C-8(b). An evidentiary hearing was set for May 18, 2018.

According to a return of service signed by a private process server, the Office of Consumer Protection served JRK’s resident agent, in person, on April 5, 2018, with an “Order to Show Cause” why JRK’s builder’s license should not be suspended or revoked. The order explained the basis for the Board of Registration’s action and stated the date

and time of the hearing. The Office of Zoning and Administrative Hearings also gave notice of the hearing to JRK via certified mail, return receipt requested, to JRK's president.

JRK failed to appear at the hearing. The hearing proceeded nonetheless, with the County presenting evidence of JRK's Code violations to the hearing examiner.

On July 6, 2018, the hearing examiner submitted a report to the Board of Registration. The report contained findings that JRK had violated Chapter 31C of the County Code and a recommendation that JRK's license be revoked. The Board of Registration adopted the hearing examiner's findings and proposed revocation order in full and revoked JRK's building contractor's license by an order dated July 10, 2018.

On July 10, 2018, the Director of the Office of Consumer Protection mailed a copy of the revocation order, by first-class mail, to JRK's resident agent, to JRK's president, and to JRK's business address. The Director personally sent additional copies of the revocation order by Federal Express to JRK's resident agent and to JRK's president. According to Federal Express, these parcels were delivered on July 13, 2018.²

C. JRK's Challenges to License Revocation Order

JRK did not ask the Board of Registration to reconsider its order within 10 days of its decision (Mont. Cty. Code § 2A-10(f)) or appeal to the Board of Appeals within 30

² According to the County, JRK has a history of disputing the sufficiency of service. Anticipating that JRK would dispute that it had received the revocation order, the Director took extra steps to document that the County had sent the order. Among other things, the Director took pictures of himself, next to the envelopes that were addressed to JRK's agents, before he deposited the envelopes in the mail.

days after the Board of Registration's order was mailed (*id.* § 31C-8(c)(2)). Hence, if JRK wanted to challenge the revocation order, its only remedy was to move the Board of Registration to reconsider its order on the limited grounds of fraud, mistake, or irregularity. *See* Mont. Cty. Code § 2A-10(f).

On August 21, 2018, 40 days after the order was mailed, JRK filed a barrage of legal challenges. First, it filed a motion to reconsider with the Board of Registration. Second, it filed an untimely appeal to the Board of Appeals. Third, it filed a petition for judicial review in the Circuit Court for Montgomery County. Fourth and finally, it filed a motion for reconsideration in the Office of Zoning and Hearing Appeals.³

In all of its filings, JRK claimed that it had not been served with notice of the May 18, 2018, evidentiary hearing and that it did not learn of the revocation proceedings until August 15, 2018. According to JRK, it had been deprived of property without due process because the County had revoked its license without affording it proper notice.

The focus of this consolidated opinion is the fate of JRK's second and third filings – the appeal to the Board of Appeals and the petition for judicial review.

³ The motion for reconsideration in the Office of Zoning and Hearing Appeals had no legal effect. The purpose of the Office of Zoning and Hearing Appeals is to conduct hearings and issue recommendations to various county agencies, including the Board of Registration. *See* Mont. Cty. Code §§ 2-140(a)(1), (4). Neither the Office of Zoning and Hearing Appeals nor the hearing examiner could revoke JRK's builder's license; the County Code vests revocation authority solely with the Board of Registration. *See* Mont. Cty. Code § 31C-8(b).

1. Petition for Judicial Review in Circuit Court

The County successfully moved to dismiss JRK’s petition for judicial review for failure to exhaust administrative remedies.⁴ The court (Burrell, J.) concluded that JRK did not have a right to appeal the Board of Registration’s order directly to the circuit court. It explained that, in the circumstances of this case, where JRK claimed to have learned of the order after the time for an appeal had passed, the correct avenue to challenge the order was a motion to reconsider filed with the Board of Registration pursuant to section 2A-10(f) of the County Code (permitting a party to file a motion to reconsider at any time on grounds of fraud, mistake, or irregularity). If the Board of Registration denied the motion, JRK could appeal to the Board of Appeals. *See* Mont. Cty. Code § 31C-8(c)(2). If the Board of Appeals affirmed the Board of Registration’s decision, JRK could then petition for judicial review in the circuit court.

The court acknowledged that JRK had indeed filed a motion to reconsider the Board of Registration’s order. While the petition for judicial review was pending, however, the Board of Registration had denied JRK’s motion for reconsideration.⁵ JRK failed to exercise its right to appeal the Board of Registration’s denial to the Board of

⁴ The County moved to dismiss the petition pursuant to Md. Rule 7-204(b), which states that “[a] person may file with [a response to a petition for judicial review] a preliminary motion addressed to standing, venue, timeliness of filing, or any other matter that would defeat a petitioner’s right to judicial review.” The failure to exhaust administrative remedies defeats the right to judicial review, at least until the remedies are exhausted.

⁵ More precisely, the motion was “deemed denied,” because the Board of Registration did not grant it within 10 days after it was filed. Mont. Cty. Code § 2A-10(f).

Appeals, so the Board of Appeals had never considered the propriety of the denial. Accordingly, the court held, JRK had failed to exhaust its administrative remedies before petitioning for judicial review in the circuit court.

JRK noted a timely appeal of that decision (No. 0155, Sept. Term 2019).

2. *Appeal to the Board of Appeals*

On September 11, 2018, the County moved to dismiss JRK's appeal to the Board of Appeals on the ground that it was untimely. JRK opposed the motion.

On October 31, 2018, the Board of Appeals held a public hearing on the motion and voted unanimously to dismiss JRK's appeal of the revocation order. In a written opinion entered November 16, 2018, the Board explained that it lacked jurisdiction to hear JRK's appeal because the appeal had not been filed within 30 days after the Board of Registration's order was mailed on July 10, 2018.

JRK petitioned for judicial review of the Board of Appeals' dismissal of its appeal. The circuit court (Cho, J.), by a memorandum opinion entered on June 7, 2019, concluded that the Board of Appeals had jurisdiction to hear the appeal and remanded the matter to the Board. The court reasoned that under Mont. Cty. Code § 2A-10(f) JRK's motion for reconsideration stayed the time for taking an appeal (even though the time for taking an appeal had already run by the time JRK filed its motion for reconsideration).

The County noted a timely appeal of that order (No. 0767, Sept. Term 2019).

QUESTIONS PRESENTED

The Board of Registration's revocation order is the genesis of both appeals currently before this Court. Although the two appeals stem from the same order, they

present slightly different questions for review, which we have derived from the parties' briefs.

In the first appeal (No. 0155), noted by JRK, the issue is whether the circuit court erred in dismissing JRK's petition for judicial review for failure to exhaust administrative remedies.⁶

In the second appeal (No. 0767), noted by the County, the issue is whether the circuit court erred in reversing the dismissal of JRK's appeal to the Board of Appeals, when the appeal was filed more than thirty days from the date the order was mailed.⁷

We conclude that the circuit court correctly dismissed JRK's petition for judicial review, but that it erred in reversing the dismissal of JRK's untimely appeal to the Board of Appeals. Accordingly, we shall affirm the order that dismissed the petition for judicial review and reverse the order that reversed the dismissal of the appeal to the Board of Appeals.

DISCUSSION

I. The Circuit Court Correctly Dismissed JRK's Petition for Judicial Review

The County moved to dismiss JRK's petition for judicial review in accordance with Md. Rule 7-204(b), which permits a person to file a "preliminary motion . . . addressed to standing, venue, timeliness of filing, or any other matter that would defeat a

⁶ In its brief, JRK presented this Court with twelve separate questions, many of which were repetitive or not properly before us. *See* Appendix A.

⁷ The County phrased the question as follows: Did the Board of Appeals properly dismiss the appeal as untimely when JRK filed it more than thirty days from the date it was mailed?

petitioner's right to judicial review.” On a motion to dismiss pursuant to Md. Rule 7-204, as with any other motion to dismiss, this Court conducts a de novo review of the circuit court's decision, “assum[ing] the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn” therefrom. *See A.C. v. Maryland Comm'n on Civil Rights*, 232 Md. App. 558, 569 (2017) (quoting *Gasper v. Ruffin Hotel Corp. of Maryland*, 183 Md. App. 211, 226 (2008), *aff'd*, 418 Md. 594 (2011)). Matters of statutory interpretation are legal issues that we review for legal correctness. *Id.*

In this case, the circuit court dismissed JRK's petition on the ground that it had no right to judicial review because it had failed to exhaust its administrative remedies. The circuit court was correct in every respect.

“When a legislature provides an administrative remedy as the exclusive or primary means by which an aggrieved party may challenge a government action, the doctrine of administrative exhaustion requires the aggrieved party to exhaust the prescribed process of administrative remedies before seeking ‘any other’ remedy or ‘invok[ing] the ordinary jurisdiction of the courts.’” *Priester v. Baltimore County*, 232 Md. App. 178, 193 (2017) (quoting *Soley v. State Comm'n on Human Relations*, 277 Md. 521, 526 (1976)) (emphasis added in *Priester*). Under the Montgomery County Code, JRK had a right to judicial review of a decision by the Board of Appeals. JRK, however, attempted to bypass the Board of Appeals by petitioning for judicial review of the Board of Registration's decision before the Board of Appeals had the opportunity to pass upon it.

It would be difficult to imagine a more flagrant violation of the rule requiring the exhaustion of administrative remedies.

In advocating a contrary conclusion, JRK argues, first, that it is not required to exhaust its administrative remedies before asserting a claim under 42 U.S.C. section 1983, the statutory remedy against state officials who deprive a person of rights secured by the United States Constitution, including the Fourteenth Amendment right to due process. The short answer to that contention is that JRK did not file a civil action under section 1983; it filed a petition for judicial review of a decision by the Board of Registration. JRK had no right to judicial review of the Board of Registration’s decision, because it had not exhausted its administrative remedies by pursuing an appeal to the Board of Appeals.⁸

JRK cites *Maryland Reclamation Associates, Inc. v. Harford County*, 342 Md. 476 (1996), for the proposition that it was not required to present its due process arguments to an administrative agency before asserting them in court. JRK misapprehends *Maryland Reclamation*. That case did not involve a petition for judicial review in which a litigant raised a federal constitutional defense to an administrative agency’s decision; it involved a landowner’s affirmative challenge to the validity of various land-use enactments as

⁸ It is no answer that the Board of Appeals dismissed JRK’s untimely appeal from the Board of Registration’s decision. JRK could and did move for reconsideration of the Board of Registration’s decision on the grounds of fraud, mistake, and irregularity, a rubric that would cover the claims of defective service or jurisdictional “mistake.” See, e.g., *Peay v. Barnett*, 236 Md. App. 306, 322 (2018). When the Board of Registration denied the motion for reconsideration, JRK had the right to appeal to the Board of Appeals and to challenge the rejection of its claims of defective service. JRK, however, inexplicably failed to pursue that appeal.

applied to its property. The Court of Appeals held that the landowner was not required to exhaust its administrative remedies before it asked a court to invalidate the legislation on federal constitutional grounds, but that it was required to exhaust its administrative remedies insofar as it challenged the legislation on State-law grounds. *Id.* at 492-93.⁹ *Maryland Reclamation* does not permit a litigant to bypass an administrative appeals board and proceed directly to court, as JRK did in this case, whenever a litigant claims to have a federal constitutional defense in an administrative enforcement action.

JRK invokes the so-called “constitutional exception” to the general requirement that a litigant must exhaust its administrative remedies before proceeding to court. The “constitutional exception” is, however, “an extremely narrow one.” *See, e.g., Prince George’s Cty. v. Ray’s Used Cars*, 398 Md. 632, 650 (2007); *accord Holzheid v. Comptroller of the Treasury*, 240 Md. App. 371, 398 (2019). The exception applies only when a party attacks the constitutionality of a statute as a whole, including all of its parts and all of its applications. *See, e.g., Prince George’s Cty. v. Ray’s Used Cars*, 398 Md. at 652; *Holzheid v. Comptroller of the Treasury*, 240 Md. App. at 399. A defense to an administrative enforcement action is not an attack on the constitutionality of a statute as a whole, including all of its parts and all of its applications.

JRK also invokes section 2A-11(a) of the Montgomery County Code, which is part of the County’s Administrative Procedures Act. Section 2A-11(a) provides, in

⁹ The Court, however, went on to hold that the federal claims were not ripe, because the potential constitutional violation might not come to pass if the landowner obtained certain relief in the administrative proceedings. *Id.* at 502-05.

pertinent part, as follows: “A party aggrieved by a final decision in a case governed by this Article may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure.” JRK seems to assert that under section 2A-11(a) it was entitled to bypass the Board of Appeals and to seek immediate judicial review of the “final decision” of the Board of Registration. JRK is incorrect.

Section 2A-3 of the County Code provides that, “[w]here any provision of this article [i.e., of Article 1 of the Administrative Procedure Act] conflicts with a substantive provision of any act pertaining to a particular agency, the latter shall prevail.” Section 2A-11(a), a general provision that is part of Article 1, conflicts with a specific provision concerning administrative appeals of the Board of Registration’s decisions: section 31C-8(c)(2), which states that a “builder may appeal a decision of the Board [of Registration] to the Montgomery County Board of Appeals.” In view of the conflict, section 31C-8(c)(2) prevails: the builder’s initial right of review is with the Board of Appeals, not the circuit court.

JRK asserts that section 2A-11(a) does not actually conflict with section 31C-8(c)(2), because section 31C-8(c)(2) uses what JRK calls “permissive language” (“may appeal”). JRK apparently contends that if a builder is aggrieved by a decision of the Board of Registration, it “may appeal” to the Board of Appeals or it may simply choose to go directly to the circuit court. That contention is untenable.

In stating that an aggrieved builder “may appeal” to the Board of Appeals, Montgomery County used a conventional legislative formulation to authorize a person to take an action (in this case, to appeal). It would have made no sense to use mandatory

language (“shall appeal”) in an enactment like section 31C-8(c)(2), because that language might seem to require an appeal even if the builder did not wish to pursue one. In authorizing an appeal to the Board of Appeals from an adverse decision in the Board of Registration, Montgomery County did not intend to give an aggrieved builder multiple options for review.

Much of JRK’s brief consists of adamant protestations that have little bearing on the question of whether the circuit court erred in dismissing the petition for judicial review on account of JRK’s failure to exhaust its administrative remedies. For example, JRK asserts that courts can “strike” unconstitutional proceedings and laws. They certainly can. But if a litigant must exhaust its administrative remedies before proceeding in court, the court cannot strike anything unless the litigant has complied with that requirement.

Similarly, JRK asserts that a denial of due process “invalidates” a proceeding. It cites *Woodmont Country Club v. Mayor and City Council of Rockville*, 107 Md. App. 696, 732 (1996), *aff’d in part, vacated in part*, 342 Md. 572 (1998), in which this Court reversed an administrative adjudication because a party had been prohibited from cross-examining its adversary’s expert.¹⁰ JRK neglects to note that, before petitioning for judicial review in that case, the country club exhausted its administrative remedies.

¹⁰ On certiorari, the Court of Appeals agreed with that conclusion. *Mayor and City Council of Rockville v. Woodmont Country Club*, 342 Md. at 590. The Court of Appeals appears to have vacated this Court’s decision only to the extent that our predecessors considered issues that were not raised before the adjudicatory body. *Id.* at 582 n.3

Woodmont Country Club does not stand for the proposition that JRK can ignore its administrative remedies and proceed directly to the circuit court.

JRK argues that a “matter” may be reopened at any time on account of fraud, mistake, or irregularity. The Board of Registration’s decision could indeed have been reopened, and JRK asked that it be reopened, on those grounds. Yet, when the Board of Registration denied JRK’s request, it failed to pursue its administrative remedy of an appeal to the Board of Appeals. JRK is in its current predicament because it did not pursue the remedies at its disposal.

Finally, JRK asserts a number of procedural arguments that it failed to assert in the circuit court. Because the circuit court did not have the opportunity to consider or decide those arguments, we ordinarily would not decide them. *See* Md. Rule 8-131(a). We consider them here only because they intersect with some of the arguments in the County’s separate appeal of the order that reversed the Board of Appeals’ dismissal of JRK’s untimely appeal of the Board of Registration’s initial decision.

First, JRK observes that, on the fortieth day after the Board of Registration had mailed the decision, it both appealed to the Board of Appeals and moved for reconsideration in the Board of Registration. JRK proceeds to recharacterize its untimely appeal of the Board of Registration’s decision as a premature appeal of a decision that had not yet been made — the Board of Registration’s decision to deny JRK’s motion for reconsideration. Even if we were to accept JRK’s dubious recharacterization, JRK cites no authority for the proposition that, through some kind of procedural alchemy, a

premature appeal, filed before an administrative body has even taken any action, can spring into effect as soon as an adverse decision is made.

Second, JRK argues that under section 2A-10(f) a request for reconsideration extends the time for an appeal to the Board of Appeals. The argument fails, because it is impossible to extend a deadline that has already passed. Had JRK moved for reconsideration of the Board of Registration's initial decision within 10 days after it was mailed, section 2A-10(f) would have extended the time to appeal until 30 days after the Board of Registration had rendered an adverse decision on the motion for reconsideration. In this case, however, the time for an appeal had passed 10 days before JRK moved for reconsideration. Section 2A-10(f) does not revive the right to appeal after it has expired.

Nearly a third of JRK's brief is devoted to various challenges to the validity of the legislation by which Montgomery County regulates homebuilders. JRK did not raise those challenges in the circuit court, and they are completely irrelevant to the issue of whether JRK was required to exhaust its remedies before proceeding in the circuit court. For those reasons, we do not consider them.

In summary, JRK failed to exhaust its administrative remedies before it petitioned for judicial review in the circuit court. The court, therefore, correctly dismissed JRK's petition for judicial review. Accordingly, we shall affirm the judgment in No. 0155.¹¹

¹¹ When a party has failed to exhaust its administrative remedies, a court, ordinarily, should stay the proceeding until the administrative remedies are exhausted rather than dismiss it. *See, e.g., Maryland Reclamation Assocs. v. Harford County*, 382 Md. 348, 361 (2004). In this case, however, a stay would be futile, because JRK no

II. The Board of Appeals Correctly Dismissed JRK’s Appeal as Untimely

In No. 0767, the County has appealed the circuit court order that reversed the dismissal of the JRK’s untimely appeal to the Board of Appeals. Under familiar principles of administrative law, this Court looks “through the circuit court’s decision and evaluates the decision of the agency,” *Chesapeake Bay Found. v. Clickner*, 192 Md. App. 172, 181 (2010), to determine “if the administrative decision is premised upon an erroneous conclusion of law.” *United Parcel Serv. v. People’s Counsel for Baltimore Cty.*, 336 Md. 569, 577 (1994). With respect to the Board of Appeals’ conclusions of law, “a certain amount of deference may be afforded when the agency is interpreting or applying the statute the agency itself administers.” *Emps.’ Ret. Sys. of City of Balt. v. Dorsey*, 430 Md. 100, 111 (2013).

In mandatory language, the Board of Appeals’ Rules of Procedure state that a notice of an appeal of a decision “must” be filed within 30 days after the day the decision was mailed. *See* Mont. Cty. Bd. of Appeals Rule 2.1 (“[u]nless the applicable law specifies a shorter time, an appeal from an administrative decision must be filed within 30 days after the day the decision was *mailed*”) (emphasis added). The record reflects that the County mailed three copies of the Board of Registration’s revocation order to

longer can pursue its administrative remedies to conclusion. To exhaust its administrative remedies, JRK needed to note a timely appeal, to the Board of Appeals, of the Board of Registration’s denial of the motion for reconsideration, after the Board of Registration had made that decision. JRK did not do so. Consequently, JRK is incapable of obtaining a final decision in the Board of Appeals that would be subject to judicial review in the circuit court.

JRK by first-class mail on July 10, 2018, as well as two additional copies via Federal Express on or before July 13, 2018. JRK did not file its appeal until August 21, 2018, outside the period prescribed by law.

Under language like that set forth in Rule 2.1, Maryland courts have consistently held that, where an appeal is not filed within the statutorily prescribed time period, the appellate tribunal does not have the authority to hear the case on its merits. *See, e.g., United Parcel Serv. v. People’s Counsel for Baltimore Cty.*, 336 Md. at, 580; *see also Nat’l Inst. of Health Fed. Credit Union v. Hawk*, 47 Md. App. 189, 196 (1980).

Therefore, we hold that the Board of Appeals correctly applied its rules when it determined that JRK’s appeal, filed on August 21, 2018, was untimely and not properly before it.

In a familiar-sounding argument, JRK contends that its appeal to the Board of Appeals on August 21, 2018, was actually a “premature” appeal of the Board of Registration’s denial of the motion for reconsideration on August 31, 2018. JRK’s argument is nonsensical. JRK did not have a right to appeal a hypothetical ruling on its motion for reconsideration on August 21, 2018, on the same day that it filed the motion for reconsideration itself. JRK’s right to appeal to the Board of Appeals was of a *decision* by the Board of Registration (*see* Mont. Cty. Code § 31C-8(c)(2)), and JRK could not appeal a decision that had not yet been made. If we took JRK’s absurd argument to its illogical extreme, a litigant could eliminate any concern about the timeliness of a request for appellate review through the simple expedient of filing a precautionary appeal at the very outset of a case.

In reversing the Board of Appeals’ decision to dismiss JRK’s appeal, the circuit court drew an analogy between section 2A-10(f) of the County Code and Md. Rule 8-202. Section 2A-10(f) states, in pertinent part, that “[a]ny request for rehearing or reconsideration shall stay the time for any administrative appeal.” Rule 8-202(c) provides, in pertinent part, that in a civil action, when a party files a timely motion post-judgment motion under Rule 2-532 (for judgment notwithstanding the verdict), 2-533 (for a new trial), or 2-534 (to alter or amend the judgment) within 10 days after the entry of the judgment, the notice of appeal shall be filed within 30 days after the motion is withdrawn or decided.¹² Relying on Rule 8-202(c) and cases interpreting it, the court reasoned that JRK’s motion for reconsideration, which it filed after the deadline for noting an appeal, stayed the time for taking an appeal. In that scenario, the untimely notice of appeal would magically become a timely notice of appeal if JRK moved for reconsideration.

The court seems to have believed that JRK’s untimely notice of appeal was actually a premature notice of appeal that suddenly sprang to life when the Board of

¹² In full, Rule 8-202(c) provides as follows:

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

Registration denied JRK’s motion for reconsideration. In reaching that conclusion, the circuit court relied on *Edsall v. Anne Arundel County*, 332 Md. 502 (1993), and *Folk v. State*, 142 Md. App. 590 (2002). Neither case supports the court’s conclusion.

In *Edsall* the appellants filed a timely post-judgment motion. Within 30 days of the judgment, while the post-judgment motion was still pending, the appellants also filed a notice of appeal. *Edsall v. Anne Arundel County*, 332 Md. at 503-04. The parties disputed the impact of the post-judgment motion on the notice of appeal: were the appellants required to file a second notice of appeal after the court denied the post-judgment motion, or was the timely notice of appeal held in abeyance until the court had decided the post-judgment motion, so that a second notice of appeal was unnecessary? After examining the language and history of Rule 8-202, the Court of Appeals held that the appellants had preserved their right to appellate review by filing a notice of appeal within 30 days of the judgment: they were not required to file an additional notice of appeal after the court denied their post-judgment motion. *Edsall v. Anne Arundel County*, 332 Md. at 508.

In *Folk* the appellant filed a notice of appeal two days after his criminal conviction and a timely motion for a new trial six days later. *Folk v. State*, 142 Md. App. at 593. The circuit court said that it had no “jurisdiction” to rule on the motion because of the pendency of the appeal, and the appellant filed an amended notice of appeal. *Id.* at 594. Following *Edsall*, this Court held, among other things, that the original notice of appeal was effective, but that the appeal was in abeyance until the trial court ruled on the motion for a new trial. *Id.* at 602.

This case is quite different from *Edsall* and *Folk*. Unlike the appellants in *Edsall* and *Folk*, JRK did not file a timely appeal. Nor did JRK present the tribunal with a timely post-judgment motion while a timely appeal was pending. Instead, after the time for an appeal had passed, JRK filed a motion for reconsideration, limited to grounds of fraud, mistake, or irregularity, and an untimely notice of appeal. There is nothing in *Edsall* or *Folk* to suggest that JRK’s untimely notice of appeal could be transmuted into a viable but latent or premature notice of appeal of a ruling that had yet to be made.

Furthermore, JRK’s motion for reconsideration was quite different from a post-judgment motion under Rule 2-532, 2-533, or 2-534, which must be filed within 10 days of the entry of judgment. As long as JRK’s motion was confined to issues of fraud, mistake, or irregularity (as those terms are understood in the context of post-judgment motions), JRK could file its motion at any time – months, years, or even decades after the decision in question. In this regard, JRK’s motion for reconsideration was more like a revisory motion under Rule 2-535(b), under which a “court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity” “[o]n motion of any party filed at any time.”

If a party files a revisory motion under Rule 2-535(b) and notes an appeal before the court has denied the motion, there is no rule, like Rule 8-202(c), that says that the notice of appeal becomes effective as soon as the court denies the motion. Thus, to obtain appellate review of the denial of the revisory motion, the party must note another appeal after the court has announced its decision to deny the motion or signed an order denying the motion. So too, in this case, was JRK required to file another notice of

appeal if it sought further review of the Board of Registration's denial of its motion for reconsideration.

For these reasons, we hold that the Board of Appeals correctly construed its Rules of Procedure. JRK failed to file its appeal within 30 days of the revocation order was mailed; therefore the Board of Appeals properly dismissed the appeal.

**IN CASE NO. 0155 OF THE SEPTEMBER
2019 TERM, JUDGMENT OF THE
CIRCUIT COURT FOR MONTGOMERY
COUNTY AFFIRMED; COSTS TO BE
PAID BY APPELLANT. IN CASE NO.
0767 OF THE SEPTEMBER 2019 TERM,
JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
REVERSED; COSTS TO BE PAID BY
APPELLEE.**

APPENDIX A

JRK Contractor, LLC, presented the following questions for our review:

1. Is there a direct right of appeal to the Circuit Court from the Montgomery Board of Appeals under Montgomery County Code 2A-11?
2. When does a violation of Federal Due Process waive the requirement to exhaust state administrative remedies?
3. May the Montgomery County Board of Registration violate Due Process?
4. Did the Montgomery County Board of Registration violate Contractor's Due Process?
5. Did the Montgomery County Board of Registration have the power to reconsider fraud, mistake or irregularity?
6. Does the failure by the Board of Registration to provide federal Due Process amount to fraud, mistake or irregularity?
7. May the Montgomery County Board of Appeals violate Due Process?
8. Did the Montgomery County Board of Appeals violate Contractor's Due Process?
9. Did the Montgomery County Board of Appeals have the power to reconsider fraud, mistake or irregularity?
10. Does the failure by the Board of Appeals to provide federal Due Process amount to fraud, mistake or irregularity?
11. Does Montgomery County Code 2A-11 preclude filing a timely appeal to the Board of Appeals by filing before or contemporaneously with filing an appeal with the Montgomery County Board of Registration?
12. Does the Montgomery County New Home Builder Law violate the Maryland Constitution?