Circuit Court for Prince George's County
Case No. CAL21-00352

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 218

September Term, 2021

LARAY J. BENTON

v.

PRINCE GEORGE'S COUNTY
DEPARTMENT OF PERMITTING,
INSPECTIONS & ENFORCEMENT, ET AL.

Fader, C.J.,
Graeff,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 9, 2022

LaRay J. Benton, the appellant, petitioned for judicial review of a decision of the Maryland Department of Transportation (the "Department") to issue certain permits and easements to Woodmore Overlook Commercial, LLC. The Circuit Court for Prince George's County granted Woodmore Overlook's motion to dismiss the petition. Mr. Benton has appealed that decision to this Court, naming the Department, the Prince George's County Department of Permitting, Inspections & Enforcement, and Woodmore Overlook as appellees. Because we agree with the circuit court that, on the record before it, Mr. Benton lacks standing, we will affirm.[1]

BACKGROUND

On January 11, 2021, Mr. Benton filed a petition for judicial review in the Circuit Court for Prince George's County. He identified the order or action that was the subject of the petition as:

> the final Permits and Easements issued by the Maryland Department of Transportation (MDOT) to the Woodmore Overlook, LLC and Woodmore Overlook Commercial, LLC[,] applicants for the Woodmore Overlook development site located at 9700-9800 Landover Road, Landover, MD, and specifically regarding ingress and egress of the site at grade from off of [State highway] MD-202 (Landover Road).

Mr. Benton claimed that he had been "irreparably harmed" and "continues to be especially aggrieved" by the decision to issue the permits.

On January 21, Woodmore Overlook filed a motion to dismiss the petition for lack of standing. Woodmore Overlook contended that Mr. Benton was not entitled to judicial

[1] On February 3, 2022, Mr. Benton filed a "Motion for Ruling on the Briefs." As a result of this decision, we will deny the motion as moot.

review of the permits issued by the Department because (1) he was not a party to the administrative proceedings, and (2) he lacked proximity to the property to which the permits applied and, therefore, he was not "aggrieved" for purposes of standing.[2] Woodmore Overlook also filed a motion to strike the petition pursuant to Rule 2-131(a)(2) ("Except as otherwise provided by rule or statute[,] . . . a person other than an individual may enter an appearance only by an attorney."), a motion requesting that any of Mr. Benton's subsequent filings be reviewed by a judge for merit, and a motion to shorten the time for Mr. Benton to respond to the motion to dismiss. Each of Woodmore Overlook's motions included a certificate of service stating that a copy of the motion had been mailed to Mr. Benton at an address on Stourbridge Court in Mitchellville, which is the address he had provided to the court in his petition for judicial review.

On February 10, Mr. Benton filed a "Notice of Address Change & Intent to Respond" to Woodmore Overlook's preliminary motions. Mr. Benton claimed that Woodmore Overlook's motions had not been properly served on him and provided the court with a different address, on Apollo Drive in Largo. He requested that the court issue an order compelling service of each motion on him at the new address and requested that

[2] As an alternative ground for the motion to dismiss, Woodmore Overlook asserted that the petition failed to include argument or evidence that the permits were issued improperly. However, a petitioner is not required to include argument or evidence in a petition for judicial review. *See* Md. Rule 7-202(c). We presume that the court granted the motion to dismiss based on standing, and not the alternative argument, as judges are "presumed to know the law, and [are] presumed to have performed [their] duties properly." *Comptroller of the Treasury v. Clise Coal, Inc.*, 173 Md. App. 689, 707 (2007) (quoting *Lapides v. Lapides*, 50 Md. App. 248, 252 (1981)).

he be given 30 days after such service to file responses. Mr. Benton did not respond to any of Woodmore Overlook's substantive arguments.

In an order signed on February 22 and entered on the docket on March 11, the court granted Woodmore Overlook's motion to dismiss. Mr. Benton noted this timely appeal.[3]

DISCUSSION

In his appellate brief, Mr. Benton identifies 33 questions for our review, the majority of which appear to concern the merits of tort claims or claims against persons or entities that are not parties to this appeal. Because those issues were not raised in or decided by the circuit court, we will not consider them. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). The only issue that is properly before this Court is whether the circuit court erred or abused its discretion in dismissing the petition for judicial review for lack of standing.

Before reaching the merits of that issue, however, we must address two preliminary matters. First, in two questions presented, Mr. Benton contends that the circuit court erred in dismissing the petition without holding a hearing pursuant to Rules 7-208 and 2-311(f). As an initial matter, Mr. Benton has waived reliance on those issues by failing to include any argument in support of them in his brief. *See Diallo v. State*, 413 Md. 678, 692 (2010) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999))). Even if

[3] The court also denied Woodmore Overlook's motion requesting that any future filings by Mr. Benton be preliminarily reviewed by a judge for merit.

he had not waived them, Mr. Benton is incorrect. Rule 7-208 applies to hearings on the merits, not the resolution of preliminary motions. *See* Md. Rule 7-208(b) (providing that the date for a "hearing on the merits" shall be set "[u]pon the filing of the record" and held "no earlier than 90 days from the date the record was filed"). And Rule 2-311(f), even if it were applicable to this judicial review proceeding, requires a hearing only "if one was requested as provided in this section." Mr. Benton did not request a hearing as provided in that section.[4]

Second, Mr. Benton raises a series of issues that all arise from the circuit court's ruling on his motion to dismiss before the administrative record was transferred to it. To the extent that Mr. Benton contends that the Department is at fault for not timely transferring the administrative record, he is incorrect. According to the docket entries, the petition for judicial review was received by the Department on January 27, 2021. The Department thus had until March 27 to transmit the record. *See* Md. Rule 7-206(d) (stating that "the agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings within 60 days after the agency receives the first petition for judicial review"). The circuit court entered the order of dismissal on the docket on March 11, well before the time for transmitting the record had expired.

To the extent that Mr. Benton contends that the court erred in ruling on the motion to dismiss before the administrative record arrived, he is also incorrect. Rule 7-204

[4] Mr. Benton further asserts that the court erred in not granting a hearing on his Motion for Reconsideration or Motion to Stay. The record before us does not reflect that Mr. Benton filed either motion.

expressly permits the filing of "a preliminary motion addressed to standing" before transmission of the administrative record. Md. Rule 7-204(b). Indeed, a committee note to that Rule contemplates that a court may extend the time to transmit the record until the court resolves such a preliminary motion, necessarily implying that the record may never need to be transmitted. *Id.*, comm. note. A court is thus not required to await the filing of the administrative record before resolving a preliminary motion addressing standing. And to the extent that Mr. Benton believes there is something unique about this case in general, or the administrative record in this case specifically, that required the circuit court to defer ruling on the preliminary motion pending receipt of the administrative record: (1) he has not explained why that is the case, either here or before the circuit court; and (2) he has not provided any documentation to support any such contention. *See In re Jeremy P.*, 197 Md. App. 1, 22 (2011) (stating that "appellate courts cannot fill in blanks in the evidentiary record").

We therefore turn to whether the court erred in dismissing the petition for judicial review based on lack of standing. In reviewing the grant of a motion to dismiss a petition for judicial review, this Court "must determine whether the court was 'legally correct.'" *Modell v. Waterman Fam. Ltd. P'ship*, 232 Md. App. 13, 19 (2017) (quoting *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 139 (2012)). In making this determination, "[w]e accept all well-pled facts in the [petition], and reasonable inferences drawn from them, in a light most favorable to the nonmoving party." *Id.*

Standing is a concept that "refers to whether the plaintiff has shown that he or she is entitled to invoke the judicial process in a particular instance[.]" *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343 (2020) (quoting *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 502 (2014)). "[F]or an administrative agency's action properly to be before . . . any court[] for [statutory] judicial review, there generally must be a legislative grant of the right to seek judicial review." *Appleton Reg'l Cmty. All. v. County Comm'rs of Cecil County*, 404 Md. 92, 98-99 (2008) (quoting *Harvey v. Marshall*, 389 Md. 243, 273 (2005)).

Mr. Benton sought judicial review of permits and easements issued by the Department, which is an "agency" within the meaning of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-101 – 10-226 (Repl. 2021). *See Warwick Corp. v. Dep't of Transp.*, 61 Md. App. 239, 245-46 (1985). Pursuant to the Act, to petition for judicial review of a decision of an administrative agency, the "person or entity must both be a *party* to the administrative proceedings *and* be *aggrieved* by the final decision of the agency." *Turner v. Maryland Dep't of Health*, 245 Md. App. 248, 264 (2020) (quoting *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 287 (1996)) (emphasis added in *Turner*).[5] *See also* State Gov't § 10-222(a)(1) ("[A] party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision[.]").

[5] Mr. Benton's reliance on § 22-407(a)(1) of the Land Use Article in support of his claim of standing is misplaced. That statute governs judicial review of the Prince George's County District Council and does not apply to decisions of the Department.

A petition for judicial review must "state whether the petitioner was a party to the agency proceeding, and if the petitioner was not a party to the agency proceeding, state the basis of the petitioner's standing to seek judicial review." Md. Rule 7-202(c)(1)(C). Mr. Benton's petition did not state that he was a party to the proceeding before the Department, nor did it state any other basis for standing other than a general assertion that he was "irreparably harmed" and aggrieved by the Department's decision. That conclusory assertion does not suffice to demonstrate the basis for Mr. Benton's standing. Moreover, when Woodmore Overlook raised that issue in its motion to dismiss, Mr. Benton chose not to respond substantively. Instead, Mr. Benton claimed that he had not been properly served with the motion,[6] asked the court to order that it be served on him at a different address, and stated an intent to file a substantive response later. Mr. Benton also did not amend his petition to include required allegations to support standing, even after being made aware of that deficiency. Under the circumstances, we discern no error in the circuit court's ruling on the motion to dismiss based on the record before it.

MOTION FOR RULING ON THE BRIEFS DENIED AS MOOT.

[6] Mr. Benton did not explain *how* he believed service of the motion had been improper. To the extent his contention was tied to his new address, of which he first provided notice at the same time he claimed the prior service was improper, he is incorrect. Rule 1-321(a), applicable here through Rule 7-204(c), provides: "Service upon . . . a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the . . . party, or if not stated, to the last known address." Mr. Benton's petition identified the Stourbridge Court address in Mitchellville as his address. Woodmore Overlook's certificate of service identified that it properly served him at that address. In any event, Mr. Benton never demonstrated any error in Woodmore Overlook's service on him.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.