Circuit Court for Baltimore City
Case No. 24C15007146

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 290

September Term, 2018

SAMUEL J. McCOLLUM, *et ux.*

v.

MARYLAND INSURANCE ADMINISTRATION, *et al.*

Wright,
Kehoe,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: July 9, 2019

Appellants Samuel McCollum and Cathy Brooks-McCollum filed an administrative complaint against appellee State Farm Fire & Casualty Insurance Company with the Property and Casualty Unit of the Maryland Insurance Administration ("MIA"), alleging violations of the Unfair Claim Settlement Practices Act of the Insurance Article and challenging State Farm's denial of damages and insurance coverage of claims for defense and indemnification.[1] After the MIA issued a final determination finding no violation in State Farm's denial of the claims, the McCollums requested an appeal hearing. Thereafter, an administrative law judge ("ALJ") issued a proposed decision affirming the MIA's final determination.

The McCollums filed written exceptions to the proposed decision, along with a motion for rehearing. The MIA reviewed the ALJ's proposed decision and issued a final order summarily affirming the proposed decision and denying the McCollums' exceptions and motion for rehearing. The McCollums then filed a petition for judicial review in the Circuit Court for Baltimore City, which, following a hearing, affirmed the MIA's final order. The McCollums, representing themselves, noted a timely appeal to this Court.

We rephrase and consolidate the questions presented by the McCollums, and State Farm's reframing of the questions presented, as the single question of: Is there substantial

[1] The MIA is also a named appellee but elected not to participate in the matter below and did not file a brief in the appeal.

evidence in the record to support the MIA's findings and conclusions in its final order to make its decision legally correct?[2]

Perceiving no error, we affirm.

BACKGROUND

The dispute between the McCollums and The Reserve at Elk River Homeowners' Association, Inc. ("the HOA") dates back at least to 2011, when the McCollums did not pay the assessed HOA fees on their home and the HOA notified them of its intent to place

[2] The McCollums presented the following questions: "(1) Were the McCollum's 5th and 14th Amendment Rights violated, denying them depriving them of 'life, liberty, or property, without due process of law…prohibiting governmental deprivations of 'life, liberty, or property, without due process of law?' (2) Was there error by the MIA and court below depriving the 'McCollum's' & the corporation of not ruling and hearing on the 'Fraud' presented and should those issues be ruled upon and/or Summary Judgment granted due to Appellees failure to answer any pleadings within the required time, as to circumvent the Affidavits? (3) Did the MIA and the court err by not answering and considering any Motions before it below and before the MIA, including Summary Judgment; where Appellants 'The McCollum's' provided Affidavits below to all filings where Appellees failed to file any answers within the time provided by the rules and/or al all; where there were there were no disputes as to the material facts presented? (4) Was there error by not insuring the Appellants 'McCollum's' and the Corporate Association for damages covered pursuant to the insurance policy? (5) Was there error by not allowing a full trial, discovery, cross examination and review?"

State Farm reframed the questions presented as follows: "(1) Did ALJ Burns abuse his discretion in precluding appellant Cathy Brooks-McCollum from presenting evidence of the validity of the HOA, whether the board members, officers and resident agent were authorized to act on behalf of the HOA, or whether the HOA was authorized to collect homeowner's association fees at the OAH hearing? (2) Did State Farm's denial of the McCollums' claim a defense and indemnification in the lien challenge case, and claim for compensatory damages due to the placement of lien on their property in 2008 violate Ann. Code Md., Ins. §27-303 or §4-113? (3) Was the MIA's amended final order summarily affirming the OAH's proposed decision supported by substantial evidence contained in the record?"

a lien against their property. In response, the McCollums sent lien notices of their own—which they later admitted had no validity—to individual members of the HOA's Board of Directors and its property management company. To challenge the validity of those liens, the HOA filed suit against the McCollums in the Circuit Court for Cecil County, the county in which the development is located.[3]

The HOA was, at all relevant times, covered by a business owner's policy of insurance, issued by State Farm. The McCollums submitted a claim to State Farm requesting a defense and indemnification in the HOA's lawsuit against them, which, of course, had been initiated as a result of the McCollums' own actions.[4] State Farm denied the McCollums' claims for defense and indemnification, on the ground that the McCollums were not insureds and that the civil suit against them did not meet the definition of an "occurrence" under the policy. The insurer further declined to offer to settle with the

[3] The circuit court ultimately granted the HOA's motion for summary judgment in that case and awarded the HOA $10,000 in attorneys' fees. This Court affirmed that decision in an unreported decision. *Samuel J. McCollum, et ux. v. Reserve at Elk River Homeowners Association, Inc., et al.*, No. 1428, September Term, 2012 (filed November 14, 2013). In the meantime, however, the McCollums had filed their own lawsuit against the HOA, alleging numerous tort and breach of contract claims. In their complaint, they acknowledged the unenforceability and inapplicability of the lien notices they had filed and claimed that the HOA knew, or should have known, that the McCollums had no legitimate basis to bring suit against them.

[4] Ms. McCollum contended that her "tentative" service on a HOA finance committee qualified her as an insured under the policy.

McCollums for their alleged compensatory damages resulting from the placement of a lien against their property in 2008.[5]

In April 2013, the McCollums filed an administrative complaint with the MIA, challenging State Farm's denial-of-coverage decision and its denial of their claim for compensation for their asserted damages. In August 2013, the MIA determined that "State Farm's actions have not been shown to be arbitrary and capricious or to otherwise be in violation of the Insurance Article." The McCollums appealed the MIA's decision by requesting a hearing. The MIA delegated its authority to the Office of Administrative Hearings ("OAH") to conduct the hearing and issue a proposed decision.

ALJ Michael Burns held a full evidentiary hearing on the matter on March 5, 2014. Despite the McCollums' attempts to introduce irrelevant evidence concerning alleged fraud on the part of the HOA, the propriety of its board members, and its authority to collect HOA fees, ALJ Burns explained that he had "no jurisdiction over all this other material and dispute" and would only entertain the "very clear and very simple" coverage issues that had been decided by the MIA—whether State Farm had used unfair claims settlement practices and whether the McCollums were covered insureds.[6]

[5] In denying that claim, State Farm advised the McCollums that the HOA's directors and officers liability coverage had not gone into effect until 2010.

[6] After the hearing, the McCollums filed several motions with the OAH, including a motion for summary judgment. By letter dated March 10, 2014, ALJ Burns advised them that he declined to rule on the motions, as the record had closed at the conclusion of the hearing.

On March 25, 2014, ALJ Burns issued a proposed decision affirming the MIA's decision. Noting the irrelevance and lack of persuasiveness of Ms. McCollum's testimony, which he found to be based on opinion and not fact, ALJ Burns determined that the McCollums had not met their "burden of proving by a preponderance of the evidence, that [State Farm] had acted arbitrarily and capriciously, or otherwise in violation of the Insurance Article, in denying coverage because Ms. McCollum was neither a director or officer of the HOA," and, even if she were an insured, the policy provided no coverage for "the occurrences raised in the lawsuits involved herein." He went on to explain:

> The [McCollums] seek coverage under the Policy as a result of their actions in threatening liens against the HOA and its Directors because of a dispute over HOA fees. There is, quite simply, no way to read the Policy as providing them coverage where they have threatened, and eventually did, sue the HOA and its Directors and the HOA has responded with a suit of its own. The coverage limitations under the Policy are clear and coverage does not apply to the claims raised by, and against the [McCollums].
>
> The evidence is clear and overwhelming that [State Farm] has also not handled the [McCollums'] claim for damages and associated costs in an arbitrary and/or capricious manner. The voluminous record—explained concisely and effectively at the hearing by [State Farm's liability claims adjustor]—proves that [State Farm] has consistently evaluated the [McCollums'] positions and requests fairly based upon the clear language of the Policy and the facts as they have developed. [State Farm] is defending the HOA and its Directors under a reservation of rights. Considering the ever-growing list of cases and causes of action which the [McCollums] have initiated in this matter, the decision by [State Farm] to reserve its rights and not settle this matter with the [McCollums] up to this point in time is entirely prudent, rational[,] and understandable.
>
> The [McCollums], in spite of [Mrs. McCollum's] lengthy, earnest testimony, did not produce any persuasive evidence to demonstrate that [State Farm's] decision to deny their claim for coverage under the policy or to settle their claims against the HOA and its Directors was unreasonable. In fact, the evidence established that [State Farm] has gone to considerable

> efforts, under challenging circumstances, to repeatedly review its coverage under the Policy and to ensure that the [McCollums'] claims for coverage and for settlement were thoroughly considered and reconsidered before being denied. [State Farm] has provided prompt and consistent explanations to the [McCollums] for its decisions to deny coverage to the [McCollums] under the Policy and to deny their claim for settlement. The [McCollums] have failed to establish that [State Farm's] decisions or actions were in any way arbitrary, capricious[,] or illegal.
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> For all the foregoing reasons, I conclude that [State Farm's] actions in handling the [McCollums'] claim for coverage under the Policy, as well as its actions concerning settlement, were reasonable, were not arbitrary or capricious[,] and did not violate the Maryland Insurance Article.

The ALJ concluded, as a matter of law, that the McCollums had not proven, by a preponderance of the evidence, that State Farm: acted arbitrarily or capriciously in handling their claim for coverage; engaged in unfair claim settlement practices; or refused or delayed payment of an amount due them without just cause. He therefore proposed that State Farm not be found in violation of the Maryland Insurance Article and that the McCollums' complaint be denied and dismissed.

The McCollums filed a motion for rehearing on March 6, 2014, before the issuance of the proposed decision. They also filed timely exceptions to the proposed decision.

The MIA issued its amended final order on August 19, 2015, providing a "summary affirmance of the proposed decision below," having been "persuaded that the result reached

by the ALJ is correct." The MIA further denied the McCollums' exceptions and motion for rehearing.[7]

The McCollums timely filed a petition for judicial review in the Circuit Court for Baltimore City, alleging that the MIA had denied them due process by declining to permit them to present evidence, failing to stay the matter until State Farm provided them with requested documents, and failing to address their claim of the HOA's fraud in placing the initial lien on their property.[8] Following argument, the circuit court issued a memorandum and order affirming the MIA's final order, finding that "there was substantial evidence presented to the OAH to support the conclusion below that the McCollums a.) were not covered by the State Farm policy as an 'insured,' and/or b.) that the civil action for which they sought coverage was not covered by the policy." This timely appeal followed.

DISCUSSION

In an appeal from the judgment of a circuit court on judicial review of a final agency decision,

> we look 'through' the decision of the circuit court and review the decision of the MIA. Our review of the agency decision is circumscribed. It is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.

[7] The order amended the MIA's August 7, 2015 final order to reference consideration and denial of the McCollums' exceptions and motion for rehearing, which had been omitted from the initial order.

[8] The McCollums initially filed their petition for judicial review prior to the MIA's issuance of its final order. Pursuant to State Farm's motion, that petition was stricken, and the McCollums refiled their petition after the MIA issued its amended final order.

> In applying these standards, we review the record in the light most favorable to the agency and defer to its fact-finding and drawing of inferences if supported by any evidence in the record. We review purely legal decisions *de novo.* Even so, with respect to an agency's legal conclusions, we give considerable weight to the agency's interpretation and application of the statute which the agency administers. In the context of appellate review of an administrative agency decision on a mixed question of law and fact, we apply the substantial evidence test.

People's Ins. Counsel Div. v. State Farm Fire & Cas. Ins. Co., 214 Md. App. 438, 449-50 (2013) (cleaned up). Substantial evidence is defined as "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Owusu v. Motor Vehicle Admin.*, 461 Md. 687, 698 (2018) (quoting *Gigeous v. Eastern Correctional Institution*, 363 Md. 481, 497 (2001)).

Here, despite the McCollums' numerous claims of denial of due process, fraud on the part of the HOA, error on the part of the MIA and circuit court in declining to grant them summary judgment, and denial of full trial and discovery, they fail to set forth any coherent argument or legal authority as to why the final decision of the MIA, upholding State Farm's denial of coverage and finding no violation by the insurer of the Insurance Article, was not legally correct based on substantial evidence. The competent evidence presented below credibly showed that the McCollums were not insureds under the HOA's insurance policy with State Farm because they were not directors, officers, board members, mangers, *etc*., of the HOA, and Ms. McCollum's "tentative" membership on a finance committee did not prove that she served in any covered capacity for the HOA. And, even had the MIA been persuaded that the McCollums were insureds under the policy, State Farm explained that their act of sending invalid lien notices to members of the HOA, and

consequently having to defend a lawsuit, did not meet the definition of "occurrence" in the policy—bodily injury, property damage, personal injury or advertising injury—such that defense and indemnification were warranted.

The MIA, in summarily affirming the ALJ's proposed decision, concluded that the McCollums did not prove, by a preponderance of the evidence, that State Farm engaged in unfair settlement practices by "refus[ing] to pay a claim for an arbitrary or capricious reason based on all available information." MD. CODE, INSURANCE ARTICLE § 27-303.[9] Based on State Farm's careful consideration (and reconsideration) of the claim and explanation of its denial, and the MIA's finding that State Farm's position is "sound and supported by the evidence," we are not persuaded that the MIA's decision was not legally correct.[10]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS ASSESSED TO APPELLANTS.

[9] Indeed, as the circuit court pointed out in its summary affirmance of the MIA's final order, "in light of the fact that the McCollums' lawsuit (in which they sought settlement) did not survive a motion for summary judgment (a judgment that was affirmed on appeal), there was no basis for the ALJ or the MIA to find that State Farm acted arbitrarily or capriciously."

[10] To the extent that the McCollums claim failure of due process in the MIA's denial of discovery and failure to grant them summary judgment, the short answer is that they did not make timely requests for either. They filed no request for discovery within 30 days prior to the OAH hearing, as permitted in an administrative action, *see* COMAR 28.02.01.13(A), and their filing of a motion for summary judgment, if permitted in an administrative action, occurred after the close of the record in the OAH, which the ALJ explained to them in writing. *See*, *supra*, n.6. These claims are therefore not preserved for our review, but even if they were, they would be meritless.