Circuit Court for Carroll County
Case No: C-06-CV-18-000436

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 357

September Term, 2019

MARY KOWALSKI

v.

CARROLL COUNTY COMMISSIONERS

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 14, 2020

In October 2018, the Board of Carroll County Commissioners ("the Board"), appellee, adopted the Freedom Community Comprehensive Plan ("the Plan"), involving approximately 28,901 acres of land in southeastern Carroll County. Following its adoption, Mary Kowalski, the appellant, filed an initial pleading in the Circuit Court for Carroll County entitled "Appeal of Decision by Carroll County Commissioners," requesting that the court declare the plan "void and overruled." Specifically, Ms. Kowalski alleged that the Board had failed to adhere to § 3-202(a)(1) and § 3-202(a)(3) of the Land Use Article when it held a public hearing without first having received "the final report of the planning commission." Upon receipt of Ms. Kowalski's initial pleading, the court issued a "Notice to Administrative Agency of Judicial Review" to the parties.

The Board moved to dismiss the action instituted by Ms. Kowalski or, alternatively, moved that the court enter an order directing Ms. Kowalski to provide "a more definite statement of the matters complained of" in her initial pleading. The Board contended, in pertinent part, that it was unclear whether Mr. Kowalski's initial pleading constituted a "complaint for injunctive or declaratory relief" or an "on the record appeal filed under Rule 7-201." If filed as the latter, the Board argued that the action must be dismissed because "appeals of comprehensive planning decisions may not be filed as appeals of 'zoning actions.'" In response, the court ordered Ms. Kowalski to provide a more definitive statement, as requested, within 30 days. Accordingly, Ms. Kowalski filed a more definitive statement, declaring that the case was filed as an "[o]n the Record Appeal, seeking Judicial Review in accordance with Title 7 and 7-201 of the Md. Rules."

The Board renewed its motion to dismiss asserting again, in pertinent part, that Maryland Rule 2-701 and § 4-410 of the Land Use Article do not create a right of appeal to the adoption of the Plan. Ms. Kowalski did not file an opposition to the Board's motion and, thereafter, the circuit court granted the Board's motion to dismiss with prejudice. In response, Ms. Kowalski filed a motion to alter and amend, asserting that she was permitted to pursue the action "in accordance with Title 7 and 7-201 of the Maryland Rules." On April 4, 2019, the court entered an order denying Ms. Kowalski's motion to alter and amend, finding that Ms. Kowalski had "no right to appeal a legislative action in the manners in which it was sought in this case."

On appeal, Ms. Kowalski raises the following questions for our review, which we rephrase for clarity:

1. Did the appellant's initial pleading state a claim upon which relief could be granted in accordance with Md. Rule 2-305?

2. Did the circuit court's issuance of a "Notice to Administrative Agency of Judicial Review" constitute prejudicial error?

For the following reasons, we shall affirm the judgment of the circuit court.

ARGUMENT

Despite Ms. Kowalski's definitive statement asserting that the case was filed as an "[o]n the Record Appeal, seeking Judicial Review," Ms. Kowalski asserts for the first time on appeal that she "had no intention to seek 'judicial review'" when she initiated the action. She further asserts that the initial pleading did not state that the action was for judicial review and that, "without any cause to do so," the circuit court "erroneously issued a 'Notice to Administrative Agency of Judicial Review.'" As a result, she contends that the

improperly issued notice caused her to believe, to her detriment, that "the [c]ircuit [c]ourt had properly steered her complaint into the Title 7 lane of designation" and that the case was properly filed as a Title 7 action. She therefore advanced that it was such in her definitive statement and in her subsequent motion to alter and amend.

The issue of whether the notice was erroneously issued and whether it prejudiced Ms. Kowalski's further prosecution of the case was not raised below for the circuit court's consideration. As we have previously stated, "[a] contention not raised below . . . and not directly passed upon by the trial court is not preserved for appellate review." *Baltimore Cty., Maryland v. Aecom Servs., Inc.*, 200 Md. App. 380, 421 (2011) (internal quotations omitted). We will not, therefore, consider this issue on appeal.

As to the grant of the Board's motion to dismiss, "we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Scarbrough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019). As to whether her initial pleading properly stated a claim upon which relief could be granted, Ms. Kowalski does not advance any argument on appeal that the contents of her pleading advanced a justiciable cause of action. The entirety of her argument is devoted to the issuance of the notice of judicial review and its effect on her subsequent handling of the case. She does not contend that the action could have been considered as a zoning action subject to judicial review, nor does she argue that the initial pleading set forth some other viable cause of action. We, therefore, decline to consider on appeal whether the court erred in dismissing her initial pleading for failure to state a claim upon which relief could be granted. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain "[a]rgument in support of the

party's position."); *Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that "arguments not presented in a brief or not presented with particularity will not be considered on appeal").

Even had Ms. Kowalski properly briefed her argument with specificity, we perceive no error in the court's dismissal of the action. "The right to appeal, except as authorized by constitution, is regulated entirely by statutes." *Washington Suburban Sanitary Comm'n v. Lafarge N. Am., Inc.*, 443 Md. 265, 274-75 (2015). Unless a right to appeal is expressly granted by law, an appeal is not permitted from a final judgment of a circuit court entered or made in the exercise of appellate jurisdiction in reviewing the decision of an administrative agency. Md. Code Ann., Cts. & Jud. Proc. § 12-302. Ms. Kowalski did not argue in the circuit court which statutory provision, if any, conferred upon her a right to appeal. The Board acknowledged that § 4-401 of the Land Use Article permitted judicial review, but specifically for the review of zoning actions of a legislative body. The circuit court considered, therefore, whether the action instituted by Ms. Kowalski constituted a zoning action subject to judicial review.

The "pertinent criteria" for determining whether a particular action is a "zoning action," is as follows:

> [F]irst, there must be a determination that the process observed by the governmental body in affecting an alleged zoning action was quasi-judicial in nature, rather than legislative. A quasi-judicial proceeding in the zoning context is found where, at a minimum, there is a fact-finding process that entails the holding of a hearing, the receipt of factual and opinion testimony and/or forms of documentary evidence, and a particularized conclusion, based upon delineated statutory standards, for the unique development proposal for the specific parcel or assemblage of land in question. Second, if the governmental act in question involves a quasi-judicial process, the

> inquiry moves to the question of whether it qualifies as a "zoning action." Where the City Council exercises its discretion in deciding the permissible uses and other characteristics of a specific parcel or assemblage of land upon a deliberation of the unique circumstances of the affected land and its surrounding environs, a "zoning action" is the result.

Maryland Overpak Corp. v. Mayor and City Council of Baltimore, 395 Md. 16, 53 (2006).

Considering the foregoing, the court found that the Plan was not adopted through a quasi-judicial process because 1) the Plan consisted of "generalized statements to provide guidance to government officials and staff to develop policies that advance the community," 2) there were no evidentiary hearings preceding the adoption of the plan, and 3) the Plan was a comprehensive zoning plan rather than piecemeal or spot zoning. As we have previously stated, "[c]omprehensive rezoning is a vital legislative function, and in making zoning decisions during the comprehensive rezoning process, the [zoning authority] is exercising what has been described as its 'plenary' legislative power." *Friends of Frederick Cty. v. Town of New Mkt.*, 224 Md. App. 185, 204 (2015). Given that the Plan was the result of legislative, and not quasi-judicial, function, Ms. Kowlaski's appeal was not permitted pursuant to § 4-401 of the Land Use Article. Accordingly, the circuit court did not err in granting the Board's motion to dismiss on those grounds.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.