

Circuit Court for Garrett County
Case No.: 11-C-16-014839

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 431

September Term, 2017

DAYSTAR BUILDERS, INC.

v.

MARYLAND HOME BUILDER
GUARANTEE FUND

Woodward, C.J.,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: May 15, 2018

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

This appeal emanates from an administrative agency decision awarding payment from the Maryland Home Builder Guarantee Fund (“Fund”) to a claimant, and suspending the home builder registration of Daystar Builders, Inc. (“Daystar”), appellant, until the funds expended on its behalf are repaid. Daystar filed a petition for judicial review in the Circuit Court for Garrett County, and in response, the Consumer Protection Division¹ within the Office of the Attorney General, appellee, filed a motion to dismiss for failure to submit the record within the prescribed time. Daystar appeals from the February 24, 2017 order of the circuit court dismissing its petition. Daystar’s sole issue on appeal is whether the circuit court erred in not affording it a hearing before granting the motion to dismiss.

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

FACTUAL BACKGROUND

On October 25, 2016, the Agency issued a final order awarding \$50,000 compensation from the Fund to a claimant for losses resulting from Daystar’s unworkmanlike construction of her new home, and breach of express and implied warranties in the construction of the home. The Agency ordered that Daystar’s home builder registration be suspended after the claimant received payment, and that Daystar was ineligible to renew its registration until after the Fund had been reimbursed. On

¹ The Consumer Protection Division in its capacity as appellee shall be referred to as the “Division,” and the Consumer Protection Division in its capacity as an administrative agency shall be referred to as the “Agency.”

November 28, 2016, Daystar filed a petition in circuit court for judicial review and, also moved to stay enforcement of the order suspending its registration.²

On February 8, 2017, the Division filed a motion to dismiss the petition for judicial review, claiming that Daystar had failed to order and pay for the transcripts of the administrative hearings and file a certification of costs for the transcripts within the time required by Md. Rule 7-206(b). The Division claimed that because the delay was not caused by the agency, stenographer, or another person, that dismissal of the petition was proper under Md. Rule 7-206. On February 23, 2017, Daystar filed its response, arguing that it had submitted the transcripts to the court “at significant expense” on February 10, 2017, and that a complete administrative record was now before the court. Daystar further asserted that Md. Rule 7-206 does not mandate dismissal where there is “substantial compliance” with the rule, and where the movant does not claim unfair prejudice caused by the late filing. Daystar also requested a hearing pursuant to Md. Rule 2-311.

On February 24, 2017, the court found that Daystar failed to transmit the record within the time prescribed and dismissed the petition. On March 8, 2017, Daystar filed a motion to alter or amend, or revise the judgment, challenging the dismissal on the

² On January 31, 2017, the court scheduled a hearing on Daystar’s request to stay enforcement. The Division subsequently filed a motion to revise the judgment and dismiss the hearing, claiming that Daystar’s argument was moot because its home builder registration was not yet suspended, and would not be suspended until after all appeals had been adjudicated and the claimant paid. On February 17, 2017, the parties filed a stipulation to remove the February 22, 2017 hearing from the docket because the request to stay enforcement was moot. On February 21, 2017, the court dismissed the hearing.

grounds that Md. Rule 2-311 precluded the court from rendering a decision dispositive of its claim without a hearing. On April 3, 2017, the court denied the motion. Daystar then noted a timely appeal from that judgment.

DISCUSSION

Daystar argues that the circuit court erred in granting the motion to dismiss its petition for judicial review. Citing Md. Rule 2-311(f), Daystar contends that the court was required to first conduct a hearing before rendering a decision dispositive of its claim where, as here, the request for a hearing was properly made. The Division responds that the court correctly dismissed Daystar’s petition under Md. Rule 7-206(e), which does not require the court to conduct a hearing before dismissing a petition for failure to transmit the record within the time prescribed.

As a preliminary matter, Daystar filed its motion to alter or amend twelve days after the court filed the order dismissing its petition, consequently, the thirty-day deadline in which to file a notice of appeal from the February 24, 2017 order dismissing the petition was not tolled. *Sydnor v. Hathaway*, 228 Md. App. 691, 707 (2016) (citing *Furda v. State*, 193 Md. App. 371, 377 (2010)). “When a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion.” *Id.* at 707-08; *see* Md. Rule 8-202(a). Accordingly, the only matter before this Court is the denial of the motion for reconsideration.

The trial court’s decision to deny a motion for reconsideration is reviewed for an abuse of discretion. *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 96 (2013), *aff’d*, 437 Md.

47 (2014). We find that an abuse of discretion occurs where “no reasonable person would take the view adopted by the [trial] court or the trial court acts without any guiding rules or principles.” *Id.* (citing *Das v. Das*, 133 Md. App. 1, 15-16 (2000) (internal quotations omitted)). “We do not disturb a trial court’s discretionary ruling simply because we would not have made the same ruling.” *Id.* at 96-97 (quoting *Abrishamian v. Barbely*, 188 Md. App. 334, 342 (2009)). Moreover, the party moving for reconsideration bears a burden “overlaid with an additional layer of persuasion” and “must make a strong case for why a judge, having once decided the merits, should in his broad discretion deign to revisit them.” *Id.* at 97-98 (quoting *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484–85 (2002)). As we explained in *Wormwood v. Batching Systems, Inc.*, 124 Md. App. 695, 700 (1999):

The fact that an error may have been or was committed and not corrected by a trial court on a motion to revise is not necessarily an abuse of discretion. The nature of the error, the diligence of the parties, and all surrounding facts and circumstances are relevant. Thus, the determination is case specific. The real question is whether justice has not been done, and our review of the exercise of a court’s discretion will be guided by that concept.

Hence, the critical question confronting this Court is not whether the circuit court committed any conceivable error in granting the Division’s motion to dismiss without affording Daystar a hearing, but whether Daystar brought to the court’s attention on reconsideration an error so clear that no reasonable judge would refuse to correct the previous ruling. Among the arguments advanced in its motion for reconsideration, Daystar, relying on *Wormwood, supra*, reiterated its previous contention that dismissal of

its petition for failure to timely transmit the record was not mandatory pursuant to Md. Rule 7-206(d).

In *Wormwood*, the claimant submitted payment for the administrative hearing transcript to the court reporter, and approximately two weeks later, the court reporter filed the transcript with the agency on the last day to transmit the record to the court. *Wormwood*, 124 Md. App. at 698. The agency sent the record to the court approximately six days later, and the record was received by the court four days after that. *Id.* The agency then filed a motion to dismiss *Wormwood*'s petition, asserting the untimely filing of the record. *Id.* We held that “the rule governing transmittal is subject to substantial compliance” and reversed the dismissal of *Wormwood*'s petition, finding that the substantial compliance test was met where the record demonstrated that the delay was not solely attributable to *Wormwood*. *Id.* at 705.

On reconsideration, Daystar failed to allege any facts that would have supported its claim that the “substantial compliance” test articulated in *Wormwood* was met. Daystar did not provide the court any explanation or allege any facts that attributed the delay in some part to the actions of the agency, court reporter, or another party. Moreover, Daystar had not suggested to the court that any evidence was forthcoming that may have had a bearing on whether it was in substantial compliance with the rule, even if the Court had granted the request for a hearing. On these grounds, Daystar's arguments in favor of reversal were unpersuasive and did not bring to the court's attention any facts reflecting that justice had not been done. Based on the foregoing, we cannot say that the

trial court abused its discretion in declining to revise its judgment granting the motion to dismiss.

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