

Circuit Court for Prince George's County
Case No. CAL22-07546

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 443

September Term, 2024

WILLIAM G. FRUTCHEY, ET AL.

v.

PRINCE GEORGE'S CO. BOARD OF
REGISTRATION FOR ELECTRICIANS, ET
AL.

Wells, C.J.,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: October 3, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case is presented to us on appeal by William Frutchey (“Mr. Frutchey”), the master electrician for Rosendin Electric, Inc. (“Rosendin,” together “Appellants”). Mr. Frutchey’s electrician license was revoked by the Prince George’s County Board of Registration for Master Electricians, Limited, and Electrical Contractors, Limited (“Board”).¹ Appellants provided some of the electrical work during the construction of the MGM Casino located in Oxon Hill, Maryland. Following an incident involving personal injuries, the Department of Permitting, Inspections, and Enforcement (“DPIE”) filed a complaint alleging that Appellants violated electrical codes during the completion of the work at the MGM Casino. The Board agreed, ordered a six-month suspension of Mr. Frutchey’s electrical license and recommended Appellants removal from the DPIE’s third-party inspection program.

Appellants sought review in the Circuit Court for Prince George’s County, which affirmed the decision of the Board. This appeal followed. The Board and DPIE (“Appellees”) filed a motion to dismiss, contending that the appeal is not permitted as a matter of law under Maryland Code (1973, 2020 Repl. Vol.) § 12-302(a) of the Courts and Judicial Proceedings Article (“CJP”). This Court initially denied the motion to dismiss, and allowed the appeal to proceed, but permitted Appellees to again present the jurisdictional issue in their briefing.

¹ At the time of the administrative proceedings in this case, the Board was defined in Prince George’s County Code (“PGCC”) § 2-253.50 as the Board of Registration for Master Electricians and Electrical Contractors.

QUESTIONS PRESENTED

Appellants present three questions for our review, which we have recast and rephrased as follows:²

- I. Whether Appellants were properly provided notice and the opportunity to cure the deficiency in the electrical work.
- II. Whether the Board had jurisdiction to sanction Appellant following the enactment of the Revised Maryland Electricians Act.
- III. Whether as applied to Appellants, CJP §12-302 violates Article 24 of the Maryland Declaration of Rights.

Appellees in turn assert that the appeal should be dismissed, as it is not permitted by CJP § 12-302(a). In the alternative, Appellees argue that following the enactment of the Revised Maryland Electricians Act and expiration of Mr. Frutchey's Board-issued license, there is no relief that this Court could offer, and Appellants' appeal is therefore moot. As we explain below, this Court lacks jurisdiction to consider this appeal pursuant to CJP § 12-

² Appellants phrased the questions as follows:

1. Whether the Board failed to provide the statutorily mandated opportunity to correct prior to sanctioning Frutchey?
2. Whether the enactment of the revised Maryland Master Electricians Act divested the Board of jurisdiction to sanction Frutchey's electrical license?
3. Whether § 12-302 of the Courts and Judicial Proceedings Article violates the equal protections provided by Article 24 of the Maryland Declaration of Rights as applied to Frutchey?

302(a). Accordingly, we dismiss this appeal and decline to address the parties’ remaining questions.

BACKGROUND

In March 2015, Appellants were subcontracted to perform a portion of the electrical work during the construction of the MGM National Harbor Casino and Hotel (the “Project”). The Project passed all required inspections and achieved substantial completion so that it could open to the public in December 2016. The Project obtained final use and occupancy approval in February 2017. After opening, MGM was responsible for all maintenance and repairs of electrical work excluded by warranty.³

In June 2018, a minor child visiting MGM with her family suffered serious injury from electrocution when she touched an exterior stainless-steel handrail illuminated with LED lights located on the west side terrace of the building. Immediately following the incident and again in August 2018, DPIE initiated investigations to determine the cause of the electrocution. Appellants participated in these initial investigations. Later, DPIE retained two other electrical firms to conduct additional investigations of the electrical work done on the Project throughout the property. The other firms concluded that there were various electrical issues throughout the Project that occurred either during installation or that could not be attributed to post-installation maintenance.

³ Rosendin’s warranty obligations ran through December 2017, and excluded ordinary wear and tear, abuse and misuse, accidents, maintenance, and repair by others.

On August 22, October 18, and November 9, 2018, DPIE issued a series of correction orders to MGM, ordering that various electrical deficiencies throughout the Project be remedied. Each of the correction orders was directed at MGM, not Appellants.⁴ On October 12, 2018, DPIE filed a complaint (the “Initial Complaint”) with the Board, requesting that the Board revoke Appellant’s electrical license pursuant to PGCC § 2-253.57(a) due to negligence and violation of the [National Electric Code (the “NEC”)]. The Initial Complaint alleged 16 specific violations. In addition, on October 12, 2018, DPIE directed Appellants to cease and desist any work on the Project, barring Appellants from entering the property without pre-approval from MGM.

On April 23, 2020, DPIE filed its First Amended Complaint with the Board. This complaint narrowed the scope of the complaint to 11 specific electrical work violations. The complaint alleged that Appellants “willfully and deliberately” violated the NEC. On June 11, 2020, several days before the hearing was scheduled to begin on June 16, DPIE withdrew its allegation that Appellants’ electrical work was the direct cause of the electrocution incident. Accordingly, on June 12, 2020, the Board granted DPIE’s request that both parties be precluded from “presenting evidence relating to the cause of the electrocution incident at MGM National Harbor.” The parties were still permitted to

⁴ PGCC § 2-253.56(b) provides that when a complaint is filed regarding deficient electrical work, the Director of DPIE “shall report the complaint to the licensee, who is the subject of the complaint, and order the licensee to correct the defect within a reasonable period of time, not to exceed one (1) month.” Appellants argue on appeal that they were not given proper notice and opportunity to correct the deficiencies because the correction orders were directed to MGM rather than the licensee, Mr. Frutchey. DPIE maintains that they were unable to determine who performed the specific electrical work.

address DPIE’s other allegations of electrical code violations throughout the Project. Further, on June 12, 2020, DPIE produced 18 additional exhibits, all of which Appellants alleged did not pertain to the electrocution incident. As a result, the Board suspended the upcoming hearing.

On July 31, 2020, DPIE filed its Second Amended Complaint with the Board, adding the request that the Board suspend Appellant’s license pursuant to PGCC § 2-253.57(a)(11).⁵ This complaint alleged that the repeated violations of the NEC were committed by underground work throughout the property, separate and apart from the electrocution incident. Appellants allegedly requested that DPIE identify the specific work that was deficient and the corresponding NEC provisions that were violated, and received no such response from DPIE.

On May 7, 2021, the Board issued a show cause order, ordering that DPIE “submit, with specificity, the precise Code provisions being relied upon in support of the Code violations against [Appellants].” DPIE submitted the six charged violations on May 18, 2021, five of which Appellants allege were new charges they were unaware of and did not concern the work done that led to the electrocution incident.

The administrative hearing commenced via Zoom on June 3 and 4, 2021, and continued on October 19 and 20, 2021. On July 1, 2021, while the administrative proceedings were pending, the Revised Maryland Electricians Act (the “Act”) took effect.

⁵ PGCC § 2-253.57(a)(11) authorizes the Board to suspend a license due to a licensee’s “[r]epeatedly performing or permitting the performance of defective or unsafe work.”

The Act divested the Board of jurisdiction over the issuance of electrical licenses and placed the regulation of all electrical licenses with the State, rather than individual counties. Appellants contended below that, as of July 1, 2021, Mr. Frutchev had no county license for the Board to suspend, and any proceedings before the Board at that time were therefore moot.

On March 15, 2022, the Board issued its order concluding that Appellants committed five of the six charged violations of the NEC. The order provided that “the Board imposes six (6) month suspension on the subject Master License” and “the Board recommends that the Department of Permits, Inspections and Enforcement (“DPIE”) revoke use of DPIE’s third party inspection program for all Rosendin projects.”⁶ DPIE had not requested that the Board permit it to revoke the third-party inspection program for Appellants’ projects. The recommended revocation was for an unspecified period of time.

Thereafter, Appellants filed a pleading captioned as a “Petition for Judicial Review” of the Board’s decision in the Circuit Court for Prince George’s County. A hearing was held on August 11, 2023, and on April 4, 2024, the circuit court issued an opinion and order affirming the decision of the Board. This appeal followed.

⁶ The third-party inspection program “utilizes qualified, third-party professionals along with DPIE’s own inspectors, to conduct inspections of commercial construction projects, commercial additions and other specified projects permitted by the DPIE.” The purpose of the third-party inspection program “is to expedite issuance of required certificates and permits. . . . It is not the only method to receive such approvals.”

DISCUSSION

I. Appellants’ appeal to the Circuit Court for Prince George’s County constitutes a petition for judicial review rather than a common law mandamus action. Therefore, this Court lacks jurisdiction under CJP § 12-302(a) to consider this appeal.

Appellees argue that Appellants’ appeal to the Circuit Court for Prince George’s County constitutes a petition for judicial review, and pursuant to CJP § 12-302(a), the court’s decision is not appealable to this Court. Appellants counter that their appeal filed in the circuit court was akin to a common law mandamus action, and, therefore, this Court has jurisdiction to review the decision of the circuit court. The issue before us is whether the proceeding in the circuit court constitutes an action for judicial review or a mandamus action.

We start our analysis with a plain reading of the statute authorizing an appeal from the circuit court. CJP § 12-302(a) provides: “Unless a right to appeal is expressly granted by law, § 12-301 of this subtitle does not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court, an administrative agency, or a local legislative body.” In this particular case, Appellants’ right to petition for judicial review is authorized by Prince George’s County Code Section 2-253.57(c). PGCC 2-253.57(c) expressly provides: “a person aggrieved by an action of the Board may appeal to the Circuit Court not more than thirty (30) days after service of the notice by the Board.” Notably, the Code does not authorize a right to appeal the decision of the Circuit Court for Prince George’s County. All parties agree that if Appellants’ appeal to the circuit court constitutes an action for judicial review,

Appellants are not permitted to appeal the decision of the circuit court to this Court. If, however, Appellants’ appeal constitutes a mandamus action, an appeal to this Court would be permitted.

Maryland case law instructs us that while the caption or label of an action may be instructive, it is not dispositive. *Mayor & City Council of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 666 (2021) (noting that “if we examine the nature of the proceeding as a whole and determine that, regardless of the caption or label, the substance of the case is in the nature of an original action seeking a writ of common law mandamus,” the action will be appealable). “The issue is whether the action, as a whole, ‘should in substance be viewed as a . . . mandamus action’ or whether it more resembles ‘a typical statutory judicial review action.’” *Murrell v. Mayor & City Council of Balt.*, 376 Md. 170, 195 (2003) (quoting *Prince George’s Cnty. v. Beretta U.S.A. Corp.*, 358 Md. 166, 183 (2000)).

In *ProVen Management, Inc.*, the Supreme Court of Maryland engaged in a thorough discussion of mandamus and judicial review, and summarized the distinction as follows:

It can be difficult to differentiate between an appeal of an administrative agency decision arising under a statute or local law (where the petitioner asserts that the decision is unsupported by substantial evidence and is arbitrary and capricious), and a common law mandamus action involving an exercise of a court’s original jurisdiction (where the petitioner asserts that the decision-maker failed to perform a ministerial duty). In many cases, the distinction between the two types of actions may be evident from the nature of the relief sought. In a common law mandamus action, the petitioner is seeking narrow relief—a writ to compel an official to perform a ministerial duty that the official failed to perform. By contrast, in an action for judicial review of an administrative agency

decision, a petitioner may obtain a variety of relief, including, where appropriate, a remand for the purpose of the administrative decision-maker providing a sufficient explanation of the facts to support his or her decision in order to enable appropriate judicial review on the record. In other words, common law mandamus relief arises from an official's *failure to perform the duty at all*, whereas in a statutory judicial review action, relief may include a remand for further proceedings before the administrative agency arising from the agency's *failure to perform the duty well*.

ProVen Mgmt., Inc., 472 Md. at 670-71 (emphasis in original).

The Supreme Court of Maryland has held that an action is a mandamus action when the particular relief sought was an order to compel a public official to complete a particular non-discretionary duty. *See, e.g., Murrell*, 376 Md. at 196 (“The gist of the petitioner’s complaints, at this stage, is a failure of the Department of Housing to perform several non-discretionary mandatory duties under the Baltimore City Code and principles of Maryland administrative law.”); *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 498-500 (1997) (holding that when the relief sought was an order directing the Board of Supervisors of Elections to perform its “non-discretionary duty to delete from the Ocean City registered voter list the names of unqualified voters before determining the percentage of voters who had signed [a referendum] petition,” the “action was in substance a common law mandamus action”).

Conversely, when the relief sought by a petitioner as a whole resembles the relief commonly sought by judicial review, the action is not a mandamus action. *See, e.g., Beretta*, 358 Md. at 177 (rejecting this Court’s attempt to parse out and permit claims that could have been litigated in proceedings such as a declaratory judgment or mandamus

action while prohibiting judicial review of “substantial evidence” claims). As the Supreme Court of Maryland noted in *Beretta*, CJP § 12-302(a) “does not relate to what issues may be considered on appeal and what issues may not be considered. Rather, the language of the statute, and the case law on which the statute was based, preclude any appeal to the [Appellate Court] in a particular type of case.” *Id.*

In the present instance, we must determine whether the relief sought by Appellants, as a whole, was akin to the relief typically sought in a mandamus action. Following the decision of the Board, Appellants filed a document titled “Petition for Judicial Review” in the circuit court. Appellants requested “that the findings of the Board be reversed,” and presented the following five questions for review:

- a. Whether the Board had jurisdiction to suspend petitioner Frutchey’s master license after the Revised Maryland [Electricians] Act was enacted.
- b. Whether the Board erred when it recommended that DPIE revoke use of DPIE’s third party inspection program for all Rosendin projects.
- c. Whether the Board erred in allowing the charges to move forward when the Director failed to give petitioners their statutorily afforded opportunity to correct.
- d. Whether equitable estoppel precludes the Board from sanctioning petitioners when years prior, the agency had expressly approved petitioners’ work.
- e. Whether the court erred in finding a repeated violation of the NEC.

Viewing the petition as a whole, we conclude that in both form and substance, Appellants’ action qualifies as a petition for judicial review. Appellants’ primary argument on appeal is that:

DPIE did not act within the jurisdictional bounds the law affords it and did not give the licensee (Frutche) notice and opportunity to cure as the PGCC requires. Thus, this is a matter of agencies’ ‘failure[s] to perform the duty at all’ and is therefore a mandamus petition.

Appellants further contend that “suspending Frutche’s license in light of the Revised Act” and “issuing unauthorized sanctions” were actions that exceeded the Board’s jurisdiction and are subject to common law mandamus.

This, however, ignores Appellants’ fourth and fifth contentions, that “equitable estoppel precludes the Board from sanctioning petitioners when years prior, the agency had expressly approved petitioners’ work” and that “the court erred in finding a repeated violation of the NEC.” Appellants’ equitable estoppel argument alleges that because DPIE previously inspected and approved Appellants’ work, DPIE should have been estopped from presenting evidence that the previously inspected work was deficient. Appellants maintain that the finding of repeated violations was in error and alleges that the Board misunderstood what amounted to a “repeated violation.” The Appellants further contend that the evidence presented was insufficient to sustain such a finding. Both of these contentions involve the Board’s consideration of evidence and whether the Board

improperly applied the law to the facts. In our view, this is the crux of judicial review, namely that the Board erred in its consideration of the issues before it.⁷

The relief Appellants sought also reinforces the nature of this action. Appellants did not seek a writ or order requiring the Board or DPIE to perform a particular ministerial duty. Instead, Appellants sought to have the circuit court vacate the Board's decision and sanctions against Appellants and dismiss the action in its entirety following various errors by the Board in its statutory interpretation of certain sections of the PGCC and its application to the facts at hand. This judicial determination is consistent with judicial review of an agency decision.

As the Supreme Court of Maryland held in *ProVen Management, Inc.*, 472 Md. at 685:

Nor is a statutory petition for judicial review action converted into a common law mandamus action simply because the petitioner has included due process assertions or

⁷ In *Murrell*, the then Court of Appeals concluded that certain administrative procedures -- including providing proper notice, compiling a proper record of proceedings, and making proper findings of fact and conclusions of law -- were non-discretionary ministerial duties, and the failure of the Baltimore City Department of Housing and Community Development to comply with the procedures gave rise to a common law mandamus action in the Circuit Court for Baltimore City. 376 Md. at 196.

In dissent, Judge Wilner noted that these claims “are cognizable in the traditional judicial review action that petitioner filed in this case. . . . To make those failures, fully correctable in a judicial review action, subject to the extraordinary writ of mandamus, on the theory that an agency has no discretion to violate those kinds of requirements, is to stretch the reach of mandamus far beyond what it ever was intended to be and, at the same time, render unnecessary statutory judicial review actions.” *Murrell*, 376 Md. at 200. Thus, “[t]he effect of treating this action as one for mandamus is to render nugatory that part of Courts and Judicial Proceedings Article, § 12–302, disallowing appeals from judgments of a Circuit Court rendered in judicial review actions, absent some other statutory basis for an appeal.” *Id.*

allegations of procedural deficiencies. In determining whether a petition for a judicial review should instead be treated as a common law mandamus action, we look at the entire action. As *Beretta* instructs, we do not isolate each assertion made by petitioner to determine whether the particular claim could have been brought in another form, such as a common law mandamus action, or a declaratory judgment action. As we noted in *Beretta*, judicial review of administrative agency decisions often includes assertions of due process violations, procedural errors, lack of substantial evidence to support the agency's decision, or other shortcomings in the process. Including procedural arguments in a petition for judicial review does not transform the case into a common law mandamus action. See, e.g., *Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722, 730-31, 734 (2009) (holding that the inclusion of a lack of notice argument did not create appellate jurisdiction); *Dvorak v. Anne Arundel Cnty. Ethics Comm'n*, 400 Md. 446, 456-59 (2007) (holding that the inclusion of an administrative jurisdiction argument did not create appellate jurisdiction).

Appellants contend that the Board lacked jurisdiction to impose sanctions and that DPIE failed to provide proper notice. Notably, merely by including these arguments in a petition that otherwise clearly sought judicial review of the Board's decision does not confer appellate jurisdiction.

CONCLUSION

We hold that Appellants' appeal to the Circuit Court for Prince George's County constitutes a petition for judicial review, and, therefore, is not reviewable by this court. Lacking jurisdiction to review Appellants' claims, we are unable to consider the merits of their contentions that: (1) DPIE failed to provide proper notice and opportunity to correct prior to the imposition of sanctions; (2) the Board lacked jurisdiction to sanction Appellants following the enactment of the Revised Maryland Electricians Act; and (3) CJP § 12-302

violates Article 24 of the Maryland Declaration of Rights as applied to Appellants.⁸ We similarly need not address Appellees' argument that the enactment of the Act renders this appeal moot. We, therefore, dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANTS.**

⁸ Appellees maintain that we need not consider the Appellants' constitutional argument because it was neither raised nor decided below. Inasmuch as we lack jurisdiction to entertain this appeal, we need not address this issue regarding preservation of this constitutional issue.