Circuit Court for Prince George's County
Case No. CAE20-19965

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 679

September Term, 2021

MICHAEL LUCIOTTI

v.

TOWN OF BLADENSBURG, *et al.*

Wells, C.J.,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 20, 2022

This appeal stems from an internal investigation initiated by the Town of Bladensburg Police Department (the "Department") regarding alleged misconduct by one of its officers, Michael Luciotti. Following that investigation, the Department met with Officer Luciotti to discuss its findings and proposed discipline. During that meeting, Officer Luciotti accepted the proposed punishment and waived his right to an administrative hearing. Immediately thereafter, the Department informed Officer Luciotti that he was under investigation for an unrelated matter. Some time later, Officer Luciotti attempted to rescind his prior waiver and proceed to an administrative hearing on the initial matter, but the Department refused.

Officer Luciotti later filed, in the Circuit Court for Prince George's County, a Verified Complaint for Show Cause Order, in which he asked the court to issue an order directing the Department to show cause as to why his right to an administrative hearing had not been violated. Following a hearing, the court denied Officer Luciotti's request and dismissed his complaint. In this appeal, Officer Luciotti presents a single question for our review, which we rephrased slightly as follows:

> Did the circuit court err in denying the relief requested in the complaint for show cause order?

For reasons to follow, we hold that the circuit court did not err. We therefore affirm the court's judgment.

BACKGROUND

In February 2020, an unnamed citizen filed a complaint with the Department alleging that Officer Luciotti had addressed her in a discourteous manner while on duty

(the "February 2020 incident"). The Department investigated the incident and found that Officer Luciotti had engaged in "unbecoming conduct" and had failed to exercise reasonable courtesy. For the unbecoming conduct charge, the Department recommended a five-day suspension with pay. For the failure to exercise reasonable courtesy charge, the Department recommended a $250.00 fine.

On November 17, 2020, representatives from the Department met with Officer Luciotti to discuss the investigation, charges, and disciplinary recommendations. At the conclusion of that discussion, Officer Luciotti agreed to accept the disciplinary recommendation and waive his right to an administrative hearing.

After Officer Luciotti signed the necessary paperwork indicating his intent to forego a hearing and accept punishment, the Department informed Officer Luciotti that he was being suspended, with pay, effective immediately. The suspension was based on a separate incident in which Officer Luciotti had allegedly engaged in "repeated unprofessional and insensitive disruptions during a department training on October 22, 2020[.]" (the "October 2020 incident").

On December 10, 2020, counsel for Officer Luciotti sent a letter to the Department indicating that Officer Luciotti wished to rescind his waiver and proceed to an administrative hearing on the charges stemming from the February 2020 incident. The Department did not respond.

Shortly thereafter, Officer Luciotti filed, in the circuit court, a Verified Complaint for Show Cause Order pursuant to the Law Enforcement Officers' Bill of Rights

("LEOBR").[1] Under the LEOBR, a law enforcement officer is entitled to an administrative hearing if a Departmental investigation "results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive[.]" Md. Code, Public Safety ("PS") § 3-107(a)(1).

In his complaint, Officer Luciotti alleged that, during his meeting with Department personnel on November 17, 2020, he had been told that, "by accepting the discipline and waiving his right to a hearing [regarding the February 2020 incident], he would return to work for his next-scheduled shift, and would essentially move forward with a 'clean slate,' i.e., he would not be facing any additional investigations or potential disciplinary action." Officer Luciotti maintained that he ultimately agreed to waive his right to a hearing because of those assurances. Officer Luciotti noted that, after he agreed to waive his right to a hearing, the Department informed him that he was suspended from duty pending its investigation into the October 2020 incident. Officer Luciotti alleged that the Department should have informed him about that disciplinary action and that he never would have waived his right to a hearing regarding the February 2020 incident had he known about the investigation into the other incident. Officer Luciotti alleged that, upon being informed of the suspension, he "immediately objected" and informed the Department that "he would never have signed the waivers and accepted the punishment had he been informed that he would be suspended pending a new investigation." Officer Luciotti also alleged that, "within minutes after he signed the waivers," he informed the Department that he wanted

[1] *See* Md. Code, Public Safety ("PS") § 3-101, *et. seq.*

to retract the waivers and proceed to a hearing. Officer Luciotti argued that, because of his prompt retraction, the Department would not have been prejudiced in accepting the retraction and holding a hearing. Based on those allegations, Officer Luciotti asked the court to issue an order directing the Department to show cause as to why his right to a hearing had not been violated.

In response, the Department asserted that Officer Luciotti waived his right to a hearing freely and knowingly. The Department denied making any assurances or misleading Officer Luciotti in any way. The Department also denied Officer Luciotti's claims that he immediately objected to the waiver and that he attempted to retract the waiver minutes after he signed.

Hearing

At the hearing on Officer Luciotti's complaint, Tyrone Collington, the Chief of Police for the Bladensburg Police Department, testified that he was one of the Departmental representatives present at the meeting with Officer Luciotti on November 17, 2020. Chief Collington testified that the purpose of the meeting was to provide Officer Luciotti with the results of the investigation into the February 2020 incident. Chief Collington testified that Officer Luciotti was presented with a written statement of the charges and disciplinary recommendations and that the two read through the documents together. Chief Collington denied telling Officer Luciotti that he could return to work on his next scheduled shift or that he would not be facing any additional investigations for potential disciplinary action.

Chief Collington testified that, at the time of the meeting, Officer Luciotti was also the subject of a third investigation into a complaint of excessive force (the "excessive force incident"). Chief Collington testified that the Department's investigation into that incident had been "stalled" because the matter had been referred to the Prince George's County State's Attorney's Office "due to the severity of the injuries that the victim sustained." Chief Collington stated that, on April 21, 2020, the Department sent a letter to Officer Luciotti informing him of that investigation, as well as the investigation into the February 2020 incident. Chief Collington testified that he never told Officer Luciotti that the investigation into the excessive force complaint would not go forward. Chief Collington testified that the two incidents and investigations were not connected in any way.

Chief Collington also testified about an investigation that had occurred in 2016 involving Officer Luciotti. That investigation involved "sick leave abuse and untruthfulness" and resulted in a disciplinary recommendation of forfeiture of medical leave time. Officer Luciotti ultimately accepted that punishment and waived his right to a hearing on those charges.

On cross-examination, Chief Collington was asked why he waited until after Officer Luciotti signed the waivers to give him the suspension paperwork and notice of the investigation into the October 2020 incident. Chief Collington responded that he wanted to "take care of one matter at a time[,]" so he "took care of the [February 2020] incident" and then went into the October 2020 incident involving the suspension. Regarding the first incident, Chief Collington testified that he discussed the matter with Officer Luciotti thoroughly and that Officer Luciotti was given the opportunity to "step out of the room to

seek advice about whether he should or should not sign the disciplinary action, to accept it." According to Chief Collington, Officer Luciotti did just that and then returned to the room and signed the waivers.

Chief Collington was also asked about the suspension letter, which stated that Officer Luciotti was being suspended because of the October 2020 incident. Chief Collington testified that Officer Luciotti had been suspended as a result of that incident and the excessive force incident. Chief Collington testified that the excessive force incident was not mentioned in the suspension letter because that incident "was being handled by the State's Attorney's Office."

Also during the hearing, the Department intended to call several other witnesses, all of whom were present during the November 17, 2020 meeting. The parties ultimately stipulated that those witnesses would testify that "no promises were made about any other charges" and that "Officer Luciotti did not bring up this other investigation or the excessive force."

In the end, the circuit court denied Officer Luciotti's request for a show cause order and found as follows:

> What we have before us is a disciplinary action in which [Officer Luciotti] was called in before the Chief. There was [sic] three other officers there. He was given the charges. He was given a full opportunity to speak to whomever he wanted to and apparently, he left the room, made a telephone call, was allowed to spend as much time as he wanted to, came back and he signed a waiver, waiving his rights, specifically waiving his right to a hearing. All of that has been admitted.
>
> Furthermore, the evidence established that [Officer Luciotti] was familiar with these proceedings. He had been through these kind of proceedings before and the evidence established that [he] certainly knew that

> there were other complaints that were made against him. That letter of April [2020] indicated that there was an investigation of these other complaints. There was no indication at all that those complaints had been resolved or disposed of or otherwise dismissed.
>
> This Court has not heard of a reason to rescind the waiver and it certainly seems to this Court that it was knowingly, voluntarily, and understandingly entered into given that he knew the process. He had the opportunity to think about it. He had the opportunity to call whomever he called to discuss it, that what he accepted was a disciplinary resolution that, in essence, took (inaudible), but the issue really is whether he understood what he was waiving and this Court finds that he knowingly waived his right to a hearing and so the petition will be denied.

This timely appeal followed. Additional facts will be supplied below.

DISCUSSION

Parties' contentions

Officer Luciotti contends that the circuit court erred in denying his request for a show cause order regarding the Department's alleged violation of his right to a hearing on the charges stemming from the February 2020 incident. Officer Luciotti argues that, under the LEOBR, officers "must be fully informed as to all aspects of the ramifications of their decision prior to accepting or rejecting proposed charges and discipline and waiving their right to a hearing." Officer Luciotti asserts that the Department violated the LEOBR in failing to inform him of the investigation and suspension related to the October 2020 incident prior to accepting the waiver of his right to a hearing on the charges stemming from the February 2020 incident. Officer Luciotti maintains that he only agreed to the waiver on the condition that he would no longer be under administrative investigation, and that he would not have waived his right to a hearing had he known about the other investigations. Officer Luciotti asserts, therefore, that his wavier was not "knowing" and

that he was entitled to rescind the waiver and receive a hearing. Officer Luciotti argues further that the Department would not suffer any prejudice in granting his request for a hearing.

The Department contends that the circuit court correctly found that Officer Luciotti had knowingly and voluntarily waived his right to a hearing and that he was not entitled to rescind that waiver. The Department asserts that it met its obligation to inform Officer Luciotti of the relevant charges and that it was under no duty to inform him of any other pending investigations.[2] The Department contends that, under the facts presented here, Officer Luciotti should not be permitted to rescind his waiver.

Standard of Review

"When reviewing an action tried without a jury, we review the judgment of the trial court 'on both the law and evidence.'" *Baltimore Police Dep't v. Brooks*, 247 Md. App. 193, 205 (2020) (quoting *Banks v. Pusey*, 393 Md. 688, 697 (2006)). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Issues of law, however, are reviewed *de novo*. *Brooks*, 247 Md. App. at 205.

"Because we are asked to interpret and apply statutory law, we review [that] issue *de novo*." *Baltimore City Police Dep't v. Robinson*, 247 Md. App. 652, 676, *cert. denied*,

[2] The Department also argues that this issue was not preserved because it was not raised before the circuit court. We disagree. The record shows that Officer Luciotti made a substantially similar argument in his written complaint and at trial.

471 Md. 533 (2020). "The paramount object of statutory construction is the ascertainment and effectuation of the real intention of the Legislature." *Andrews & Lawrence Pro. Servs., LLC v. Mills*, 467 Md. 126, 149 (2020) (citation and quotations omitted). "The starting point of any statutory analysis is the plain language of the statute, viewed in the context of the statutory scheme to which it belongs[.]" *Kranz v. State*, 459 Md. 456, 474 (2018) (citations and quotations omitted). '"If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction."' *Noble v. State*, 238 Md. App. 153, 161 (2018) (quoting *Espina v. Jackson*, 442 Md. 311, 322 (2015)). If, on the other hand, words of a statute are ambiguous, "a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process." *Id.* at 162 (citations and quotations omitted).

Analysis

The LEOBR, codified in PS § 3-101, was enacted "to guarantee certain procedural safeguards to law enforcement officers during any investigation or interrogation that could lead to disciplinary action, demotion, or dismissal." *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 122 (2002) (citations and quotations omitted). The LEOBR grants a law enforcement officer extensive rights and is the officer's "exclusive remedy in matters of departmental discipline." *Id.* "The broad purpose of the LEOBR is to provide law enforcement officers with heightened procedural rights and protections when they are under internal investigation." *Manger v. Fraternal Ord. of Police, Montgomery Cnty.*

Lodge 35, Inc., 239 Md. App. 282, 294 (2018). "[T]hose safeguards include standards governing the investigation of complaints against an officer, the right to a hearing following a recommendation for disciplinary action, and standards governing the conduct of such a hearing and the decision of the hearing board." *Cochran v. Anderson*, 73 Md. App. 604, 612 (1988).

Under the LEOBR, a law enforcement officer under investigation "shall be informed of the name, rank, and command of: (i) the law enforcement officer in charge of the investigation; (ii) the interrogating officer; and (iii) each individual present during an interrogation." PS § 3-104(d)(1). In addition, "[b]efore an interrogation, the law enforcement officer under investigation shall be informed in writing of the nature of the investigation." PS § 3-104(d)(2). "[W]hat constitutes sufficient notice of the nature of the investigation must be determined on a case by case basis." *Bray v. Aberdeen Police Dep't*, 190 Md. App. 414, 427 (2010) (citation and quotations omitted). "It does not necessarily require that all known detail or the exact charges be disclosed, but it must advise the officer as to the nature of the investigation[.]" *Id.* (citation and quotations omitted).

"[I]f the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action." PS § 3-107(a)(1). "On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be . . . notified of the name of each witness and of each charge and specification against the law enforcement officer[.]" PS §

3-104(n)(1)(i). In addition, the law enforcement officer must be "provided with a copy of the investigatory file and any exculpatory information," provided the officer executes a confidentiality agreement and pays the cost of reproducing the material. PS § 3-104(n)(1)(ii). "The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer under this subsection: (i) the identity of confidential sources; (ii) nonexculpatory information; and (iii) recommendations as to charges, disposition, or punishment." PS § 3-104(n)(2).

"A law enforcement officer who is denied a right granted by [the statute] may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted." PS § 3-105(a). "On a finding that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by [the statute], the court shall grant appropriate relief." PS § 3-105(c). "In most instances, injunctive or mandamus relief will suffice; the court can order the agency to act in conformance with the law and, if necessary, enforce its order through contempt or other appropriate proceedings." *Manger*, 239 Md. App. at 294 (citation and quotations omitted). "The goal is not to thwart appropriate investigations or discipline, but rather to empower the circuit court to take the steps necessary to assure that the police agency will do what the law requires." *Id.* at 294-95 (citation, quotations, and emphasis omitted).

Finally, "[a] law enforcement officer may waive in writing any or all rights granted by [the LEOBR]." PS § 3-103(f). "Waiver is the 'intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may

result from an express agreement or be inferred from circumstances.'" *Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 607 (2019) (quoting *Creveling v. Gov't Emps. Ins. Co.*, 376 Md. 72, 96 (2003)). "The right or advantage waived must be known; the general rule is that there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights, and of facts which will enable him to take effectual action for the enforcement of such rights." *Taylor v. Mandel*, 402 Md. 109, 136 (2007) (citation, quotations, and brackets omitted). Nevertheless, unlike waiver of a constitutional right, "which ordinarily must meet more stringent standards, a statutory right may be deemed waived by a lesser showing." *Owens v. State*, 399 Md. 388, 418-19 (2007) (footnote omitted). "Whether a party has waived its right to assert a claim is a question of fact, which this Court will not disturb unless clearly erroneous." *Anderson*, 243 Md. App. at 607.

Here, Officer Luciotti filed his show cause request on the grounds that the Department had violated the LEOBR by failing to inform him of his pending suspension related to the October 2020 incident when he agreed to waive his right to a hearing on the charges stemming from the February 2020 incident. The circuit court denied that request upon finding that Officer Luciotti had validly waived his right to a hearing. The court concluded that Officer Luciotti had signed the waiver documents knowingly, voluntarily, and understandingly. The court found that Officer Luciotti had been properly informed of the charges, that he had been provided the opportunity to speak and ask questions, and that he had been allowed to "spend as much time as he wanted to" before signing the waiver. The court also found that Officer Luciotti was familiar with the investigative process, as the evidence showed that he had been through similar proceedings before. Finally, the

court, citing the letter sent to Officer Luciotti in April 2020, found that Officer Luciotti knew when he signed the waiver that he was under investigation for other complaints. The court noted that there was no evidence that those complaints had been resolved or otherwise disposed of when Officer Luciotti signed the waivers.

We hold that the circuit court did not err in denying Officer Luciotti's request on the grounds that he had validly waived his right to a hearing. The evidence shows that Officer Luciotti had full knowledge of his rights and was apprised of all salient facts related to the February 2020 incident before waiving his right to a hearing. The court's decision was supported by the evidence and was not clearly erroneous.

Officer Luciotti argues that his waiver was invalid because the Department did not inform him of the investigation and suspension related to the October 2020 incident. He asserts that, because PS § 3-108(d)(4) allows the Department to consider an officer's "past job performance" before recommending and imposing a penalty, the officer should be made aware of all pending investigations so that he may make an informed decision about whether to waive his right to a hearing, as that waiver "would guarantee that the charges and discipline could be used against [him] at the end of this new investigation."

We disagree. First, there is nothing in the plain language of the LEOBR to indicate that the Department is required to inform an officer about pending investigations into unrelated matters prior to accepting the officer's waiver. All relevant notice provisions contained in the LEOBR involve notice of the charges, investigation, and recommended discipline in that specific case. *See Ellsworth v. Baltimore Police Dep't*, 438 Md. 69, 96-97 (2014) (explaining that the Legislature, in enacting the disclosure provision set forth in

PS § 3-104, "only intended to disclose information related to the officer *and the charges specified*[.]") (emphasis added). In fact, PS § 3-104(n)(2)(ii) expressly authorizes the Department to withhold "nonexculpatory information[.]"

Moreover, Officer Luciotti's reliance on PS § 3-108 is misplaced. To be sure, that statute does state that the Department must consider "the law enforcement officer's past job performance" before recommending and imposing a penalty. PS § 3-108(a)(4)(iii) and (d)(4). But nothing in that statute's plain language suggests that the Department must inform an officer of a pending investigation or penalty during an investigation into an unrelated complaint, nor is there anything to suggest that the Department's failure to make such a disclosure has any effect on the validity of an officer's waiver of a hearing on charges stemming from the unrelated complaint. Reading the statute as Officer Luciotti's proposes would impose a duty on the Department not intended by the Legislature. *See Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 76 (2004) ("[W]e neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words the Legislature used or engage in a forced or subtle interpretation in an attempt to extend or limit the statute's meaning.") (citation and quotations omitted).

Officer Luciotti also argues that his waiver was invalid because he only agreed to the waiver on the condition that he would not face additional penalties or continue to be under administrative investigation. Again, we disagree. While Officer Luciotti claims that his waiver was based on the promise that he would not be facing additional administrative investigations or penalties, there is nothing in the trial record to support that claim. Officer Luciotti presented no testimony or other evidence to show that his waiver was premised on

anything, let alone any promises of amnesty. The only evidence on that issue, which came in the form of Chief Collington's testimony and the stipulated testimony of the other Department representatives who were present at the signing of the waiver, established unequivocally that no promises were made about any other charges. Indeed, there was no evidence that the investigation and suspension resulting from the October 2020 incident had any impact on or connection to either the investigation into the February 2020 incident or Officer Luciotti's decision to waive his right to a hearing. The uncontroverted evidence was that the two incidents and resulting investigations were completely unrelated and had no effect on each other whatsoever.

Furthermore, even if the Department was somehow responsible for informing Officer Luciotti about the investigation and suspension related to the October 2020 incident, the record makes plain that, at the very least, Officer Luciotti knew about the Department's investigation into the excessive force incident. The letter sent to Officer Luciotti in April 2020 expressly stated that Officer Luciotti was being investigated for that incident, and Chief Collington testified that he never told Officer Luciotti that that investigation would not go forward. Thus, even if Officer Luciotti was unaware of the investigation into the October 2020 incident, he was aware of the investigation into the excessive force incident and, consequently, the possibility that he could be punished, even suspended, for that incident, regardless of whether he ultimately decided to waive a hearing related to the February 2020 incident. *See* PS § 3-112(b)(1) ("The chief may impose emergency suspension with pay if it appears that the action is in the best interest of the public and the law enforcement agency.").

Officer Luciotti argues that, waiver notwithstanding, the circuit court should have granted his request because allowing him to retract his waiver and proceed with a hearing would not prejudice the Department. "Ordinarily, when a party has waived a right and then retracts his waiver, the effect of the retraction is to revive the right, subject to the doctrine of equitable estoppel." *Brockington v. Grimstead*, 176 Md. App. 327, 355-56 (2007). Under the doctrine of equitable estoppel, "a waiver cannot be revoked when the opposing party has relied upon it and would be prejudiced by the revocation or the revocation would result in an improper manipulation of the judicial process." *Id.* at 356. "Likewise, the retraction of a waiver of a right must be timely." *Id.* "[C]onsistent with the equitable estoppel principles, the court has discretion to reject a party's retraction of a waiver if by its timing the attempted retraction would interfere with the administration of the court's business or would amount to a trial tactic, aimed at manipulating the judicial process." *Id.* at 357.

We hold that the circuit court did not err. Although Officer Luciotti argued in his complaint and at trial that he attempted to retract the waiver "within minutes" of receiving notice of the suspension on November 17, 2020, he presented no testimony or other evidence to support that argument, and the Department denied the allegation in its response to Officer Luciotti's complaint. The only evidence we could find in the record to speak to that issue is the letter from Officer Luciotti's counsel to the Department stating that Officer Luciotti wished to have a hearing, which was sent almost a month after Officer Luciotti

signed the waiver. Under the circumstances, we cannot say the court abused its discretion in disallowing Officer Luciotti to retract the waiver.

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