Circuit Court for Baltimore County
Case No. C-03-CV-19-000346

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1151

September Term, 2019

TRIMECHIAH ROGERS

v.

MARYLAND RECEPTION, DIAGNOSTIC AND CLASSIFICATION CENTER, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Kehoe,
Berger,
Shaw,

JJ.

Opinion by Kehoe, J.

File: July 29, 2022

*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. *See* Md. Rule 1-104.

Trimechiah Rogers was employed as a Correctional Case Management Supervisor at the Maryland Reception, Diagnostic and Classification Center, which is part of the Maryland Department of Public Safety and Correctional Services Department. In 2018, she was demoted to her prior position within the Department. Ms. Rogers appealed this decision to the Secretary of the Department, who referred the dispute to the Office of Administrative Hearings. After a contested hearing, an administrative law judge reversed the Department's decision and ordered her reinstatement.

The Department filed a petition for judicial review in the Circuit Court for Baltimore County. The court reversed the administrative law judge's decision. Ms. Rogers has appealed and presents one issue which we have broken down into two for purposes of analysis:

> 1. Was the Department required to comply with Md. Code, State Pers. & Pens. § 11-106 before demoting Ms. Rogers?
>
> 2. Assuming for purposes of analysis that the answer to the first question is yes, is the Department required to reinstate her to her pre-demotion position under the facts of this case?

Unfortunately for Ms. Rogers, our answer to the first question is no. We will affirm the judgment of the circuit court.

BACKGROUND

Our summary of the relevant facts is based on the record developed at the administrative hearing.

For a period of approximately eleven years, Ms. Rogers was employed at the Maryland Reception, Diagnostic and Classification Center (the "Center") in Baltimore. In 2018, she applied for, and received, a promotion from her position as a Correctional Case Management Specialist II to Correctional Case Management Supervisor. Her promotion was effective as of April 11, 2018, and was probationary for a period of six months. In her new position, Ms. Rogers supervised five correctional case management specialists who, among other things, assigned security classifications to new inmates in Maryland's correctional system. An inmate's security classification is used to decide what correctional facilities are appropriate for that individual. Ms. Rogers was responsible for reviewing each security classification and correcting errors or oversights by the case management specialists whom she supervised.

In June and July 2018, the case management specialists assigned to Ms. Rogers made three errors that were not corrected by her. As a result, three inmates were initially assigned to inappropriate correctional facilities and two had to be transported back to the Center. Additionally, on June 20, 2018, Ms. Rogers was involved in an altercation with a fellow employee. As a result of this incident, she received a reprimand. This reprimand was later rescinded.

As a newly promoted employee, Ms. Rogers was subject to interim (after 90 days) and final (at the completion of the probationary period) evaluations by her direct supervisor. *See* State Pers. & Pens. § 7-404(c). In her interim evaluation, which was dated July 29, 2018, her supervisor, Bettie Harris, recommended that Ms. Rogers be demoted to her prior

position. It was Ms. Harris's view that Ms. Rogers "was unable to handle the arduous stresses and demands" inherent in the responsibilities borne by correctional case management supervisors. In addition to the altercation with another employee and the classification mistakes described in the previous paragraph, Ms. Harris discussed other incidents which, in her opinion, supported her conclusion.

This recommendation was made to Carolyn J. Scruggs, the Center's warden. Warden Scruggs accepted the recommendation and demoted Ms. Rogers. The warden did not meet with Ms. Rogers before making that decision. During the administrative hearing, Ms. Rogers provided a proffer of what she would have told Warden Scruggs in terms of mitigating circumstances had she been given an opportunity to do so.

Ms. Rogers filed a grievance, which Warden Scruggs denied. Ms. Rogers appealed the denial of her grievance and the Department of Budget and Management forwarded the case to the Office of Administrative Hearings for a hearing and decision pursuant to State Pers. & Pens. § 11-110(b)(1)(ii).

In addition to making the findings of fact that we have summarized, the administrative law judge set out his legal analysis in detail. He viewed the outcome of the case as controlled by the interplay between the parts of the State Personnel and Pensions Article that set out standards and procedures for disciplinary actions and demotions, and those

setting out substantive and employees' procedural rights on probation after hiring or promotion.[1] The most relevant statutes are:

State Pers. & Pens. § 7-402, which provides that employees (like Ms. Rogers) who have been appointed to positions in the skilled or professional service following a competitive promotion are subject to a probationary period and that the employee must "demonstrate proficiency in the assigned duties and responsibilities of the position to which the employee is appointed" in order for the appointment to become permanent.

State Pers. & Pens. § 7-405, which states that

> An appointing authority may take disciplinary action against or terminate the employment of a probationary employee in accordance with Title 11 of this article.

State Pers. & Pens. § 11-104 states in pertinent part:

> An appointing authority may take the following disciplinary actions against any employee:
> (1) give the employee a written reprimand;
> * * *
> (5) demote the employee to a lower pay grade; or
> (6) with prior approval of the head of the principal unit:
> (i) terminate the employee's employment, without prejudice[.]
> * * *

State Pers. & Pens. § 11-106 states in pertinent part:

> (a) Before taking any disciplinary action related to employee misconduct, an appointing authority shall:

[1] Ancillary to his statutory analysis, the administrative law judge also discussed various provisions of COMAR that interpret and implement these statutes. The regulations are completely consistent with the statutes which in our view are dispositive.

> (1) investigate the alleged misconduct;
> (2) meet with the employee;
> (3) consider any mitigating circumstances;
> (4) determine the appropriate disciplinary action, if any, to be imposed; and
> (5) give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.
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> * * *

State Pers. & Pens. § 11-303 states:

> (a) An appointing authority may terminate the employment of a probationary employee.
> (b) Before terminating an employee who is on probation, the appointing authority shall give the employee a notice of termination at least 10 days before the effective date of the termination.
> (c) An appointing authority may suspend a probationary employee with pay between the date of the notice and the effective date of the termination.
> (d) A probationary employee may appeal a termination under this section only on the grounds that the termination is illegal or unconstitutional.

Finally, State Pers. & Pens. § 11-304 states in pertinent part:

> (a)(1) This section applies to employees on probation following a promotion or reinstatement to a position in the skilled service or professional service.
>
> * * *
>
> (b) If, in the appointing authority's judgment, a probationary employee subject to this section is unable or unwilling to satisfactorily perform the duties or responsibilities of the position, the appointing authority shall:
> (1) return the employee to the employee's former position if it is vacant; or
> (2) demote the employee to a position comparable to the employee's position within the appointing authority's jurisdiction.
> (c) A probationary employee may appeal a demotion under this section as a disciplinary action.

During the administrative hearing, Ms. Rogers provided a proffer of what she would have told Warden Scruggs in terms of mitigating circumstances had she been given an

opportunity to do so.[2] The administrative law judge found that the warden's decision to demote Ms. Rogers was based on both job performance and disciplinary considerations. Critical to the outcome of this appeal, the administrative law judge concluded that, because Ms. Rogers was demoted, the warden's decision-making process had to comply with § 11-106 and its related COMAR provisions. In reaching this conclusion, the administrative law judge relied on the Court's analysis in *Smack v. Dep't of Health and Mental Hygiene*, 378 Md. 298, 313–14 (2003).

With this as a premise, the administrative law judge found that most of the statutory and regulatory requirements for the imposition of disciplinary sanctions had been satisfied with two exceptions, namely, that Warden Scruggs did not meet with Ms. Rogers, nor did the warden consider any mitigating circumstances before demoting her, as required by State Pers. & Pens. § 11-106(a)(2) and (3). The administrative law judge concluded that the demotion was illegal and that a remand to the Department for additional proceedings was inappropriate. The administrative law judge ordered the Department to reinstate Ms. Rogers with back pay and benefits.

The Department filed a petition for judicial review. The circuit court reversed the administrative decision and Ms. Rogers has appealed that judgment.

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[2] Among other things, Ms. Rogers testified that she would have told Warden Scruggs about her long career with the Department, her past favorable evaluations, and her excellent attendance record.

ANALYSIS

In an appeal from a judgment of a circuit court rendered in a judicial review proceeding, an appellate court "looks through the circuit court's decision and evaluates the decision of the agency." *Kor-Ko Ltd. v. Maryland Dep't of the Env't*, 451 Md. 401, 409 (2017) (cleaned up). In this process, appellate courts "look for three things . . . (1) were the findings of fact made by the agency supported by substantial evidence[;] (2) did the agency commit any substantial error of procedural or substantive law in the proceeding or in formulating its decision; and (3) did the agency act arbitrarily or capriciously in applying the law to the facts[.]" *Id.* at 411–12 (citation omitted).

To this Court, Ms. Rogers equates her demotion with a disciplinary action. She argues that § 11-106 of the State Personnel and Pensions Article sets out "a specific procedure, including 'meeting with the employee and considering any mitigating circumstances'" that must be followed before a disciplinary sanction can be imposed. Because Warden Scruggs neither met with her prior to demoting her nor considered mitigating circumstances, she argues that her demotion was illegal and the administrative law judge correctly decided that she should be reinstated. The Department disputes all of this.

In our view, the outcome of this appeal turns on whether the administrative law judge was correct when he concluded that the procedural and substantive protections afforded to state employees by State Pers. & Pens. § 11-106 apply to Ms. Rogers's case. In answering this question in the affirmative, the administrative law judge relied on the Court's analysis

in *Smack* v. *Dep't of Health and Mental Hygiene.* We do not agree with the administrative law judge's reading of that case.

Ms. Smack, a newly-hired probationary employee, was terminated after she failed to attend a work-related meeting and failed to notify her supervisor that she would be unable to attend. *Smack*, 378 Md. at 302–03. Ms. Smack challenged the decision, asserting that the agency had failed to follow the procedure for "taking . . . disciplinary action related to employee misconduct prescribed by § 11–106." *Id.* at 303. In response, the agency conceded that her failure to attend the meeting and to notify her supervisor that she was unable to do so constituted misconduct, but that § 11-106 "was inapplicable to the termination of a probationary employee." *Id.* at 304.

The Court of Appeals framed the issue as whether Ms. Smack's termination was controlled by State Pers. & Pens. § 11-106 or by § 11-303, a question that "was a matter of statutory construction." *Id.* at 303–04. After an extensive analysis of the plain meaning of each relevant statutory provision, the provisions of COMAR designed to implement the statutes, and the relevant legislative history, the Court stated:

> Section 11–104 sets out the disciplinary actions the appointing authority is permitted to take. One such action is the termination of the employee's employment, with or without prejudice. Relying on this section, the petitioner notes that termination of employment is a disciplinary action. She argues, therefore, that, as § 11–106 governs disciplinary action against State employees who engage in misconduct, that section applies to the termination of her probationary employment in this case, there being no exception for probationary employment stated in either the statute or the regulation.
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> * * *

> [Ms. Smack] draws a distinction between "management's discretion to fire an employee without giving a reason" and imposing on management certain procedural obligations prerequisite to taking disciplinary action when "management does give a reason and the reason is 'misconduct[.]'"
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> We reject the petitioner's argument. Section 11–303 is clear and unambiguous in its application to the termination of probationary employees. Subsection (a) states unequivocally, and without limitation or exception, that the appointing authority may terminate a probationary employee. And when this provision is read in conjunction with subsection (d), prescribing the limited grounds for appeal of the termination decision, it is clear that the termination may be for any reason that is not illegal or unconstitutional. . . .
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> *To be sure, § 11–106 does apply to disciplinary actions against probationary employees and, as we have seen, termination is a disciplinary action. On the other hand, it is undisputed that § 11–303 does as well*. This being the case, the statutes would appear to be irreconcilably in conflict. Section 11–303 is more narrowly focused, however, than § 11–106, referring only to one form of disciplinary action, termination. Thus, they can be reconciled by treating § 11–303, the more specific of the two, as an exception to § 11–106, the more general. Of course, if there were no § 11–303, § 11–106 undoubtedly would apply to the case sub judice. *Where, however, as here, there is a provision that specifically, and without any doubt, addresses the termination, as opposed to the discipline generally, of probationary employees, that provision must control over a provision that applies, but only generally, as § 11–106 does.*
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> * * *
>
> [T]he General Assembly specifically permitted an appointing authority "to take disciplinary action against" a probationary employee or to "terminate" that employee, both in accordance with Title 11. That § 11–303 alone applies to the termination of that employee does not deprive § 11–106 of meaning or render the regulation illogical or inconsistent.

378 Md. at 311–14 (emphasis added).

In the case before us, just as in *Smack,* § 11-106 sets out the general rule, namely that employees have substantive and procedural rights that must be respected before a

disciplinary action is taken. In *Smack*, the Court held that § 11-303 also applied because Smack was a probationary employee, and that the more specific statute (§ 11-303) was an exception to the general rule (§ 11-106). In the case before us, it is § 11-304 that is the exception to § 11-106 because Ms. Rogers was on probation after receiving a promotion. Section 11-304 empowers an appointing authority to "return [an employee in Ms. Rogers's situation] to the employee's former position if it is vacant" "[i]f, in the appointing authority's judgment, [the] probationary employee . . . is unable . . . to satisfactorily perform the duties or responsibilities of the position[.]" This is what Warden Scruggs concluded after reviewing the evaluation from Ms. Rogers's immediate supervisor. It follows that, just as in *Smack,* § 11-106 did not circumscribe Warden Scruggs's authority to demote Ms. Rogers to her prior position if the warden concluded that the latter was "unable . . . to perform the duties" of a correctional case management supervisor.[3]

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[3] At the administrative hearing, Warden Scruggs testified that her review on Ms. Rogers's evaluation led her to conclude that:

> I believe that Ms. Rogers has not satisfactorily shown that she was ready to be at the level of supervision. I don't take Ms. Rogers's knowledge away from her because I think she's very knowledgeable of the case management process, but I think that as a supervisor you have to be a step above and you have to be very meticulous and what you do to ensure the safety and security not only of our staff, but the inmates in the public.
>
> Her lack of thoroughly reviewing some of these cases and actually ensuring that there was no public safety risk when we remove [inmates] from our facility . . . exhibited to me that she just was not ready at that time to continue in the capacity [that] she was in. . . .

Nor did § 11-304 require Warden Scruggs to meet with Ms. Rogers or to consider possible mitigating circumstances before making a decision. In reaching this conclusion, we are aware that State Pers. & Pens. § 11-304(c) provides that an employee in Ms. Rogers's position "may appeal a demotion under this section as a disciplinary action." She asserts that the administrative law judge was correct when he concluded that the legal effect of § 11-304(c) is to give her the benefit of the pre-decision procedural rights set out in § 11-106.

The problem with this reasoning is that statutes must be read in context, and not in isolation. This is particularly so when, as in this case, the statutory provision at issue is one piece of "a comprehensive statutory scheme." *Smack*, 378 Md. at 306. Ms. Rogers's proposed interpretation of § 11-304(c) is not consistent with the statute when read in context. Specifically, State Pers. & Pens. § 11-109 sets out procedures for appeals of disciplinary actions within the employee's principal unit by employees who are not on probation. And § 11-110 provides that such employees have the right to seek further review by the Secretary of the Department of Personnel Management who may either mediate the dispute or refer the appeal to the Office of Administrative Hearings for a final decision. We agree with the Department that the purpose and effect of § 11-304(c)'s statement that an employee "may appeal a demotion under this section as a disciplinary action" is to make

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> Not only was her job performance taken into consideration, but there were some other behavior[al] elements that were [also] taken into consideration[.]

it clear that a challenge to a demotion by an employee in Ms. Rogers's situation follows the same procedural path.

For these reasons, we conclude that State Pers. & Pens. § 11-304 grants an "appointing authority," in this case, Warden Scruggs, broad authority to demote an "employee[] on probation following a promotion," in this case, Ms. Rogers, if the appointing authority concludes that the employee "is unable . . . to satisfactorily perform the duties or responsibilities of the position." In our view, such a result is consistent with the plain language of the statute, the statutory scheme of which it is a part, and the Court's reasoning in *Smack.* Therefore, we affirm the judgment of the circuit court.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.