UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1318

September Term, 2013

CASH WILLIAMS

v.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, MARYLAND

Krauser, C.J.,
Zarnoch,
Reed,

JJ.

Opinion by Zarnoch, J.

Filed: May 4, 2015

*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.

After seeking judicial review of an unsatisfactory teaching evaluation in the Circuit Court for Prince George's County, appellant Cash Williams asks this Court to reverse the circuit court's grant of summary judgment in favor of the Board of Education of Prince George's County ("the Board"). For the following reasons, we find no error in the circuit court's decision and affirm its summary judgment.

FACTS AND PROCEEDINGS

Cash Williams is a certified and tenured teacher that has worked in education for over twenty-five years. She has been employed by the Prince George's County Public School system since 2001 and in 2009, was assigned to Oxon Hill High School in Oxon Hill. As part of her employment, Williams's classroom performance was observed and evaluated by Dr. Jean-Paul Cadet, the principal of Oxon Hill High School.[1] Williams was observed on November 8, 2010 and December 10, 2010. As a result, Cadet provided Williams with an unsatisfactory interim evaluation on December 15, 2010 and required that she create an "action plan" to improve her classroom performance.

On January 31, 2011, Williams met with Sylvester Conyers, the Assistant Superintendent, Dorothy Ray, a Union Representative, Anthony Witherspoon, an instructional supervisor, and Cadet to discuss the unsatisfactory interim evaluation. Following this meeting, Williams contacted the Superintendent's office and was informed

[1] Teachers are routinely observed and evaluated: "Such evaluations are routine, and are designed not only to help the evaluated teacher maintain a high level of teaching proficiency, through feedback and suggestions for improvement, but also to aid the county superintendent in his rating of each teacher's certificate as required by law." *Bd. of Educ. for Dorchester Cnty. v. Hubbard*, 305 Md. 774, 779 (1986).

that Dr. A. Duane Arbogast, the Chief Academic Officer, was the designated contact person for her case. Williams claims to have contacted the office multiple times but received no response. On February 25, 2011, an appeal of the unsatisfactory interim evaluation was filed on Williams's behalf by Damon Felton, an attorney for the Maryland State Education Association. On March 1, 2011, the Superintendent denied and dismissed this appeal. On March 18, 2011, Felton filed a notice of intent to appeal to the Local School Board on behalf of multiple teachers, including Williams.

On August 8, 2011, Williams filed her *pro-se* notice of appeal with the Local School Board, which was dismissed as being untimely on August 25, 2011. Williams then filed an appeal with the Maryland State Board of Education ("MSBE") on October 3, 2011. She claimed that she was unaware of the March 1st denial from the Superintendent and that she never authorized Felton to act on her behalf. On July 24, 2012, MSBE denied and dismissed her appeal for being untimely, explaining that:

> Appellant's legal counsel received the Superintendent's decision of March 1, 2011. Counsel did not file an appeal to the local board. Instead, on March 18, 2011, he filed a notice of Intent to Appeal. We know of no law or policy that allows for a notice of Intent to Appeal to act as a placeholder for an actual appeal. Thus, when Appellant submitted her appeal on August 8, 2011, she was four months late. Appellant explains that she was unaware that the local Superintendent's decision was sent to her counsel. She provides no other reason for not filing her appeal on time.

On August 24, 2012, Williams filed both a Petition for Judicial Review of the State Board's decision in the Circuit Court for Prince George's County and a request for reconsideration by MSBE. Once Williams petitioned for review by the circuit court, MSBE no longer had jurisdiction over her appeal.

On June 21, 2013, the Board of Education of Prince George's County ("the Board") filed a motion for summary judgment in the case. Williams filed her opposition on July 8, 2013 and the Board's reply was filed on July 18, 2013. On August 8, 2013, the circuit court granted the Board's Motion for Summary Judgment. Williams, acting *pro se*, sent a letter to the circuit court requesting an explanation for the grant of summary judgment. On August 23, 2013, the circuit court responded to Williams's letter explaining that summary judgment was granted based on the reasons in the Board's motion and that Williams had the right to appeal to this Court within thirty days of its decision. On September 5, 2013, Williams noted her appeal to this Court.

QUESTION PRESENTED[2]

Williams presents four questions for our review, which we have consolidated into the following question:

[2] Williams's original questions were:

1. Did the Circuit Court abuse its discretion in granting Appellee's Motion of Summary Judgment due to no disputed facts?

2. The appellant contested that Damon Felton was not her lawyer and asserted that the date of the letter from Local Board of Education had been changed to September 4, 2011, so did the Circuit Court err when it evaluated the findings of the facts and conclusion of the law?

3. Did the court err in wrongly placing credibility on Damon Felton's assertion that he was the Appellant's attorney?

4. Did the court fail to see that within several documents presented by the Appellant, the Appellant did not receive a response from the Superintendent's office and was unable to go to the next level because they had not exhausted their administrative remedies; and that because over four months had passed, the Local School Board gave the Appellant permission to file an appeal?

Did the circuit court err in granting the Board's motion for summary judgment? Finding no error, we affirm.

STANDARD OF REVIEW

Typically, when we review the decision of an administrative agency, we review the agency's decision "to determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273-74 (2012) (Citations omitted). The decision will not be disturbed "on appeal if substantial evidence supports factual findings and no error of law exists." *Id.* at 274. (Citations omitted). We rely on the record from the administrative agency's proceedings and "[a]dditional evidence in support of or against the agency's decision is not allowed unless permitted by law." Md. Rule 7-208(d).

This case is in an unusual posture since a petition for judicial review is not normally resolved through a summary judgment motion.[3] Williams has not challenged this procedure, so we will proceed with our review under the standard for summary judgment motions. Maryland Rule 2-501(f) provides that a court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to

[3] In federal Administrative Procedure Act cases, "[s]ummary judgment is the proper mechanism for deciding, as a matter of law, whether an agency action is supported by the administrative record and consistent with the APA standard of review." *Loma Linda Univ. Med. Ctr. v. Sebelius*, 684 F. Supp. 2d 42, 52 (D.D.C.) *aff'd,* 408 F. App'x 383 (D.C. Cir. 2010). However, this is not the normal procedure in Maryland administrative appeals. *See* Md. Rules 7-204 and 7-207.

judgment as a matter of law." We review the record independently in the light most favorable to the non-moving party. *Ramlall v. MobilePro Corp.*, 202 Md. App. 20, 30 (2011) (Citation omitted). "If there is no dispute of material facts, then our role is to determine whether the trial court was correct in granting summary judgment as a matter of law." *Hines v. French*, 157 Md. App. 536, 549 (2004) (Citation omitted). "The standard of appellate review of a summary judgment is whether it is 'legally correct.'" *Id.* at 550.

DISCUSSION

Williams contends that the circuit court improperly granted summary judgment because there were material facts in dispute. Specifically, she contends that Damon Felton was never authorized to act on her behalf and that she was ignorant of the Superintendent's decision, making her unaware of her right to appeal. Additionally, she contends that the Board gave her permission to file her appeal late. The Board responds that Williams has provided no explanation as to why all of her appeals were filed late and that Williams's contention that she "was ignorant of the legal time requirements" is not sufficient to survive summary judgment.

Our review requires that we first look at the facts on the record to determine if there are any disputed material facts that would preclude summary judgment. *See Hines*, 157 Md. App. at 549–50. A material fact "is a fact the resolution of which will somehow affect the outcome of the case." *Id.* at 549 (Citations omitted). The material facts in this case relate solely to timeliness and filing deadlines. The procedural timeline is undisputed. The supporting evidence provides no explanation for why it took four months to appeal the

decision of the Superintendent to the Board or as to why Williams' appeal to MSBE was untimely.

Williams's point of dispute is that "at no point did she desire representation in the appeal process from the union attorney." She claims that she was unaware that the February 25, 2011 appeal had been filed but could not provide an argument to show that she was entitled to an exception to the thirty day limit in Md. Code (1978, 2014 Repl. Vol.), Education Article ("Educ."), § 4-205(c)(3). Accordingly, under Board Policy 4200 and as stated in the Superintendent's letter, Williams had "30 days from the date *the evaluation* was provided to [her] to appeal the unsatisfactory rating." (Emphasis added). She received her unsatisfactory evaluation on December 15, 2010, had her meeting on January 31, 2011 and the first appeal in her case was not filed until February 25, 2011. This is clearly outside of the thirty day limit prescribed in the Board's Policy 4200. Even though Williams is not the moving party, she has failed to provide corroborating evidence to support her contentions. Williams argues that the "Superintendent never provided a decision [and] that the Local School Board gave [Williams] permission to file a [late] appeal." Williams provides no evidence that would support this contention and without a supporting affidavit, this question is not in dispute.

We must now determine whether the circuit court's decision to grant judgment as a matter of law in favor of the Board was legally correct. *See Hines*, 157 Md. App. at 549–50. This case is governed by § 4-205(c)(3) and requires that a party filing an appeal of a decision of a county superintendent do so "in writing within 30 days after the decision." This appeal can "be further appealed to [MSBE] if taken in writing within 30 days after the

decision of the county board." In order for judgment to be granted to the Board, the Board must show that Williams did not comply with these statutory filing requirements and that they are entitled to summary judgment as a matter of law.

Being unaware of the period allowed for filing is not a valid reason for failure to abide by § 4-205(c)(3) as ignorance of the law is not an accepted defense. *See Hopkins v. State*, 193 Md. 489, 498–99 (1949) (explaining that "ignorance of the law will not excuse its violation"). The same is true for administrative decisions. *See HI Caliber Auto & Towing, Inc. v. Rockwood Cas. Ins. Co.*, 149 Md. App. 504 (2003). Accordingly, "[t]he courts have very little leverage in permitting untimely appeals. The most persuasive appeal, if filed late, may prove to be an expensive and professionally embarrassing exercise in futility." *Ohio Cas. Ins. Co. v. Ins. Com'r*, 39 Md. App. 547, 557 (1978). "Once the decision to appeal has been made, the first, obvious and cardinal duty of the appellate advocate is to read with care and attention the rules of the Court of Appeals." *Id.* at 548. As a result, Williams's professed ignorance of the deadlines would not be a defense to her untimely filings.

Under either of the two potential ways to read the facts of this case, Williams's claim fails. Williams received her unsatisfactory evaluation on December 15, 2010 and had a meeting to discuss the evaluation on January 31, 2011. If we follow the timeline under which Felton was acting as Williams's representative, any appeal to the Board was late. On February 25, 2011, an appeal was filed on Williams's behalf to the Superintendent. It was denied on March 1, 2011 and Felton only filed a notice of Intent to Appeal on March 18, 2011. Therefore, Williams would have needed to file an appeal to the Board

within thirty days of the March 1st denial. No appeal was filed by Felton and when Williams filed her own appeal on August 8, 2011, it was well outside of the thirty day window.

Viewing the facts under the more favorable alternative proposition that Felton was not Williams's attorney does not justify her claim either. Williams did not independently file anything until August 8, 2011. Even if she did not authorize Felton to appeal on her behalf on February 25, 2011 or know about the March 1, 2011 denial by the Superintendent, delaying her own independent appeal of the unsatisfactory evaluation until August 8, 2011 would be too late. Maryland Regulations provide that "in the event of an overall rating of unsatisfactory, the local school system shall, at a minimum, provide certificated individuals with a meaningful appeal in accordance with Education Article, § 4-205(c)(3)." COMAR 13 A.07.04.04 (2014). Williams was provided this opportunity and the Superintendent did nothing to impede Williams's ability to file an appeal.

On August 25, 2011, her appeal to the Board was denied as untimely and Williams received notice of the dismissal at this time. Again, Williams failed to appeal this denial within the thirty day window. *See* COMAR 13A.01.05.02B(1)(a)(2014) (requiring an appeal to be taken "within 30 calendar days of the decision of the local board"). She filed her appeal with MSBE on October 3, 2011, claiming that Jacqueline Brown, an administrative assistant, told her that the date of receipt had been changed to September 4, 2011 due to Williams's hospitalization and that Williams would be given additional time to file her appeal. Nothing in the record corroborates this statement. Furthermore, the record contains no affidavit from Brown or the others that she contends were aware of this

extension. The record is clear that the Board denied her appeal on August 25, 2011 for untimeliness. Therefore, she only had thirty days from that date to file her appeal with MSBE, which she failed to do.

In a letter to MSBE dated November 17, 2011, Williams stated that she thought "that the school system would waive the time limit to fix the mistakes and the violations of administrative procedures." She argued that her case presented extraordinary circumstances and that it offered the opportunity to establish precedent:

> Once again, it would be . . . a great contributor to education reform if the local school board would waive their decision on dismissing this appeal to let it set precedence [sic] that any form of evaluation can be appealed or something should be in place for when an administrator falsifies or manipulates the situation to give a teacher a bad evaluation.

Williams has not directed us to any authority to support her argument for waiver of the established time limits. Consequently, Williams has provided no legitimate reason for failing to file her appeals within the thirty day statutory limit and has not presented any relevant evidence of fraud or lack of notice that would justify her late filings. The purpose of time limits on appeals is to allow for a meaningful review. Three years later, that type of review is no longer possible. It is apparent that Williams was aware of her right to appeal and the burden was on her to file her appeal in a timely manner, which she failed to

do based on the undisputed facts. It is clear that Williams's appeals were filed late and it was proper for the circuit court to grant the Board's Motion for Summary Judgment.[4]

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

[4] The Board asks that we sanction Williams for failing to submit a complete record extract under Md. Rule 8-501(m). We deny the Board's request because we were able to decide this case without reliance on the missing documents.