

Circuit Court for Allegany County
Case No. C-01-CV-22-000380

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1540

September Term, 2022

IN THE MATTER OF WAYNE RESPER

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 28, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Wayne Resper, appellant, appeals from the denial, by the Circuit Court for Allegany County, of leave to file a petition for judicial review, the court’s denial of a “Request for Waiver of Prepaid Costs for Assembling the Record for an Appeal,” and the court’s striking of the appeal. For the reasons that follow, we shall affirm the denial of leave to file the petition, making it unnecessary for us to reach the denial of the request and striking of the appeal.

Mr. Resper is incarcerated in the Western Correctional Institution in Cumberland. On July 12, 2022, Mr. Resper filed in the Inmate Grievance Office of the Department of Public Safety and Correctional Services a grievance in which he contended that he was not receiving proper optical care. On July 19, 2022, the Office dismissed the grievance. On September 22, 2022, Mr. Resper filed in the circuit court a petition for judicial review of the Office’s decision. On September 28, 2022, the court issued an order in which it noted that Mr. Resper “has been declared a frivolous filer under” Md. Code (1974, 2020 Repl. Vol., 2021 Supp.), § 5-1005(a) of the Courts & Judicial Proceedings Article (“CJP”) (a “court may include in its final order or judgment in any civil action a finding that the action was frivolous”), “at least three times prior to the filing of this action,” and “decline[d] to grant leave in this action.”

Mr. Resper subsequently filed a notice of appeal and an application for leave to appeal from the judgment of September 28, 2022. On November 14, 2022, Mr. Resper filed the request for waiver of prepaid costs. On November 18, 2022, the court denied the request on the grounds that Mr. Resper “does not meet the financial eligibility guidelines” and “is not unable by reason of poverty to pay the prepaid costs.” (Emphasis omitted.) On

December 16, 2022, Mr. Resper filed an application for leave to appeal from the judgment of November 18, 2022. On December 29, 2022, the court issued an order in which it struck “the appeal in this matter . . . for failure to pay the required fee and/or failure to submit a proper request for a waiver of same.” (Emphasis omitted.) On January 26, 2023, Mr. Resper filed a notice of appeal from the judgment of December 29, 2022.

Mr. Resper contends, for numerous reasons, that the court erred in denying leave to file the petition for judicial review, that the “court’s denial of [the] waiver request relied on erroneous information and violates [Mr. Resper’s] constitutional rights,” and that the court erred in striking his appeal. We conclude that, regardless of whether the court erred in denying the waiver request and striking the appeal, the court did not err in denying leave to file the petition. CJP § 5-1005(c)(1) states that a “prisoner who has filed three or more civil actions that have been declared to be frivolous by a court of this State . . . may not file any further civil actions without leave of court.” Although Mr. Resper disputes the grounds upon which his previous civil actions were declared frivolous, the validity of the court’s order declaring him to be a frivolous filer is not properly before us in this appeal. And it is undisputed that Mr. Resper did not seek, much less obtain, the court’s permission before filing the petition for judicial review as required by the pre-filing order. Consequently, the court was not required to accept the petition, and hence, the court did not err in denying leave to file it. Because we so conclude, we need not address whether the court erred in denying the request for waiver of prepaid costs, or in striking the appeal.

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