Circuit Court for Baltimore City
Case No. 24-C-17-003264

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1672

September Term, 2017

IN THE MATTER OF CRYSTAL GOFF

Meredith,
Kehoe,
Berger,
JJ.

Opinion by Berger, J.

Filed: January 3, 2019

Following a May 15, 2017 hearing before the Office of Administrative Hearings, an Administrative Law Judge ("ALJ") ordered the involuntary admission of appellant Crystal Goff as a patient to the University of Maryland Medical Center ("UMMC"). Ms. Goff appealed the ALJ's order to the Circuit Court for Baltimore City. At the conclusion of a hearing on September 21, 2017, the circuit court granted UMMC's motion to dismiss Ms. Goff's petition for judicial review for failure to file a memorandum pursuant to Maryland Rule 7-207.[1]

[1] Md. Rule 7-207 provides, in pertinent part:

> (a) **Generally.** Within 30 days after the clerk sends notice of the filing of the record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied on. Within 30 days after service of the memorandum, any person who has filed a response, including the agency when entitled by law to be a party to the action, may file an answering memorandum in similar form. The petitioner may file a reply memorandum within 15 days after service of an answering memorandum. Except with the permission of the court, a memorandum shall not exceed 35 pages. In an action involving more than one petitioner or responding party, any petitioner or responding party may adopt by reference any part of the memorandum of another.
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> (b) **Sanctions for late filing of memoranda.** If a petitioner fails to file a memorandum within the time prescribed by this Rule, the court may dismiss the action if it finds that the failure to file or the late filing caused prejudice

In her timely appeal, Ms. Goff asks us to consider whether the circuit court erred in dismissing her petition requesting judicial review of the ALJ's ruling. For the reasons that follow, we find no error on the part of the circuit court and affirm.

FACTS AND LEGAL PROCEEDINGS

On April 6, 2017, a caseworker took Ms. Goff from the shelter she was staying in to the crisis walk-in clinic at Sheppard Pratt Hospital as a result of worsening depressive symptoms and her refusal to eat. Ms. Goff was admitted to Sheppard Pratt and prescribed several medications, but she refused to take them or to eat or drink, and on April 9, 2017, she was transferred to the Greater Baltimore Medical Center ("GBMC") for treatment for dehydration.

Following treatment at GMBC, Ms. Goff was returned to Sheppard Pratt, where she continued to refuse food, drink, and medical care. As a result, on April 18, 2017, she was returned to GBMC due to malnutrition.

A psychiatric consult at GBMC determined that Ms. Goff lacked the capacity to refuse to eat and drink because she was unable to provide a convincing reason for her failure to nourish herself. After receiving permission from Ms. Goff's mother, as surrogate decision maker on her behalf, hospital staff inserted a nasogastric and a percutaneous endoscopic gastrostomy tube for feeding. Ms. Goff accepted feeding and medication

> to the moving party. A person who has filed a response but who fails to file an answering memorandum within the time prescribed by this Rule may not present argument except with the permission of the court.

through the tubes but continued to refuse any food or medication by mouth. After she became medically stable, GBMC's consulting psychiatrist recommended that Ms. Goff be transferred to a tertiary care facility, such as UMMC, to be started on medication and for consideration of whether electroconvulsive therapy would be beneficial.

Ms. Goff was admitted to UMMC on May 10, 2017. During her admission interview, she admitted that she was hungry but could give no reason why she would not eat or take medication. She reported that she suspected she had a chronic terminal illness and that she would not recover.

A battery of tests and x-rays revealed no medical abnormality or terminal illness. Despite the test results, Ms. Goff continued to believe that something was decaying inside her and that the appropriate placement for her would be hospice care rather than a psychiatric unit.

Initially intermittently compliant with her prescribed medication regimen, Ms. Goff again began to refuse most medication and food. According to her attending psychiatrist, Ms. Goff's condition would be reversible with the appropriate treatment, but she had become psychotic and a danger to herself.[2] The psychiatrist recommended high levels of antipsychotic medications, which Ms. Goff continued to refuse. Therefore, UMMC requested her involuntary admission.

Following a hearing, the ALJ found UMMC's evidence clear and convincing that Ms. Goff had a diagnosis of major depressive order, severe, with psychotic features, but

[2] Ms. Goff's formal diagnosis was depressive disorder, severe, with psychotic features.

was unwilling to be voluntarily admitted for treatment, despite delusional beliefs and presenting a danger to her own life or safety. The ALJ therefore found Ms. Goff in need of acute institutional care and treatment and granted UMMC's petition for involuntary admission.

On June 12, 2017, Ms. Goff requested judicial review of the ALJ's ruling. The circuit court scheduled a hearing for September 25, 2017.

On June 28, 2017, the circuit court mailed a notice to Ms. Goff's attorney advising that the record of proceedings had been filed on June 26, 2017 and that, pursuant to Md. Rule 7-207(a), Ms. Goff was required to file, within 30 days, a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to the pages of the record and exhibits relied upon. The notice stated, in bold type, that a failure to file the memorandum within the prescribed time could lead to dismissal of the appeal if the court found that the failure to file or late filing of the memorandum caused prejudice.

At the start of the September 25, 2017 hearing, the court summarized the procedural and factual history of the case. The court then noted that its file contained a receipt of the record, mailings of certificates of compliance of the record, and a response, but not "anything else," and stated, "So preliminarily, I would assume that there's a motion." Ms. Goff's attorney responded, "Your Honor, on the merits, I submit." Counsel for UMMC asserted that there was no compelling reason to overturn the ALJ's decision and moved for the dismissal of Ms. Goff's petition.

The court added, "Well, there was no filing of the required Legal Memorandum in any sort." Ms. Goff's attorney responded, "There is no requirement of such a thing. The Administrative Procedure Act specifically states that the hearing is to be on the merits, and the Maryland Rules 700 Series also states the hearing is to be on the merits. If there was a possibility that due to the absence of a Memorandum the other side is prejudiced, then it is within the Court's power."

The court disagreed, responding that the court may dismiss an action pursuant to Rule 7-207(d) for failure to file a memorandum. Defense counsel replied that "the word is may, and the Court may if, and only if, the other side is prejudiced." Again, the court disagreed and noted that Rule 7-207(d) exists to permit the moving party to address the legal issue or decision she believes was made in error or where it lacked substantial evidence. In the absence of the filing of a memorandum, the court has nothing to consider and may dismiss.

After reviewing the rule and the case law interpreting it, the court granted UMMC's motion to dismiss the petition for judicial review and closed the case. Ms. Goff timely appealed the dismissal of her petition for judicial review.

DISCUSSION

Ms. Goff argues that the circuit court erred in dismissing her petition for judicial review for failure to file a memorandum pursuant to Rule 7-207 because, in her view, the plain language of the Rule and the relevant case law permit the dismissal of an administrative appeal if and only if the circuit court finds that the party moving for dismissal has been prejudiced by the failure to file the memorandum. Where, as here, the

circuit court did not determine that UMMC had suffered any prejudice by the absence of the memorandum, the court's dismissal of the petition was erroneous as a matter of law and must be vacated for further proceedings. We disagree.

We review a circuit court's decision to dismiss a judicial review proceeding for abuse of discretion. *Gaetano v. Calvert County*, 310 Md. 121, 127–28 (1987). Absent a mistake of law or clear error, reversal is appropriate only if "the decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).

Ms. Goff asserts that the circuit court was permitted to dismiss her petition for judicial review if and only if it found prejudice to UMMC by her failure to file the memorandum required by Rule 7-207. Indeed, the circuit court granted UMMC's motion to dismiss Ms. Goff's petition for judicial review without making an explicit determination of prejudice to UMMC. Nevertheless, even though an explanation of the court's ruling in dismissing an action would have been appropriate, the court's failure to offer one is not fatal. *See Cobrand v. Adventist Healthcare*, 149 Md. App. 431, 445 (2003) (A judge is "presumed to know the law, and is presumed to have performed his [or her] duties properly."). And, a court's "exercise of discretion is presumed correct until the attacking party has overcome such a presumption by clear and convincing proof of abuse." *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725 (2002) (citing *Langrall, Muir & Noppinger v. Gladding*, 282 Md. 397, 401 (1978)). When we consider the record that was

before the circuit court, we find nothing that leads us to conclude that the circuit court abused its discretion when it dismissed Ms. Goff's petition for judicial review.

There is no dispute that Ms. Goff did not file the required memorandum within the prescribed time frame, or at all. Her failure to do so distinguishes her case from the cases in which our appellate courts have held that circuit courts abused their discretion in dismissing judicial review actions because of an untimely filed memorandum. *See, e.g.*, *Gaetano, supra*; *Billings v. County Council of Prince George's County*, 190 Md. App. 649 (2010), *aff'd*, 420 Md. 84 (2011); *Department of Economic and Employment Development v. Hager*, 96 Md. App. 362 (1993); *People's Counsel v. Public Service Comm'n*, 52 Md. App. 715 (1982).

Instead, the facts of this matter are instead akin to the ones that confronted us in *Swatek v. Board of Elections*, 203 Md. App. 272 (2013), in which the circuit court dismissed a petition for judicial review because the petitioner failed to file a memorandum, even after the respondent had filed its motion to dismiss. There, we held that the circuit court did not abuse its discretion in dismissing the petition and commented that "[e]ven an untimely memorandum, assuming the date of the submission afforded the opposing party sufficient time to prepare, may have satisfied the purpose of Md. Rule 7–207(a)." *Id*. at 284. We based our decision on the fact that Swatek's failure to file a memorandum prejudiced both the other parties and the court. *Id.* at 283-84. We hold similarly here.

As we explained in *Swatek*, 203 Md. App. at 277:

> 'The purpose of [Md. Rule 7–207(a)] is to inform the opposing parties and the trial court of the issues involved in the case . . . in sufficient time for the opposition to respond in kind and for

> the court to make an informed decision.' *Gaetano v. Calvert County*, 310 Md. 121, 126, 527 A.2d 46 (1987). At bottom, the rule is supposed 'to promote the orderly and efficient administration of justice,' and is 'meant to be obeyed.' *People's Counsel v. Public Service Comm'n*, 52 Md. App. 715, 720 (1982).

We went on to examine four cases -- *Gaetano, Billings, Hager, and People's Counsel, supra* -- in which the appellants all filed untimely Rule 7-207 memoranda. In each of those cases, the appellate court, acknowledging that the purpose of memorandum is to provide the opposition sufficient time to prepare to respond to the petitioner's argument, agreed that the party advocating dismissal was not prejudiced by the late filing of the memorandum because each was filed well in advance of the hearing on the petition for judicial review and afforded the opposing side adequate time to prepare rebutting arguments. *See Gaetano,* 310 Md. at 126–27 (untimely submission of a memorandum satisfied the purpose of the predecessor to Md. Rule 7-207 because it was submitted approximately three months before the hearing); *Billings,* 190 Md. App. at 666-67 (the purpose of the predecessor to Md. Rule 7-207 was satisfied because the memorandum was filed 95 days before the hearing); *Hager,* 96 Md. App. at 375–76 (an untimely memorandum filed more than five weeks before the hearing fulfilled the purpose of Md. Rule 7–207(a)); *People's Counsel,* 52 Md. App. at 718-19, 721 (the circuit court properly declined to dismiss the appeal when the memorandum was filed more than thirty days before the hearing).

Gaetano, Billings, Hager, and *People's Counsel* all suggest that the appellants' failure to submit a timely memorandum was prejudicial to the opposition, but the prejudice

was sufficiently cured when a memorandum was ultimately filed well in advance of the judicial review hearing. In the instant case, no memorandum was ever filed, so the presumption of prejudice to UMMC remains. Had the hearing on Ms. Goff's petition for judicial review proceeded, UMMC presumably would not have been prepared to address Ms. Goff's arguments. Even if, as in *Swatek*, UMMC "had a general grasp of the issues," that does not mean that UMMC "would have been prepared for every material argument, given the totality of the circumstances." 203 Md. App. at 284. Moreover, the circuit court was also prejudiced by the absence of a memorandum. A memorandum would have narrowed the arguments and framed Ms. Goff's issues, thereby assisting the court in making an informed determination. *Id*. Accordingly, because UMMC and the circuit court were prejudiced by Ms. Goff's failure to file the required memorandum, we conclude that the court did not abuse its discretion in dismissing Ms. Goff's petition for judicial review.[3]

ORDER OF THE CIRCUIT COURT FOR BALTIMORE CITY DISMISSING APPELLANT'S PETITION FOR JUDICIAL REVIEW AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[3] We point out that, at the hearing before the circuit court, Ms. Goff's attorney submitted on the merits after the court summarized the factual and procedural history. Therefore, the court, had it gone on to issue a ruling on Ms. Goff's petition for judicial review, would have had only the evidence presented to the ALJ on which to base its decision. Based on that evidence, which the ALJ determined was clear and convincing that Ms. Goff was a danger to herself and required involuntary admission to UMMC for treatment of her depressive disorder, severe, with psychotic features, it appears likely the circuit court would have affirmed the ALJ's decision. Therefore, Ms. Goff's position following judicial review would have been the same as it is in light of the court's dismissal of her petition.