

Circuit Court for Howard County
Case No: 13-C-17-112023

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1694

September Term, 2019

LYDIA PIETZ

v.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING, *et al.*

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 30, 2020

*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.

In April 2013, Lydia Pietz, appellant, contracted Jonathan Cook, trading as Low Maintenance Landscaping, to perform home improvements on her residence to address “drainage problems on the property.” Mr. Cook was tasked with, in pertinent part, removing and replacing the asphalt driveway, walkway, and porch on the property, installing a new French drain and “a stone wall 6 or 7 feet away from the garage,” and re-grading the front lawn. In return, Ms. Pietz agreed to pay \$14,350.00, which she paid in full.

Following a protracted work schedule, Mr. Cook either failed to complete the tasks as contracted or failed to complete his work in an adequate and workmanlike manner. Accordingly, Ms. Pietz filed a claim with the Maryland Home Improvement Commission (“the Commission”), appellee, seeking \$14,350.00 in actual losses from its Guaranty Fund based on the acts and omissions of Mr. Cook.¹ The Commission referred Ms. Pietz’s claim to the Office of Administrative Hearings where, following a hearing, an administrative law judge (“ALJ”) issued a proposed order awarding Ms. Pietz \$5,240.00 in actual losses. Because the ALJ proposed an award less than Ms. Pietz’s claim, Ms. Pietz noted exceptions to the proposed order. In a June 2017 order, however, the Commission affirmed the ALJ’s findings of fact, conclusions of law, and proposed order.

¹ The Commission is required to establish and administer a Home Improvement Guaranty Fund from which “an owner may recover compensation . . . for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann. Bus Reg. §§ 8-403; 8-405(a).

Ms. Pietz, thereafter, filed a petition for judicial review with the Circuit Court for Howard County. Following a hearing, the circuit court affirmed the decision of the ALJ. On appeal, Ms. Pietz raises the following issues, which we paraphrase for clarity:

1. Was it legally correct for the circuit court to “disregard/not review” any of the appellant’s evidence presented upon judicial review?
2. Was it legally correct for the circuit court to imply that the ALJ’s “lack of malicious intent” was a sufficient reason to deny the appellant’s petition for judicial review?
3. Was it legally correct for the circuit court to use the appellant’s pro se status to negate her right to “equal justice under the law?”

For the foregoing reasons, we shall affirm.

DISCUSSION

In directing this Court to her alleged claims of error, Ms. Pietz has not articulated the correct standard for review of an order affirming the decision of an administrative agency. As we have previously stated, when reviewing the decision of an administrative agency, we “do not evaluate the findings of fact and conclusions of law made by the circuit court.” *Howard Cty. Dep’t. of Soc. Servs. v. Linda J.*, 161 Md. App. 402, 407 (2005) (internal citation omitted). Instead, “we bypass the judgment of the circuit court and look directly at the administrative decision.” *Kim v. Maryland State Bd. of Physicians*, 196 Md. App. 362, 370 (2010). Our inquiry is limited to determining “whether there is substantial evidence in the record to support the agency’s findings and conclusions and whether the agency’s decision is premised upon an erroneous conclusion of law.” *McClellan v. Dep’t of Pub. Safety & Corr. Servs.*, 166 Md. App. 1, 18 (2005).

Contrary to this standard, and as reflected by the questions presented in her brief, Ms. Pietz requests that we review purported errors by the circuit court rather than addressing the alleged errors of the ALJ. Not only would this be improper for the reasons previously stated, we are unable to review the alleged error by the circuit court because Ms. Pietz has failed to provide the Court with the transcript of the circuit court’s hearing on her petition for judicial review. Pursuant to Maryland Rule 8-411, it was Ms. Pietz’s responsibility to provide the transcripts relevant to the issues on appeal for the Court’s consideration. With regard to the three issues raised in Ms. Pietz’s brief, therefore, we are unable to review the transcript to determine whether the circuit court “disregarded [her] evidence,” implied that the ALJ should be affirmed because she “lack[ed] . . . malicious intent,” or considered her pro se status in rendering its judgment. We decline, therefore, to address the claims of error set forth by Ms. Pietz in her brief. *See Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) (“The failure to provide the court with a transcript warrants summary rejection of the claim of error.”).

Moreover, on appeal, in order to reverse the ALJ’s decision, Ms. Pietz was required to direct this Court to portions of the record showing that there was insufficient “evidence in the record to support the agency’s findings and conclusions” or argue that the ALJ’s “decision [was] premised upon an erroneous conclusion of law.” *McClellan v. Dep’t of Pub. Safety & Corr. Servs.*, 166 Md. App. 1, 18 (2005). She failed to do either.

We acknowledge, however, that Ms. Pietz’s recitation of the facts includes some reference to the ALJ’s decision suggesting that it was “grossly insufficient.” For example, Ms. Pietz states that the ALJ “chose to disallow some claims due to [her own]

misunderstanding of presenting evidence,” without specifying the claims she contends were disallowed. Additionally, she states that the ALJ, upon finding that Ms. Pietz’s testimony was “confusing,” should have “clarif[ied] the issues before reaching a final decision.” However, this assertion is non-specific as to which issues should have been clarified and how. It is also unsupported by any legal support in Ms. Pietz’s brief. On the contrary, it was Ms. Pietz’s burden to prove by a preponderance of the evidence the losses she incurred as a result of Mr. Cook’s acts and omissions. *See* Md. Code Ann., State Gov’t. § 10-217. Lastly, Ms. Pietz asserts that the ALJ erroneously relied on a cost estimate in determining the cost of repairing the driveway, but she fails to specify the estimate to which she refers and fails to specify any legal error in the ALJ’s reliance on this estimate.

Because these contentions were not briefed with sufficient particularity, we decline to consider them on appeal. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain “[a]rgument in support of the party’s position.”); *Klaunberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not be considered on appeal”).

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