

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0684

September Term, 2015

DARIN RUMER, ET UX.

v.

MARYLAND HOME IMPROVEMENT
COMMISSION ET AL.

Eyler, Deborah, S.,
Kehoe,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: October 5, 2016

*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.

The dispositive issue in this appeal is whether the Circuit Court for Frederick County abused its discretion when it dismissed a petition for judicial review filed by Darin L. Rumer and his spouse, Cindy L. Rumer. The appellees are the Maryland Home Improvement Commission, the agency whose decision was the subject of the proceeding, and Christopher J. Lear, a building contractor. We will affirm the judgment of the circuit court.

Background

In 2007, Mr. Rumer entered into a home improvement contract with Mr. Lear for him to install a tile floor in the kitchen of the Rumers' residence. Lear's work was not satisfactory to Rumer. It is not necessary for us to revisit the details of the dispute other than to note that, in 2010, Rumer filed a complaint with the Commission. He alleged that Lear improperly installed the floor and sought an award of damages from the Maryland Home Improvement Commission Guaranty Fund. The Commission staff conducted an investigation of Rumer's complaint and the matter was eventually submitted to the Office of Administrative Hearings for a contested case evidentiary hearing. After the conclusion of the hearing, the administrative law judge recommended to the Commission that Rumer's claim be denied in its entirety. On October 6, 2014, a panel of the Commission entered a final order affirming the administrative law judge's findings of fact, conclusions of law and proposed order.

On November 6, 2014, the Rumers¹ filed a petition for judicial review. At this point, some dates become important.

On **January 22, 2015**, the Commission filed the agency record with the circuit court. Md. Rule 7-206(f) requires the circuit court clerk to notify the parties when the administrative record is filed. The Rumers assert that they did not receive the clerk's written notice. (The docket entries do not indicate that the clerk sent notices to anyone.) Both appellees believe that it is significant that the Rumers do not assert that they were personally unaware that the administrative record had been filed.

On **January 29, 2015**, the clerk's office sent a notice to the parties that a merits hearing was scheduled on May 18, 2015. This notice was mailed to the Rumers at their residence, although their last name was misspelt as "Rumor."

Md. Rule 7-207(a) requires a petitioner in a judicial review proceeding to file its memorandum within thirty days of the date that the agency record is filed with the court. That particular date fell on a weekend, so the Rumers were required to file their memorandum on or before **February 23, 2015**. *See* Md. Rule 1-203. They did not file their memorandum. On **April 14, 2015**, Lear filed a motion to dismiss the judicial review action because the Rumers failed to timely file their Rule 7-207(a) memorandum.

On **April 16, 2015**, the Rumers filed a "Motion to Postpone Hearing, or, in the Alternative, Motion for Leave to Extend Filing Brief." Although the title of the motion

¹ At some point in the administrative process, Ms. Rumer was apparently added as a claimant. It's not clear from the materials in the extract when this occurred.

suggests that the Rumers were seeking alternative relief, they were not: the Rumers requested that the circuit court reschedule the hearing *and* extend the time for them to file their brief. The motion stated that the Commission did not object to a continuance but that Lear did. As a factual basis for their relief, the motion stated:

On or about January 21, 2015, the [Commission] transferred [its] file to the Circuit Court for Frederick County, Maryland on or around January 21, 2015.

At present, the Petitioners are required to cite to the transcript in this matter which is several hundred pages.

. . . .

Petitioners request that the hearing scheduled for May 18, 2015, be postponed for 60 days or such other mutually agreeable date.

In a footnote, the Rumers stated that:

Petitioners did not receive notice from the Circuit Court that the file had been transferred. Moreover, even at this late date, a search of the Maryland Judiciary Case Search does not disclose the filing of the present matter.

On **April 20, 2015**, the Rumers filed a response to the motion to dismiss. The Rumers presented legal authority as to why the circuit court should not grant the motion to dismiss, which we will address presently. They presented no additional facts to support their contentions other than those set out in their motion for a postponement.

On **May 7, 2015**, the circuit court granted the motion to dismiss without explanation.

Analysis

We review the circuit court’s decision to dismiss the judicial review proceeding for abuse of discretion. *Gaetano v. Calvert County*, 310 Md. 121, 127–28 (1987); *Swatek v. Board of Elections*, 203 Md. App. 272, 284 (2013). 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.” *North v. North*, 102 Md. App. 1, 14 (1994).

The circuit court granted Lear’s motion to dismiss the judicial review proceeding without comment. While an explanation of a court’s reasoning in dismissing an action would have been both appropriate and desirable, the court’s failure to do so in this case is not necessarily 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 duties properly.). Finally, 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)).

Boiled down to essentials, the Rumers’ position is that the circuit court should have denied the motion to dismiss because (1) the clerk’s office did not send them notice that the Commission had filed the administrative record with the court; and (2) as a general rule, neither this Court nor the Court of Appeals favors dismissal of actions based solely on a party’s procedural stumble. 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 the Rumers’ judicial review action. We will provide a brief explanation.

First, the Rumers’ argument that they were prejudiced in any meaningful way by an error on the part of the clerk’s office is unpersuasive. The record before the circuit court

revealed that Mr. Rumer is a member of the Maryland Bar and a practicing attorney. Lawyers, and, indeed, *pro se* litigants, have a duty “to monitor dockets for when pleadings and other documents are filed.” *Estime v. King*, 196 Md. App. 296, 304 (2010); *see also Maryland Metals, Inc. v. Harbaugh*, 33 Md. App. 570, 575 (1976). The Rumers were certainly aware that the judicial review proceeding was pending—after all, they filed it—and were also aware that the court had scheduled a hearing. In light of this, Mr. Rumer’s failure to make any inquiry whatsoever as to the status of the case works strongly against him.

Additionally, although Mr. Rumer represented to the circuit court that neither he nor his spouse had received a copy of the notice of the filing of the record, he did not assert that they were unaware that the administrative record had been filed. Although they asserted to the circuit court that they needed additional time to prepare a memorandum because they “are required to cite to the transcript in this matter which is several hundred pages,” Mr. Rumer conceded at oral argument that he had received a copy of the transcript in October, 2014.

Second, even after the motion to dismiss had been filed, Mr. Rumer did not file a memorandum. His failure to do so distinguishes this case from the cases in which appellate courts have held that circuit courts abused their discretion in dismissing judicial review actions because of an untimely filed memorandum. *See Gaetano*, 310 Md. at 126–27; *Billings v. County Council of Prince George’s County*, 190 Md.App. 649, 667 (2010); *Department of Economic and Employment Development v. Hager*, 96 Md.App. 362, 375–

76 (1993). In this regard, the present case is similar to the one that confronted us in *Swatek*, 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. We held that the circuit court did not abuse its discretion in doing so and commented that Swatek’s failure to file a memorandum, whether timely or not, was “curious” because “even 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).” 203 Md. App. 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 284–85. We turn to the question of prejudice in this case.

Litigants have the right to have their cases resolved as expeditiously as is reasonably possible. For that reason, we have held that, in the absence of a showing of good cause, a postponement is inherently prejudicial to the appellees. *See Naughton v. Bankier*, 114 Md. App. 641, 654 (1997) (“For a trial court to permit a party to deviate so from a scheduling order without a showing of good cause is, on its face, prejudicial and fundamentally unfair to opposing parties[.]”). A postponement without good cause also prejudices the public because delay disrupts the orderly administration of justice. *See, e. g. Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 523 (2013).

Because the Rumers failed to demonstrate good cause for their requested postponement, the circuit court did not abuse its discretion in granting the motion to dismiss.²

**THE JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY IS AFFIRMED.
APPELLANTS TO PAY COSTS.**

² Were we to consider this case on the merits, we would affirm the decision of the Commission. The administrative law judge determined that the Rumers' claim against Lear was barred because they "unreasonably rejected good faith efforts by the contractor to resolve the claim." The evidence on this issue, which included, but wasn't limited to, testimony from Lear and Rumer, was sharply conflicting. After reviewing and weighing the evidence, the administrative law judge found Lear's version to be more credible. "The scope of judicial review of administrative fact-finding is a particularly narrow and highly deferential one." *Kim v. Maryland State Bd. of Physicians*, 196 Md. App. 362, 370 (2010), *aff'd*, 423 Md. 523 (2011). This is particularly the case when the findings turn on assessments of credibility. *Id.* As a result, "[c]redibility findings of hearing officers who themselves have personally observed the witnesses 'have almost conclusive force[.]' *Id.* (quoting *Anderson v. Dep't of Public Safety*, 330 Md. 187, 217 (1993)). There is no basis for us to set aside the administrative law judge's credibility-based findings of fact.