Circuit Court for Washington County
Case No. 21-C-16-056839

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 406

September Term, 2016

OFFICE OF ADMINISTRATIVE HEARINGS,
et al.

v.

ROADRUNNER TITLE PAWN, LLC, *et al.*

Eyler, Deborah S.,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 27, 2017

This case raises the question of whether the circuit court properly issued a temporary restraining order to compel the Office of Administrative Hearings to grant a request for postponement and reschedule a hearing. We conclude that relief was not appropriate and vacate the order of the circuit court.

PROCEDURAL AND FACTUAL BACKGROUND

The Commissioner of Financial Regulation of the Maryland Department of Labor, Licensing, and Regulation issued a cease-and-desist order to Roadrunner Title Pawn, LLC and its principal, George Timothy Parker ("Roadrunner"), regarding its lending practices. The matter was referred to the Office of Administrative Hearings ("OAH") to conduct an evidentiary hearing and make proposed findings. Roadrunner requested several postponements due to scheduling conflicts, and additional postponements due to the ongoing health problems of its attorney. After granting Roadrunner five separate postponements, the Administrative Law Judge ("ALJ") at OAH warned Roadrunner that the hearing would not be rescheduled again. On a status call held one month before the hearing, the ALJ again reminded Roadrunner that there would be no more postponements. Roadrunner did not heed that warning and, on the eve of the scheduled hearing, requested a sixth postponement. The ALJ denied the request.

Roadrunner petitioned the Circuit Court for Washington County for a temporary restraining order to compel the ALJ to postpone the hearing. The circuit court found that Roadrunner's counsel would be unable to attend the scheduled hearing due to a medical procedure, and that it would be "nearly an impossible burden for [Roadrunner] to seek new

counsel" prior to the hearing. The court granted the petition "in the interest of justice." The Commissioner and OAH noted this appeal.[1]

DISCUSSION

The purpose of a temporary restraining order is "to maintain the status quo pending a decision as to a justiciable controversy." *Harford County Educ. Ass'n v. Bd. of Educ. of Harford County.*, 281 Md. 574, 585 (1977); *see also Bord v. Baltimore County*, 220 Md. App. 529, 564 (2014). Relief is appropriate if, based on an affidavit or a statement under oath, "immediate, substantial, and irreparable harm will result" before a full hearing can be held. Md. Rule 15-504(a). There are four established factors for a court to consider in making its decision: "(1) the likelihood that the plaintiff will succeed on the merits; (2) the 'balance of convenience' determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest." *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 300-01 (2004). The "party seeking the injunction must prove the existence of *all four* of the factors." *Fogle v. H & G Rest.*,

[1] At oral argument, counsel for the Commissioner and OAH advised that after the expiration of the TRO, the hearing at OAH was held, potentially rendering this appeal moot. Roadrunner's counsel did not file a brief or appear at oral argument, so we do not have the benefit of its views. In the absence of more information, we hold that this case is either not moot, or if it is moot, it is the type of case that is capable of repetition but evading review, and decide the matter. *G.E. Capital Mortgage Services, Inc. v. Edwards*, 144 Md. App. 449, 453-54 (2002) ("In rare instances, however, we address a moot case if … the issue presented is capable of repetition, yet evading review") (internal quotations omitted).

Inc., 337 Md. 441, 456 (1995) (emphasis in original). Generally, "[t]he failure to prove the existence of even one of the four factors will preclude the grant of preliminary relief." *Id*.

The decision to grant a TRO is discretionary. *Lamone v. Schlakman*, 451 Md. 468, 479 (2017); *DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland, Inc.*, 161 Md. App. 640, 648 (2005). "If a trial judge correctly identifies and applies these factors, we will not disturb the judge's decision absent an abuse of discretion." *DMF Leasing*, 161 Md. App. at 648. If a circuit court's decision is based on an interpretation of law, however, our review is *de novo*, "because even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal principles." *Lamone*, 451 Md. at 479 (quoting *LeJeune*, 381 Md. at 301).

In our review, we determine that it is only necessary to address the first factor: the likelihood of success on the merits.[2] Here, there was never any likelihood of success on the merits. Judicial intervention in an ongoing administrative matter is limited. Typically, a party must wait for a final administrative judgment, or make a showing that under their

[2] There are additional, independent grounds for vacating the TRO: to be valid a temporary restraining order must: "(1) contain the date and hour of issuance; (2) define the harm that the court finds will result if the temporary restraining order does not issue; (3) state the basis for the court's finding that the harm will be irreparable; (4) state that a party or any person affected by the order may apply for a modification or dissolution of the order on two days' notice, or such shorter notice as the court may prescribe, to the party who obtained the order; and (5) set forth an expiration date, which shall be not later than ten days after issuance for a resident and not later than 35 days after issuance for a nonresident." Md. Rule 15-504(c). The TRO issued here contained none of these necessary elements.

particular circumstances, interlocutory intervention is necessary and warranted. Roadrunner does not meet either requirement.

Likelihood of success on the merits is measured by whether the instant litigation has a realistic chance of achieving its goal. *Ehrlich v. Perez*, 394 Md. 691, 708 (2006). It is a question of law that we review *de novo*. *Id*. "[T]he party seeking the … injunction must establish that it has a real *probability* of prevailing on the merits, not merely a remote *possibility* of doing so." *Id*. (emphasis in original). Here, the inquiry is not about the matter ultimately scheduled to be heard by the ALJ, whether the cease-and-desist letter against Roadrunner will eventually be upheld. Rather, the inquiry is whether Roadrunner is likely to succeed in its attempt to have the hearing before the ALJ postponed. Success here is limited to what could be won at an injunction hearing at the expiration of the TRO. At such a hearing, Roadrunner would be asking the circuit court to review the ALJ's decision to deny its request for a postponement. The relief sought would be for the circuit court to grant the postponement and issue an order rescheduling the hearing in front of the ALJ. Thus, although styled differently, Roadrunner's request to the circuit court was, in effect, an interlocutory appeal from an administrative agency decision. As a result, before the circuit court could reach the substance of the ALJ's decision, Roadrunner would have to show that it was entitled to judicial review of the order in the first place.

It is well-established that, except under specific circumstances, only final administrative judgments may be reviewed by circuit courts. *Tamara A. v. Montgomery*

County Dept. of Human Services, 407 Md. 180, 189 (2009) (noting that the Court of Appeals is strict in disallowing immediate judicial review of interlocutory administrative orders); *Dorsey v. Bethel A.M.E. Church*, 375 Md. 59, 74-75 (2003) (quoting *State v. State Bd. of Contract Appeals*, 364 Md. 446, 457 (2001) (stating that the Court of Appeals has consistently held that absent express authorization for judicial review of interlocutory decisions, parties "must ordinarily await a *final administrative decision* before resorting to the courts") (emphasis in original); *Montgomery County v. Broadcast Equities, Inc.*, 360 Md. 438, 452 (2000) (holding that parties cannot resort to the courts "prior to a final administrative decision"). An administrative judgment is generally considered final only if it determines the rights and liabilities of the parties, and leaves nothing further for the agency to do. *Smith v. County Comm'rs of Kent County*, 418 Md. 692, 712-13 (2011); *Holiday Spas v. Montgomery County Human Relations Comm'n*, 315 Md. 390, 396 (1989). This finality requirement is intended to avoid "interruption for purposes of judicial intervention at various stages of the administrative process [that] might well undermine the very efficiency which the Legislature intended to achieve in the first instance." *Brown v. Fire & Police Employees' Ret. Sys.*, 375 Md. 661, 670 (2003) (quoting *Soley v. State Comm'n on Human Relations*, 277 Md. 521, 526 (1976)). A denial of a request to postpone an evidentiary hearing is not a final administrative decision; the administrative process cannot be exhausted if it has not yet really begun.

Because the challenged order here is not a final administrative judgment, Roadrunner's right to judicial review is limited. Judicial review of an interlocutory agency order is only allowed if certain specifically enumerated requirements are met:[3] (1) the aggrieved party must qualify for judicial review of a related final decision; (2) the interlocutory order at issue must determine rights and liabilities, and have immediate legal consequences; and (3) postponement of judicial review would result in irreparable harm. SG § 10-222(b); *Tamara A.*, 407 Md. at 188. Thus, to have any likelihood of success on the merits, Roadrunner had to show that it met the criteria to obtain immediate review of an interlocutory administrative decision.

It is clear that Roadrunner meets the first condition for review of an interlocutory order, that the party would qualify for review of the final decision. "[T]he threshold for establishing oneself as a party before an administrative agency is indeed low." *Dorsey*, 375 Md. at 73 (quoting *Maryland-Nat'l v. Smith*, 333 Md. 3, 10 (1993)). Should this case ever proceed forward to a conclusion, Roadrunner would be in a position to seek judicial review of the final decision.

[3] There are other limited circumstances in which a party may circumvent the administrative process, none of which are applicable here. *Cf.*, *Coroneos v. Montgomery County*, 161 Md. App. 411, 428–29 (2005) (holding that an exception to the doctrine of exhaustion of administrative remedies is "when an agency requires a party to follow, in a manner and to a degree that is significant, an unauthorized procedure"); *Heery Int'l, Inc. v. Montgomery County*, 384 Md. 129, 138 (2004) (noting that "exhaustion of administrative remedies will not be required when a party can demonstrate that an administrative tribunal is 'palpably without jurisdiction'") (citation omitted).

It is also clear, however, that Roadrunner fails to meet the second condition for interlocutory relief, a showing that the order at issue determines rights and liability, and imposes immediate legal consequences. Roadrunner is challenging a scheduling order. Such an order does not impose any substantive legal consequences. And while the content of the hearing may eventually implicate the rights and liabilities of the parties, the order setting it does not.

Roadrunner likewise fails to meet the third condition for interlocutory review because it has failed to show that irreparable harm will result without the immediate grant of relief. What constitutes "irreparable harm" depends on the unique circumstances of each individual case. *State Comm'n on Human Relations v. Talbot County Det. Ctr.*, 370 Md. 115, 140 (2002). But in general, an injury is considered irreparable for the purposes of an injunction if:

> it is of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice—in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, it cannot be readily, adequately, and completely compensated for with money.

State Comm'n on Human Relations, 370 Md. at 140 (cleaned up).

The potential harm here was that Roadrunner would have to proceed before the ALJ with alternate legal representation. The circuit court found that Roadrunner would be

"greatly impaired" at a multi-day hearing without the attorney who had been representing it up to that point. While sympathetic, this falls far short of the required standard.

Proceeding with an attorney who is less familiar with the case may indeed put Roadrunner at a disadvantage, but that disadvantage does not make it inevitable that the results of the hearing would be adverse to Roadrunner. When OAH reaches a final decision, if Roadrunner is dissatisfied with the result, it will have the opportunity to seek judicial review. One ground that Roadrunner might raise is that it believes it was erroneously denied a postponement. Seeking piecemeal review prior to the start of any hearing, however, is speculative and premature. *Tamara A.*, 407 Md. at 189 (noting that allowing interlocutory appeals from administrative proceedings would create unnecessary litigation where "a party choosing to seek review of an unfavorable interlocutory order might well, if the party waited to the end, be satisfied with the final administrative decision") (quoting *Driggs Corp. v. Md. Aviation*, 348 Md. 389, 407 (1998)). That Roadrunner may have to bear the expense of and proceed through the administrative process to an unfavorable result before being able to challenge the ALJ's decision does not change the nature of the injury. "[T]he inevitable costs of administrative litigation are not factored into" a finding of irreparable harm. *Heery Int'l*, 384 Md. at 150. We see no evidence that any harm was prevented at all.

On the record before us, it is apparent that Roadrunner had no likelihood of success on the merits before the circuit court. As a result, it is unnecessary to address the remaining factors. We vacate entry of the temporary restraining order.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY VACATED. COSTS TO BE PAID BY APPELLEE.