

Circuit Court for Montgomery County
Case No. 421342V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2059

September Term, 2016

FRANCES L. SMITH,

v.

RIDERWOOD VILLAGE, INC.

Nazarian,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: May 1, 2018

*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.

The Circuit Court for Montgomery County dismissed Appellant, Frances Smith's lawsuit alleging unlawful employment discrimination against Appellee, Riderwood Village, LLC, finding that Smith failed to exhaust her administrative remedies with the Maryland Commission on Civil Rights. Because we conclude that Smith filed a complaint with the Commission and the Commission failed to act in a timely manner, we conclude that Smith properly exhausted her administrative remedies. Thus, we reverse the circuit court's dismissal of the case and remand for a trial on the merits of Smith's discrimination claims.

BACKGROUND

Smith worked as a line cook for Riderwood Village, LLC from 2003 to June of 2015. She was fired for theft after reportedly wrapping up leftover food to take home in violation of company policy. Believing that her race played a factor in her termination, Smith retained an attorney to assist her in filing a complaint with the Maryland Commission on Civil Rights. On October 22, 2015, Smith's attorney sent an email to the Commission with the subject line "Charge of Discrimination/Employment/Initiation of Inquiry." He attached a letter with the reference line "[Commission] Charge of Discrimination" to the email that provided details about Smith's termination and alleged that "the employer terminated Ms. Smith because of racial bias." Smith's attorney also attached a completed "EEOC Form 5" to the email. This form, issued by the federal Equal Employment Opportunity Commission, is also used by state and local agencies for reporting and investigating allegations of employment discrimination. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, FORM 5, CHARGE OF DISCRIMINATION

(11/09), <https://perma.cc/4259-EY8X>; 42 U.S.C. § 2000e-5(c) (addressing the commencement of State or local enforcement proceedings alleging unlawful employment practices); COMAR 14.03.01.03D(5) (“Complaints filed on forms provided by ... federal civil rights agencies ... shall be considered complaints filed with the [Maryland] Commission [on Civil Rights].”).

On December 1, 2015, Smith received a letter from the Commission with the subject line “Inquiry of Discrimination.” It acknowledged that the Commission had “received *information* submitted by [Smith] in the above-referenced matter,” and informed Smith that she had been assigned a phone interview appointment to discuss her concerns. (emphasis added). The letter also referenced a Code of Maryland Regulations provision that requires complaints of employment discrimination to be filed with the Commission within six months of the date of the alleged violation. COMAR 14.03.01.03C(1) (“[A]n individual complaint shall be filed within 6 months from the date of the occurrence of the alleged unlawful discrimination”). The phone interview took place as scheduled, but Smith received no further communications from the Commission regarding the investigation of her charge or the status of her complaint.

180 days passed after Smith emailed her charge of discrimination to the Commission and no investigation was completed. Accordingly, Smith exercised her right under Section 20-1013 of the State Government Article to file a civil action against Riderwood in the Circuit Court for Montgomery County alleging unlawful employment discrimination. Md. Code, State Government (“SG”) § 20-1013(a) (allowing claimant to file in circuit court if Maryland Commission on Civil Rights takes no action within 180

days). Riderwood moved to dismiss the lawsuit, arguing that Smith had failed to exhaust her administrative remedies. In particular, Riderwood argued that Smith's charge did not meet the Commission's requirements for a complaint, and thus had not been accepted for filing by the Commission. As a result, Riderwood contended that the circuit court lacked subject matter jurisdiction over the case because Smith had not fully pursued relief in front of the Commission.

At a hearing on the motion to dismiss, the circuit court ruled in favor of Riderwood. It explained, in an oral ruling, "that a complaint was not filed [and] therefore, the administrative remedies were not exhausted." Accordingly, the circuit court dismissed the case for lack of subject matter jurisdiction. Smith noted this timely appeal.

DISCUSSION

Smith argues that the circuit court erred in granting Riderwood's motion to dismiss because she properly exhausted her administrative remedies. We review the grant of a motion to dismiss for failure to exhaust administrative remedies without deference to the circuit court. *Falls Road Cmty. Ass'n, Inc. v. Baltimore Cnty.*, 437 Md. 115, 134 (2014). Thus, we must determine whether the circuit court was legally correct in concluding that Smith failed to exhaust her administrative remedies and, as a result, could not seek relief in the circuit court. *Forster v. State, Office of Pub. Defender*, 426 Md. 565, 581 (2012). We will begin by addressing whether Smith properly submitted a complaint with the Commission and then review whether Smith was entitled to bring suit in the circuit court.

I. THE COMPLAINT

The circuit court found that, although Smith submitted several documents to the Commission regarding her charge of discrimination, she never actually filed a complaint. In reaching its conclusion, the circuit court placed great weight on the letter that the Commission sent to Smith informing her that it had “received information” about Smith’s claim. The circuit court reasoned, “[The Commission] ... say[s], ‘we’ve received information submitted by you.’ [It] do[es] not say, ‘We’ve received your complaint.’ It couldn’t be any clearer. Even a person unfamiliar with the Commission’s policy would have to conclude that the word ‘information’ is not synonymous with ‘complaint.’” Thus, the circuit court found that because Smith never received confirmation from the Commission that it had accepted her complaint, and no investigation took place after the initial phone interview, Smith “was certainly put on notice that this wasn’t a complaint.” We disagree.

Section 20-1004 of the State Government Article sets out the form and content requirements for a filing with the Commission to constitute a “complaint.” It provides that the filing shall:

- (1) be in writing;
- (2) state:
 - (i) the name and address of the person or State or local unit alleged to have committed the discriminatory act; and
 - (ii) the particulars of the alleged discriminatory act;

- (3) contain any other information required by the Commission; and
- (4) be signed by the complainant under oath.

SG § 20-1004(b). Complaints must be filed with the Commission within six months of the date when the discriminatory act occurred. SG § 20-1004(c).

As noted above, on October 22, 2015, Smith sent three things to the Commission: (1) an email; (2) a letter; and (3) a completed EEOC Form 5. We conclude that these three documents, together, contained all the required elements, and thus constituted a “complaint” under § 20-1004(b). *First*, the email, the letter, and the EEOC Form 5 were all in writing.¹ *Second*, Smith included the full name and address of Riderwood on the EEOC Form 5, and in her letter, provided a detailed account of the incident including the names of the individuals involved. *Third*, the letter provided that the incident occurred on June 24, 2015 and that Smith’s termination came two days later. The filing, dated October 22, 2015, was thus submitted to the Commission within six months of the incident, as required. *Finally*, Smith’s filing was signed under oath: Smith signed the EEOC Form 5 where it stated “I declare under penalty of perjury that the above is true and correct,” and also signed a separate signature line on her letter reading “I herein attest that the foregoing Charge of Discrimination is true and accurate to the best of my knowledge under penalty of perjury.” There is no provision requiring that all of these elements must be on one

¹ Both parties devote significant portions of their briefs addressing whether Smith properly filed her complaint by submitting it via electronic mail. Because COMAR 14.03.01.03 makes clear that electronic filing is acceptable, we need not address this issue at length. COMAR 14.03.01.03B(1) (“Complaints shall be filed at the offices of the Commission in person, by registered, certified, or regular mail, facsimile or other **electronic media**....”) (emphasis added).

document. In fact, the Code of Maryland Regulations is clear that beyond the requirements of SG § 20-1004(b)-(c), no additional formality is required. COMAR 14.03.01.03D(6) (“Notwithstanding the requirement for using a required form, the Commission will accept a written statement which substantially sets forth the allegations of a discriminatory practice under State Government Article, Title 20.”). Because the three documents that Smith submitted to the Commission included each of the required elements for a complaint, Smith properly filed a complaint.² The circuit court, therefore, erred in finding that Smith’s filing was defective.

II. THE CIVIL ACTION

Having concluded that, nomenclature aside, Smith successfully filed a complaint with the Commission, we now turn to whether Smith was entitled to initiate an action in the circuit court. The State Government Article provides individuals who have properly filed a complaint with the Commission a right to bring a civil action in the circuit court

² Riderwood argues that, by virtue of the fact that the Commission never assigned a charge or investigation number to Smith’s claim and never contacted Riderwood to engage in conciliation, it is clear that the Commission did not consider Smith’s filing a complaint. Due to the procedural posture of this case, we have not had the benefit of the Commission’s participation. The Commission is not a party to this appeal, nor was it involved in the circuit court lawsuit initiated by Smith. Thus, we cannot determine the reason behind the Commission’s lack of investigation of Smith’s allegations. It is not outside the realm of possibility that the Commission’s inaction resulted from some oversight within the agency. Regardless, we conclude that Smith’s filing contained all the statutorily required elements of a complaint, and had the system worked as designed, we do not doubt that the Commission would have commenced an investigation and attempted to resolve Smith’s claim—as is its standard practice. *See* COMAR 14.03.01.04-09 (governing the complaint processing, investigation, negotiation, and conciliation process that the Commission engages in after a complaint is filed). That that process did not occur here does not support the conclusion that Smith did not properly file her complaint.

against an employer if “(1) the complainant initially filed a timely administrative charge or complaint . . . ; (2) at least 180 days have elapsed since the filing of the administrative charge or complaint; and (3) the civil action is filed within 2 years after the alleged unlawful employment practice occurred.” SG § 20-1013(a). Under this section, people who properly file with the Commission can obtain speedy resolutions of their matters in the circuit court in the event that the administrative agency fails to address the claims within 180 days.³ *Id.*

Here, where the Commission failed to investigate Smith’s charge of discrimination within 180 days, Smith appropriately exercised her right under SG § 20-1013(a) to bring an action in the circuit court. Smith initially filed her complaint with the Commission on October 22, 2015. Smith filed suit in the circuit court on May 10, 2016—more than 180 days after the complaint was filed with the Commission and within two years of the June 2015 alleged discrimination. By properly filing a complaint and enduring 180 days of inaction by the Commission, Smith exhausted her administrative remedies. At that point, she was entitled to initiate a civil action in the circuit court. The circuit court, therefore, erred in dismissing her case. Because Smith remains entitled to a decision on the merits of

³ Under Title 20 of the State Government Article, a variety of remedies exist for a person found to have been the victim of an unlawful employment practice, including “affirmative relief, including the reinstatement or hiring of employees, with or without back pay” and compensatory damages. SG § 20-1009(b)(1)-(2). Thus, individuals alleging employment discrimination have a significant interest in the quick resolution of their claims because the available remedies can directly impact their employment or financial situation. *Id.* Section 20-1013 provides claimants with an alternative avenue to pursue this relief so that, in the event that the Commission fails to conduct a timely investigation, they are not forced to wait for more than six months to have their claims addressed. SG § 20-1013(d) (“If the [circuit] court finds that an unlawful employment practice occurred, the court may provide the remedies specified in § 20-1009(b) of this subtitle.”).

her allegations of unlawful employment discrimination, we reverse and remand to the circuit court for further proceedings.⁴

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY REVERSED AND
REMANDED FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION. COSTS
TO BE PAID BY APPELLEE.**

⁴ At oral argument, counsel for Riderwood argued that it would be inappropriate to remand the case to the circuit court when no proceedings were held in front of the administrative agency, which has the appropriate expertise to resolve claims of unlawful employment practices. Counsel further suggested that, because the time for Smith to bring her claims in front of the Commission had expired, a remand to either forum would be improper. We cannot agree. Such a result would be a windfall for Riderwood. While the Commission may be the ideal forum to address allegations of unlawful discrimination, we see no reason why the circuit court cannot sufficiently address Smith's claims. More fundamentally, though, we will not deprive Smith of the right to have her claim adjudicated in the circuit court simply because the Commission failed to investigate her case. Smith did everything she was supposed to do to have her charge of discrimination addressed: she filed a complaint with the Commission that met the statutory requirements and participated in an intake interview, but then heard nothing, despite repeated efforts to learn the status of her claim. The Commission's inaction cannot strip Smith of the opportunity to have her case heard in any venue.