

Circuit Court for Montgomery County
Case No. 455637V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3262

September Term, 2018

PETER A. MUNTJAN

v.

SELECTIVE INSURANCE CO. OF SOUTH
CAROLINA

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 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.

Peter A. Muntjan, appellant, filed a complaint with the Maryland Insurance Administration (“MIA”) challenging the decision by Selective Insurance Co. of South Carolina, appellee, to raise his automobile insurance premiums. Following a hearing, the Office of Administrative Hearings issued a decision upholding the premium increase.

Mr. Muntjan filed a timely petition for review in the Circuit Court for Montgomery County. Thereafter, the court entered an order requiring the administrative record to be filed by December 10, 2018, and Mr. Muntjan’s memorandum of law to be filed by January 14, 2019. On December 31, 2018, the circuit court *sua sponte* entered an order dismissing the petition for review. The stated reason for the dismissal was that appellant had “failed to file a Memorandum in accordance with Maryland Rule 7-206.” On appeal, Mr. Muntjan raises four issues, which reduce to one: whether the court erred in dismissing his petition for judicial review. For the reasons that follow, we shall vacate the order of dismissal and remand the case for further proceedings.

Our ability to resolve the issue raised on appeal is constrained by the fact that the circuit court’s reasons for dismissing the petition are not clear. The dismissal order states that the petition was dismissed because appellant “failed to file a Memorandum in accordance Maryland Rule 7-206.” However, Maryland Rule 7-207 governs the filing of memoranda in petitions for judicial review. Rule 7-206, on the other hand, addresses the requirements for filing the administrative record and transcript. This lack of clarity is evident in the arguments made in the parties’ briefs. For example, Mr. Muntjan claims that the court erred in dismissing his petition for failure to file a memorandum because he was not required to file a memorandum until January 14, 2019. However, Selective

Insurance contends that we should only consider the court’s reference to Rule 7-206 and affirm the dismissal order on that ground. *See* Rule 7-206(d)(requiring the record to be transmitted to the circuit court within 60 days after the agency receives a copy the petition for judicial review).

Under the circumstances, we will not attempt to guess the court’s reasons for dismissing the petition. Therefore, we shall vacate the dismissal order and remand the case for further proceedings. On remand, the court may enter a new dismissal order if it believes that dismissal of the petition for review is still warranted. However, that order should clearly set forth the reasons for dismissal.

To guide the circuit court on remand, we note that transmittal of the record “is neither jurisdictional nor in the nature of a statute of limitations” and therefore a “failure to transmit timely a record, in literal violation of Rule 7-206(d), does not mandate a dismissal of a petition for judicial review.” *Wormwood v. Batching Systems, Inc.*, 124 Md. App. 695, 697, 705 (1999). Instead, “the rule governing transmittal is subject to substantial compliance.” *Id.* at 705. And, “[w]here there is compliance with the substance of the requirements of statutes or rules and the other parties have not been prejudiced, technical irregularities cannot be made the basis of depriving persons of the opportunity to assert their legal rights.” *Id.* (citation omitted).

Here, the court dismissed the petition for review *sua sponte* and made no findings regarding substantial compliance. Thus, the record before us does not indicate whether a dismissal pursuant to Maryland Rule 7-206 would have been appropriate. Consequently,

if the court issues a new dismissal order relying on Rule 7-206, that order should address the issue of substantial compliance.¹

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

¹ In resolving that issue, the court may consider Mr. Muntjan’s January 2, 2019, “Motion to Compel Production of Transcript and Motion to Extend Time for Petitioner to file Memorandum of Law,” which he filed after the court dismissed his petition for review and which was denied as moot after he filed his notice of appeal. It may also allow the parties to file new pleadings addressing the substantial compliance issue and hold a hearing, if necessary, to resolve any factual questions raised in those pleadings.