

Circuit Court for Montgomery County
Case No. 450973-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3386

September Term, 2018

RICHARD AFOLABI-BROWN

v.

ALLSTATE INSURANCE COMPANY, *et al.*

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

JJ.

PER CURIAM

Filed: May 6, 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.

Richard Afolabi-Brown, appellant, filed a complaint with the Maryland Insurance Administration’s Policy and Casualty Unit (P&C Unit) alleging that Allstate Insurance Company, appellee, had failed to fully pay his claim for water damage to his home and had improperly increased his homeowner’s insurance premium because of that claim. Following an investigation, the P&C Unit concluded that Allstate had fully paid his claim and had properly increased his premium. Mr. Afolabi-Brown requested a hearing, which was granted, and a hearing was conducted before the Maryland Insurance Commissioner (the Commissioner). Following that hearing, the Commissioner issued a final order affirming the determination of the P&C Unit.

Mr. Afolabi-Brown filed a timely petition for judicial review in the Circuit Court for Montgomery County. On July 26, 2018, the Maryland Insurance Administration sent written notice to the parties indicating that it had received the petition and informing the parties that they had 30 days from the date of the letter to file a response. On August 13, 2018, the Commissioner filed a “Notice of Intent Not to Participate in the briefing of or argument” of the petition for review but indicated that it wished to remain a party and to be copied on all court filings and orders. Allstate filed a timely response opposing the petition on August 24, 2018. Following a hearing, the circuit court affirmed the Commissioner’s decision. On appeal, Mr. Afolabi-Brown presents the following questions for our review, which we quote:

- (1) Was it Error for the wrongfully Captioned Case, indicating Allstate as the “Respondent” rather than the Maryland Insurance Administration “MIA or AGENCY” whose Final Order was being Reviewed, (but chose NOT TO PARTICIPATE?) to have proceeded with the hearing; And, Can MIA substitute Allstate’s attorney for its own defense?, (who by the way has

also failed to enter its intent to Participate in the Judicial Review Process). Could that be reason enough to have terminated the Hearing, as moved by the appellant?

- (2) Can Allstate substitute itself for MIA’s attorney, given its conflict as a defendant? Was the lower court in Error by insisting on conducting the December 28, 2018 Hearing, then affirming MIA’s questioned “Final Order” without its participation, the very basis for the hearing, while denying the appellant a Declarative Judgment as moved by the appellant?

For the reasons to be discussed, we shall affirm.

As best as we can discern, Mr. Afolabi-Brown contends that he was entitled to a “Declarative or Summary Judgment” because the Commissioner did not participate in the judicial review proceedings. He also appears to assert that Allstate was improperly allowed to represent the Commission’s interests in the circuit court. However, these contentions are based on a misunderstanding of the judicial review process. The Maryland Rules do not require the agency, or any other party, to file a response to a petition for judicial review. That is because the Commissioner’s decision was presumed to be valid and thus, Mr. Afolabi-Brown, as the party challenging that decision, bore the burden of demonstrating that the administrative proceedings violated his substantial rights. *See Md. Aviation v. Noland*, 386 Md. 556, 581 (2005). Consequently, he was not entitled to a summary judgment reversing the decision simply because the Commissioner chose not to participate in the proceedings. *See Dep’t. of Public Safety & Correctional Servs. v. Neal*, 160 Md. App. 496, 507 (2004) (noting that the appellant had “no basis to argue that, an abandonment by [the appellee] of her party status in the judicial review action would have worked a

change in the standard of review applied by the circuit court” or in this Court’s standard of review on appeal).

Moreover, the record indicates that the Commissioner did not “substitute Allstate’s attorney for its defense,” as Mr. Afolabi-Brown claims. Rather, Allstate filed a timely response to his petition for review on its own behalf. And Allstate was permitted to file such a response as it was a party to the proceedings before the Commissioner. *See* Maryland Rule 7-204(a) (“Any person, including the agency, who is entitled by law to be a party and who wishes to be a party shall file a response to the petition.”). Consequently, we hold that Mr. Afolabi-Brown’s contentions on appeal lack merit.

Finally, we note that, in his “Statement of Facts,” Mr. Afolabi-Brown generally asserts that Allstate improperly reclassified the water damage to his home as having been “caused by a Sewer Backup” to avoid having to pay more money on his claim. However, he does not make any particularized arguments addressing why the Commissioner’s contrary factual findings were not supported by substantial evidence or why the Commission committed an error of law when it determined that Allstate had fully paid his claim as required by his insurance policy. Moreover, he does not raise any of these issues in his “questions presented” or discuss them in the “argument” section of his brief. Consequently, we do not consider the merits of the Commissioner’s decision on appeal. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (noting that arguments that are “not presented with particularity will not be considered on appeal” (citation omitted)); *see also Green v. N. Arundel Hosp. Assoc. Inc.*, 126 Md. App. 394, 426 (1999) (“Appellants can

waive issues for appellate review by failing to mention them in their ‘Questions Presented’ section of their brief.”).¹

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

¹ Even if properly before us, appellate review of such claims would be constrained by the fact that the record does not include a copy of the transcript of the hearing before the Commissioner and that Mr. Afolabi-Brown has not included any portions of that transcript in his record extract. However, based on our review of the existing record, we perceive no error in the Commissioner’s decision. It appears that Mr. Afolabi-Brown’s primary contention is that the damage to his home was caused by water from a broken water main entering his home, rather than from a sewer back-up through his sump pump. But, if Mr. Afolabi-Brown is correct about the cause of the water damage, Allstate would not have been required to pay any money to settle his claim as the plain language of his homeowner’s insurance policy specifically excludes losses caused by “[w]ater . . . on or below the surface of the ground, regardless of its source” including “water . . . which exerts pressure on, or flows, seeps, or leaks through any part of the residence premises.”