

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1257

September Term, 2015

JOHN W. ANDERSON

v.

LAKIESHA PIERSON

Krauser, C. J.,
Graeff,
Kehoe,

JJ.

Opinion by Kehoe, J.

Filed: July 14, 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. Md. Rule 1-104.

John W. Anderson, the Sheriff of the City of Baltimore, appeals a judgment of the Circuit Court for that city in favor of Lakiesha Pierson, a deputy in his department. The underlying issue concerns Deputy Pierson’s right to back pay arising out of an employment dispute resolved in her favor several years ago. The immediate question for our consideration is whether the legal remedy that Deputy Pierson wields in this action—a petition for civil enforcement of an administrative order—is procedurally appropriate. The circuit court concluded that it was and granted her the relief she sought. On appeal, Sheriff Anderson asserts that the circuit court was incorrect on this point. We agree with Sheriff Anderson.

Background

In 2010, Pierson was administratively charged with violating the Sheriff Department’s policies and regulations by making a false statement to her supervisor. Pierson invoked her rights under the Law Enforcement Officer’s Bill of Rights (the “LEOBR”).¹ A hearing found her guilty and recommended termination. Anderson accepted the recommendation and Pierson was terminated from her position with the Department in 2011. In *Lakeisha Pierson v. Sheriff John W. Anderson*, No. 1918, September Term, 2011, filed February 22, 2013 (“*Pierson I*”), a panel of this Court held that there was no substantial evidence to support the hearing board’s determination that Pierson was guilty of the charge. The panel remanded the case to the circuit court with

¹Public Safety Article § 3-101 *et seq.*

instructions for the court to “remand to the Hearing Board to reinstate appellant.” Slip op. at 11. The panel did not address the issue of back pay and benefits and the panel denied a timely motion for reconsideration filed by appellee asking for this relief.

Pursuant to the mandate in *Pierson I*, the circuit court issued a reversal and remand order on July 3, 2013 to the hearing board with instructions to reinstate Pierson. Before the circuit court issued its order, however, the Department had already reinstated Pierson. What happened next is a bit unclear.

There is no dispute that the Department never re-convened the hearing board² or that Pierson, on her own behalf and with the assistance of counsel, requested payment of back pay and benefits from the Department. It is also clear that the Department didn’t pay them. However, there is nothing in the record that indicates whether the Department formally and explicitly refused to pay, or simply failed to act on Pierson’s request.

Comments made by the Department’s counsel during the hearing before the circuit court

²We are not suggesting that the Department should have done so. The powers and duties of LEOBR hearing boards are set out in PS § 3-108. The statute does not authorize hearing board to grant any sort back wages or any of form of affirmative relief to an officer.

The parties disagree as to whether the Administrative Procedure Act applies to LEOBR Proceedings. If the officer is a member of a State law enforcement agency, the Administrative Procedure Act applies to LEOBR proceedings insofar as the Act provides procedural protections to the officer. *Maryland State Police v. Zeigler*, 330 Md. 540, 553 (1993). Sheriff’s departments are state agencies. *Rucker v. Harford County*, 316 Md. 275, 281-83 (1989). We do not read *Ziegler* as suggesting that LEOBR hearing boards are invested with the right to award back pay to wrongfully-terminated officers.

suggest that the latter may have been the case. Counsel also indicated that there was uncertainty as to the Department’s authority to pay back wages and benefits without either a court or agency order.

In 2015, Pierson initiated the present action, seeking the enforcement of the circuit court’s July 3 order. She claimed that, as part of the July 3 order, she was also entitled to back pay and benefits because “had there been no guilty finding [by the hearing board], there would have been no termination, and therefore . . . she is entitled not only to reinstatement, but also . . . back pay for the period of time encompassing her unlawful termination.” Pierson contended that the circuit court had the authority to order an award of back pay and benefits pursuant to State Government Article § 10-222.1.³

Anderson filed a motion to dismiss and made essentially the same arguments that he presents to this court. The circuit court denied Anderson’s motion and granted

³The statute provides in pertinent part:

§ 10-222.1. Civil enforcement of administrative order.

(a) *Petition.* — A party to a contested case may timely seek civil enforcement of an administrative order by filing a petition for civil enforcement in an appropriate circuit court.

* * * *

(d) *Action by party.* — A party may file an action for civil enforcement of an administrative order if another party is in violation of the administrative order.

(e) *Relief*— A party in an action for civil enforcement of an administrative order may request, and a court may grant, one or more of the following forms of relief:

* * * *

(4) any other civil remedy provided by law.

Pierson’s petition. The circuit court did not find that the court’s July 3 order explicitly awarded Pierson back pay and benefits, but concluded that the award was “implicit” in the order. Subsequently, Anderson filed this appeal.

Analysis

The circuit court denied Anderson’s motion to dismiss and granted Pierson’s petition to enforce the administrative order based on its interpretation of Maryland statutory and case law. As such, we will review the circuit court’s decision *de novo*. See *Mayor and Council of Rockville v. Pumphrey*, 218 Md. App. 160, 177–78 (2014). As to any factual issues, “[w]e presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom in a light most favorable to plaintiffs.” *Holden v. Univ. Sys. of Maryland*, 222 Md. App. 360, 366 (2015) (internal quotations and citations omitted).

Anderson argues that the circuit court erred in denying his motion to dismiss for two reasons. He contends that: (1) the circuit court was without authority to grant Pierson’s petition because Pierson sought to enforce a judicial order, namely, the circuit court’s July 3, 2013 order remanding the matter to the hearing board, as opposed to an order by an administrative agency or official, and (2) the circuit court was without authority to enforce an “implicit” award of back pay and benefits. We agree on both counts.

First, SG § 10-222.1 authorizes parties to seek the enforcement of *administrative* orders; it does not authorize a party to enforce a judicial order. No administrative agency, board, or official has ever ordered Anderson to pay back wages and benefits to Pierson. Therefore, § 10-222.1, by its plain terms, is inapplicable to this case. The disconnect between the very clear purpose and scope of the statute and the relief sought by Pierson is illustrated by the fact that the circuit court order that is the basis of this appeal stated that an award of back pay and benefits was implicit in its July 3, 2013 order remanding the matter to the hearing board.

To avoid this result, Pierson argues that her action challenged the administrative order, because the original administrative order was reversed by the circuit court’s July 3 order. This does not change our analysis because there was never an administrative order addressing back pay and benefits in the first instance. SG § 10-222.1 does not provide an avenue of relief for Pierson in this case.

Moreover, even if § 10-222.1 were applicable, we would still reverse the court’s order. The circuit court reasoned that enforcing the July 3, 2013 order entitled Pierson to back pay and benefits because the award of back pay and benefits was “implicit” in the July 3 order. However, “[i]f the administrative order . . . failed to address . . . a remedy sought by a party,” courts are without authority to “perform the agency’s function by filling in the gaps under the guise of ‘enforcing’ the administrative order pursuant to § 10–222.1.” *Dep’t of Health & Mental Hygiene v. Rynarzewski*, 164 Md. App. 252,

260-61 (2005). The result is the same when there is no administrative decision in the first place. The circuit court is limited to only enforcing those remedies that the administrative law judge clearly and indisputably awarded—save for those remedies that are statutorily required to be awarded. *Wilson v. Simms*, 380 Md. 206, 225–26 (2004). Pierson does not direct us to any provision of the LEOBR, or any other statute, that mandates that an employee must receive back pay and benefits as a matter of right when a termination is rescinded; as such we conclude that the circuit court erred in awarding back pay and benefits.

In conclusion, SG § 10-222.1 does not provide a remedy to Deputy Pierson. Absent a statutory directive, reinstatement and entitlement to back pay are separate issues and an employee is not necessarily entitled to back pay and benefits simply because he or she has been reinstated. *Rynarzewski*, 164 Md. App. at 261. The pertinent provisions of the LEOBR do not authorize a hearing board to award back pay or benefits. *Wilson* instructs that, under such circumstances, a reinstated employee seeking back pay and benefits must do so through the governmental unit’s grievance process. If there is no grievance procedure, then the employee may file a mandamus action. *Wilson*, 380 Md. at 223.

**THE JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY IS REVERSED. APPELLEE TO
PAY COSTS.**