

Circuit Court for Montgomery County
Case No. 483061V

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 298

September Term, 2022

IN THE MATTER OF DAQUAN L. TYLER

Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: January 5, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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.

Daquan L. Tyler appeals the grant, by the Circuit Court for Montgomery County, of Takoma Park Police Department and Takoma Park Police Chief Antonio DeVaul’s (hereinafter, collectively referred to as “TPPD”) motion to dismiss his amended complaint/petition for judicial review, relating to TPPD’s alleged failure to respond to his Maryland Public Information Act (“MPIA”)¹ request for investigative documents in a criminal case in which he is a defendant. In his informal brief, Mr. Tyler asks us to consider whether the circuit court was legally correct in granting the motion, thereby denying his claims for statutory damages and litigation costs and fees.² For the reasons that follow, however, we will not consider the issue Mr. Tyler raises and will, instead, dismiss Mr. Tyler’s appeal.

DISCUSSION

On May 13, 2020, Mr. Tyler, a prisoner at the Roxbury Correctional Institution (“RCI”), sent TPPD an MPIA request for documents and information relating to his 2013 arrest in a criminal matter. He did not receive a response from TPPD within 30 days, as required by GP § 4-103. Therefore, on August 5, 2020, Mr. Tyler filed a complaint/petition for judicial review of TPPD’s alleged lack of response to his MPIA request. He did not, however, serve his petition upon TPPD.

¹ See Md. Code, § 4-101, *et seq.*, of the General Provisions Article (“GP”).

² Mr. Tyler filed an “Informal Brief” pursuant to this Court’s March 9, 2021, Administrative Order permitting informal briefing in cases in which the appellant is a self-represented litigant who is incarcerated. See Maryland Rule 8-502(a)(9).

On March 16, 2021, Mr. Tyler filed a “motion for relief” asserting that TPPD had not responded to his petition and asking the circuit court to compel a response to his MPIA request and to award him \$2,100 as “civil penalty/damages.” The circuit court denied the motion as prematurely filed because Mr. Tyler had not served the petition upon TPPD. Mr. Tyler moved to defer entry of dismissal. The court granted that motion, permitting Mr. Tyler 60 days in which to file proof of service upon TPPD.

Mr. Tyler did not file such proof of service, so on June 16, 2021, the circuit court ordered dismissal of Mr. Tyler’s petition for lack of prosecution. Mr. Tyler moved to vacate the dismissal, stating that he had attempted service upon TPPD but had been unsuccessful. The court reinstated the case and deferred dismissal for an additional 60 days.

TPPD was served with Mr. Tyler’s summons and motion for relief on August 4, 2021, after which it moved to dismiss. TPPD averred that, because it does not exist as an independent legal entity, Mr. Tyler had not named a defendant subject to suit under Maryland law. In addition, dismissal was appropriate because TPPD did not receive Mr. Tyler’s MPIA request or petition prior to being served with his motion for relief, and, according to TPPD, damages were not warranted as a matter of law under MPIA legal standards for two reasons: (1) Mr. Tyler did not attempt reasonably to resolve the matter through alternative methods; and (2) TPPD did not knowingly and intentionally deny his MPIA request.

The circuit court granted TPPD’s motion without prejudice on October 14, 2021, and gave Mr. Tyler 30 days to amend his complaint. Mr. Tyler filed an “amended

complaint for judicial review for violations of the MPIA” on November 15, 2021, adding TPPD Chief Antonio DeVaul as a defendant.

TPPD moved to dismiss Mr. Tyler’s amended complaint, or in the alternative for summary judgment. TPPD again asserted that it was not a legal entity capable of being sued and that Mr. Tyler’s petition must be dismissed in any event because he was not denied inspection of a public record, which is a jurisdictional prerequisite to filing suit. Moreover, TPPD had not been afforded an opportunity to avoid litigation by responding to Mr. Tyler’s MPIA request, as it had never received the request. Finally, TPPD concluded, the matter should be dismissed because Mr. Tyler was not entitled to the damages he sought.

Mr. Tyler, opposing the motion to dismiss, disputed TPPD’s claim that it had not received his initial MPIA request. He asserted that RCI records showed that the \$1.00 check he had sent to cover the cost of his MPIA request had been cashed by TPPD.

TPPD replied that, despite RCI’s handwritten notation that Mr. Tyler’s check had been cashed on “7/2,” the prison’s Director of Finance had verified that the notation was erroneous and the check remained outstanding; the director submitted an affidavit to that effect. In addition, Takoma Park’s finance director confirmed that the check had not been deposited into the city’s cashiering system.

TPPD reiterated that it had not received Mr. Tyler’s initial MPIA request until he filed his amended complaint in November 2021, and that when its attorney received the request, he notified Mr. Tyler of the costs associated with performing the MPIA search and

asked if Mr. Tyler wished to narrow his search to lower the cost. Mr. Tyler did not respond, so TPPD was then still waiting to begin the search process.

Following a hearing on February 23, 2022, the circuit court granted TPPD’s motion to dismiss the amended complaint as it related to the police department but denied it as it related to Chief DeVaul, individually. Sometime following the hearing, TPPD provided documents to Mr. Tyler in response to his MPIA request. By letter dated March 7, 2022, Mr. Tyler notified TPPD’s attorney of “deficiencies” in the response, including the absence of victim and witness statements, photos of suspects in the 2013 crime, information about suspect identification, and information about how TPPD conducts photo arrays or lineups.

TPPD’s attorney responded to Mr. Tyler that the city’s response satisfied its obligation under the MPIA because it had provided Mr. Tyler with the “complete investigative file,” and there were no other documents it could produce. In addition, the MPIA did not require TPPD to answer questions, so TPPD had no obligation to provide the requested information relating to its investigatory techniques. Finally, despite Mr. Tyler’s claim to the contrary, no photo array had been shown to any witness; instead, he had been identified as a suspect in the criminal case by a co-conspirator.

On March 16, 2022, the circuit court vacated its order on TPPD’s motion to dismiss and continued the matter until a March 23, 2022, hearing. Following that hearing, the circuit court, granting the defendants’ motion to dismiss the amended complaint, dismissed the amended complaint and denied Mr. Tyler’s request for damages. Mr. Tyler filed a timely notice of appeal of the court’s ruling.

On July 15, 2022, this Court entered an order requiring Mr. Tyler to show cause, within 30 days, why his appeal should not be dismissed for failure to order the transcripts necessary for consideration of the appeal, as required by Maryland Rule 8-411. Mr. Tyler moved for more time to submit the record. On August 8, 2022, we granted Mr. Tyler’s motion and required him to “take all steps necessary” to “cause the transcript of the March 23, 2022 hearing to be filed with the Clerk of the Circuit Court for Montgomery County” by August 22, 2022. According to the clerk’s office for the Circuit Court for Montgomery County, no transcripts have been ordered in the case, and the pertinent hearing transcript has not been filed with this Court.

Md. Rule 8-413(a) identifies the required contents of a record to be filed in an appeal. In pertinent part, the Rule provides: “The record on appeal shall include (1) a certified copy of the docket entries in the lower court, (2) the transcript required by Rule 8-411, and (3) all original papers filed in the action in the lower court[.]” With regard to the transcript, Md. Rule 8-411(a)(2) provides that “[u]nless a copy of the transcript is already on file, the appellant shall order in writing from the court reporter a transcript containing ... (2) a transcription of any portion of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-503 (b) and that: (A) contains the ruling or reasoning of the court or tribunal, or (B) is otherwise reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal[.]”

Md. Rule 8-602(c)(4) provides this Court, either by motion or on its own initiative, the discretion to dismiss an appeal where “the contents of the record do not comply with Rule 8-413.” *See also Boswell v. Boswell*, 118 Md. App. 1, 24 (1997), *aff’d and*

remanded, 352 Md. 204 (1998) (Failure to comply with appellate court rules for the filing of the proper record is a ground for dismissal.).

Here, the record transmitted to this Court did not contain the transcript of either the February 23, 2022, or March 23, 2022, hearing on TPPD’s motion to dismiss. This Court issued an order to Mr. Tyler—who bore the burden of producing the transcripts under Rule 8-411(a)—requiring him to show cause in writing why his appeal should not be dismissed for failure to order all the transcripts necessary for consideration of the appeal. Despite being granted additional time to submit the March 23, 2022, transcript to the clerk of the circuit court, Mr. Tyler did not take steps to do so by August 22, 2022.

Without the transcript of the March 23, 2022, hearing granting TPPD’s motion to dismiss Mr. Tyler’s petition and denying his motion for relief, we are left to guess as to the circuit court’s rationale for its ruling in order to determine whether the ruling was legally correct. For that reason, we will exercise our discretion under Md. Rule 8-602(c)(4) to dismiss Mr. Tyler’s appeal because we lack the requisite transcript necessary to evaluate the merits of his appeal.³

**APPEAL DISMISSED; COSTS ASSESSED
TO APPELLANT.**

³ To both the circuit court and this Court, TPPD presented a compelling argument that Mr. Tyler was not eligible for the relief he sought. Were we to consider the merits of this appeal based on the incomplete record before us, we would affirm the order of the circuit court.