Circuit Court for Baltimore County
Case No. 3-C-15-003363

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0715

September Term, 2018

KARL GEPPERT

v.

MILTON CHAFFEE, ET AL.

Meredith,
Kehoe,
Gould,

JJ.

Opinion by Gould, J.

Filed: September 6, 2019

Statutes establishing administrative agencies typically authorize those agencies to promulgate regulations to implement them. See Adventist Health Care Inc. v. Maryland Health Care Comm'n, 392 Md. 103, 119 (2006). In this atypical case, the regulation was inconsistent with the enabling statute, and the person caught in the crosshairs was 17-year-old Karl Geppert. As a result, he has repeatedly been stymied by the Maryland Motor Vehicle Administration (the "**MVA**" or the "**Administration**") in his efforts to obtain a learner's permit.

The applicable statute required that an applicant for a learner's permit either have a social security number or prove his ineligibility for one (hereinafter, the "**social security number requirement**"). The applicable regulation, however, provided that an applicant could satisfy the social security number requirement by certifying, on the MVA's application, that he either did not have a social security number *or* was ineligible for one. Mr. Geppert, who did not have a social security number but *was* eligible for one, truthfully completed the MVA's application, certifying that he did not have a social security number. After the MVA rejected Mr. Geppert's application, an Administrative Law Judge ("**ALJ**") held that his certification was sufficient to satisfy the social security number requirement. Nevertheless, the MVA again refused to allow him to sit for the learner's permit examination. Mr. Geppert petitioned the circuit court for a writ of mandamus, which the circuit court denied.

We find that the circuit court should have granted the petition for a writ of mandamus to enforce the ALJ's order and erred by instead addressing the merits of Mr. Geppert's underlying claim. We therefore reverse the judgment of the circuit court and

remand the case to the circuit court with instructions to issue a writ ordering the MVA to allow Mr. Geppert to sit for the learner's permit exam and, should he pass, issue him the permit.[1]

FACTUAL AND PROCEDURAL BACKGROUND

In 2013, Mr. Geppert, at the age of 17, went to the MVA to apply for a learner's permit. The MVA used a computerized application process which he completed by entering information into the appropriate fields and checking appropriate boxes. One such box stated: "I certify under the penalty of perjury that I do not have or I am not eligible for a [social security number]." Mr. Geppert checked that box, making the requisite certification. However, the MVA refused to process Mr. Geppert's application.

The MVA sent Mr. Geppert a notice informing him of its refusal to process his application. According to the notice, the application lacked "[a] verifiable SSN or proof of ineligibility." The MVA's internal records stated that Mr. Geppert's application was denied because he made a false statement.

The MVA's notice also stated Mr. Geppert's right to request a hearing to contest the MVA's decision:

> If you believe you have presented sufficient documentation in accordance with Maryland's laws and regulations, you have the right to request a hearing under TR 12-203(b) based on the MVA's determination that you do not meet the statutory license or identification (ID) card requirements and the refusal of your Maryland driver's license or ID. If you wish to request a hearing, you must, within 15 days of the date of this notice, complete the bottom portion

[1] The parties did not raise, and we will not address, whether Mr. Geppert is entitled to be issued a provisional or full driver's license should he apply for one in the future.

> of this notice and send the entire notice to the Office of Administrative Hearings with a filing fee of $125.00. Make check or money order payable to Maryland State Treasurer.[2]

Mr. Geppert timely requested a hearing.

Mr. Geppert's case was heard by an ALJ at the Office of Administrative Hearings ("**OAH**").[3] Mr. Geppert appeared in person. No one appeared on the MVA's behalf. The MVA submitted its case solely through documents, which the ALJ admitted without objection. The MVA's records caused the ALJ some initial confusion about the nature of the appeal because the records referred to a cancellation of a license, not a refusal to process the application.

Initially, the ALJ appeared inclined to rule, based on TR § 16-103.1, that Mr. Geppert had not provided proof of ineligibility for a social security number, and thus could not have been issued a learner's permit. However, she changed her mind after being shown

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[2] Md. Code Ann., Transp. ("**TR**") § 12-203 (1977, 2012 Repl. Vol.) provides:

> (a) If the Maryland Vehicle Law or a rule or regulation of the Administration provides that an applicant or licensee may request a hearing on refusal, suspension, or revocation of a license or privilege, the Administration shall give the applicant or licensee written notice under § 12-114 of this title of:
>
> (1) The refusal, suspension, or revocation; and
>
> (2) The right of the applicant or licensee to request a hearing.
>
> (b) (1) Except as otherwise provided in the Maryland Vehicle Law, the applicant or licensee may request a hearing within 15 days from the date that the notice required by this section is mailed.
>
> (2) The hearing shall be held within 30 days of the date of the request.
>
> (3) The Administration shall render a decision within 30 days of a hearing conducted under Title 16, Subtitles 1 through 4 of this article.

[3] The MVA delegated its hearing obligations to the OAH as permitted under Md. Code Ann., State Gov't ("**SG**") § 10-205 (1984, 2014 Repl. Vol.) and TR § 12-104(e). See also COMAR 11.11.02.07 (delegating hearing responsibilities to OAH).

that by certifying that he did not have a social security number, Mr. Geppert had complied with the MVA's regulations and the license application.

The ALJ's statements on the record reflect her determination that Mr. Geppert's certification under COMAR 11.17.12.02 satisfied the statutory social security number requirement:

> Okay. I'm going to find as a fact that he did submit a certification by way of the MVA computer saying he doesn't have it or is not eligible. Quite frankly, if that's good enough for them, I mean if that's the way they have it formulated, that's up to them.
>
> ***
>
> If there's some policy that I'm not aware of, I find that the regulation appears to be more liberal than the language of the statute. If they need to fix their regulation, they need to do it going forward.
>
> If they really mean that they may not or shall not, the statute says may not, but if you read the regulation it appears that if he gives a certification, that that's enough.
>
> That he gave this little pro forma certification on the computer, that that's good enough for the MVA, so be it. If it's not, they need to fix that. That's not for me to do. Okay?
>
> But he did not violate 16-201(a) or 16-301.1 because he did provide it such as it is. Okay?
>
> ***
>
> And I will write on my docket sheet that the denial of learner's permit [is] not upheld and that as far as I can understand that based on the interplay between the statute and the regulation, that they should issue that to him, presuming that that certification that they have on their electronic form is sufficient.

The ALJ's written order stated:

> MVA denied Karl Geppert a learner's permit because he did not provide a Social Security number, see TR 16-103.1(11), or satisfactory documentation that he is not eligible for one. However, Mr. Geppert provided evidence that he checked off the certification on a computer at an MVA branch and at Glen Burnie. Pursuant to COMAR 11.17.12.02, it appears that this is sufficient

> notwithstanding the mandatory language in 16-103.1. 42 USC section 666, referenced in regulation, has to do with child support enforcement.
>
> ***
>
> Based on the foregoing, I conclude that the Licensee did not violate Md. Code Ann., Transp. § 16-201 (a), or 16-103.1.
>
> ***
>
> Based on the above interpretation of the regulation and statute, MVA should issue a learner's permit to Karl Evan Geppert, DOB 6/4/96, based on application initiated 11/6/13, modified 1/9/1[4].

The MVA's internal record described the result of the hearing before the ALJ as "REFUSAL REVERSED."

The MVA did not seek judicial review of the ALJ's decision in the circuit court, as was its statutory right under SG § 10-222.

Armed with the ALJ's order, Mr. Geppert twice returned to the MVA and demanded that he be allowed to sit for the learner's permit exam. Undeterred by the ALJ's decision or even its own interpretation of that decision ("refusal reversed"), the MVA denied both requests.

In March 2015, Mr. Geppert filed a petition for a writ of mandamus in the Circuit Court for Baltimore County, requesting that the court order the MVA to comply with the ALJ's decision, allow him to sit for the permit examination under TR § 16-106, and issue him a permit upon its successful completion. Mr. Geppert alleged that he had both the clear right to sit for the examination for a learner's permit based on the ALJ's order and the right to be issued the permit upon passing the exam.

The MVA responded that the ALJ's order would have required it to issue a license in violation of federal and state law due to Mr. Geppert's failure to satisfy the social

security number requirement set forth in the statute. The MVA argued that the ALJ had erred by elevating the regulation (with which Mr. Geppert complied) over the enabling statute. The MVA also argued that the ALJ's order was too vague and unclear to be enforced through a writ of mandamus. Essentially, the MVA's argument was that the ALJ had gotten it wrong, and therefore Mr. Geppert did not have the legal right to have the order enforced.

The circuit court accepted the MVA's invitation to address the merits of the ALJ's order and found that the ALJ's order was legally incorrect because Mr. Geppert had not satisfied the social security number requirement established by TR §§ 16-103.1 and 16-122. The court therefore concluded that Mr. Geppert did not have a legal right to take the exam and denied his petition. Mr. Geppert noted a timely appeal.

THE PARTIES' CONTENTIONS

Mr. Geppert argues that the ALJ's order constituted a final order from which the MVA had failed to seek judicial review and is therefore shielded from the MVA's collateral attack by the doctrine of res judicata. Second, Mr. Geppert argues that the circuit court erred in creating a requirement that he supply a letter from the Social Security Administration stating that he was ineligible for a social security number. Third, Mr. Geppert contends that the trial court denied him due process by finding that he had not provided "satisfactory documentary evidence" when he had satisfied the certification process established by the MVA's regulations and its computerized application.

The MVA argues that, as an initial matter, this Court lacks jurisdiction over this appeal because it arises under Title 16 of the Transportation Article, which is expressly

exempted from the statutory right to appeal administrative decisions. It further argues that the circuit court correctly denied Mr. Geppert's mandamus petition because he did not establish a "clear right" to the relief he was seeking. Specifically, the MVA contends that TR §§ 16-103.1(11) and 16-106(c) do not provide Mr. Geppert with a clear right to be issued a learner's permit without proof of ineligibility for a social security number, which Mr. Geppert lacked. It also argues that if it had been granted, the writ would have required the MVA to violate federal and state law. Further, the MVA contends that the sole issue before the ALJ was whether Mr. Geppert had shown proof of ineligibility for a social security number, and therefore the ALJ exceeded her authority by venturing beyond that limited issue to decide that Mr. Geppert was entitled to a learner's permit. Finally, the MVA argues that the ALJ's order lacks the clarity needed to be subject to judicial enforcement because it does not specify the type of learner's permit the MVA was required to issue to Mr. Geppert.

STANDARD OF REVIEW

Mandamus is an "extraordinary remedy," and is not granted as a matter of course, but only in the "sound legal discretion" of the trial court. Ipes v. Bd. of Fire Comm'rs of Baltimore, 224 Md. 180, 183 (1961). As such, we will not disturb the trial court's denial of a petition for mandamus barring a clear abuse of that discretion. Goodwich v. Nolan, 102 Md. App. 499, 506-07 (1994), aff'd, 343 Md. 130 (1996). A trial court abuses its discretion "where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." Alexis v. State,

437 Md. 457, 478 (2014) (quotation omitted) (cleaned up). A circuit court's legal conclusions are reviewed de novo. Romero v. Perez, 463 Md. 182, 196 (2019).

DISCUSSION

I. MR. GEPPERT WAS ENTITLED TO A WRIT OF MANDAMUS ORDERING THE MVA TO ALLOW HIM TO SIT FOR HIS LEARNER'S PERMIT EXAM AND, UPON SUCCESSFUL COMPLETION THEREOF, TO ISSUE THE PERMIT

A. The Applicable Administrative Procedures

A writ of mandamus is used to command public officials or administrative agencies to perform their non-discretionary duties. See Wilson v. Simms, 380 Md. 206, 217-18 (2004). For a writ of mandamus to be appropriate, "a clear and undisputable legal right and corresponding duty must be present." Id. at 224 (citation omitted). This "right and duty" may come from an administrative order requiring an agency to perform a certain act. See, e.g., id.

To determine whether Mr. Geppert was entitled to a writ of mandamus compelling the MVA to allow him to take the learner's permit examination, it is useful to briefly outline the law regarding applications for driver's licenses in Maryland. This law is set out in a series of statutes, supplemented by regulations issued by the MVA.

License applications must be completed on standardized MVA-mandated forms. TR § 16-106(a). Among other things, an applicant is required to prove compliance with the social security number requirement, and the MVA is prohibited from issuing a driver's license to an individual without such proof. TR §§ 16-103.1(11), 16-106(c). Although the statute lists several ways an applicant can prove that he has a social security number, it

does not specify what constitutes "[s]atisfactory documentary evidence" that he is ineligible for one. TR § 16-103.1(11).

At the time Mr. Geppert completed his application for a learner's permit, the MVA's regulation, codified in COMAR 11.17.12.02, provided that the social security number requirement could have been satisfied with an applicant's certification that he merely *did not have* a social security number:

> A. The Administration shall request the social security number of each applicant for an original, renewed, duplicate, or corrected driver's license or identification document.
>
> B. An applicant for a driver's license shall disclose the applicant's social security number as required by 42 U.S.C. § 666. If the applicant does not have a social security number, the applicant shall certify in the application that the applicant does not have a social security number.
>
> C. The administration shall deny the issuance of a driver's license for failure to disclose the required social security number or to certify that the applicant does not have a social security number.
>
> D. The disclosure of the social security number is voluntary for applicants for an identification document.

COMAR 11.17.12.02 (repealed March 12, 2018).

Should the MVA refuse to issue a license, it will then notify the applicant of his right to request a hearing under TR § 12-203 to contest the MVA's decision, as was done in this case. Such hearings are conducted at the OAH under the contested case provisions of Maryland's Administrative Procedures Act ("**APA**"). See Motor Vehicle Admin. v. Krafft, 452 Md. 589, 595 (2017) (citing TR § 12-206). The hearing is conducted by an ALJ. Id. (citing TR § 12-104(e); COMAR 11.11.02.07).

The ALJ has considerable discretion to fashion an appropriate remedy:

> (a) After a hearing, the Administration may:
>
> (1) Refuse, suspend, or revoke the license or privilege of an applicant or licensee;
>
> (2) Rescind, continue, or modify any prior action; or
>
> (3) Take any other action permitted by the Maryland Vehicle Law.

TR § 12-208(a). "[T]he ALJ's decision is the final decision of the MVA." Krafft, 452 Md. at 596 (citing COMAR 11.11.02.07(A)). Either party may seek judicial review of the ALJ's decision in the circuit court.[4] TR § 12-209; SG § 10-222.

B. The Finality of the ALJ's Order

In determining whether the circuit court should have issued the requested writ, we must assess the finality of the ALJ's order to determine whether Mr. Geppert had a clear right to sit for the learner's permit exam (and receive a permit upon his successful completion thereof).

1. After Failing to Seek Judicial Review, the MVA May Not Attack the ALJ's Order on its Merits

Mr. Geppert maintains, and we agree, that the ALJ's order was final because the MVA declined to exercise its right to seek judicial review; therefore, the ALJ's order is not subject to further review at any administrative or judicial level. See Dep't of Health & Mental Hygiene v. Rynarzewski, 164 Md. App. 252, 254 (2005). This is true even if the ALJ was legally wrong, as the MVA maintains here. See Karabetis v. Mayor & City Council of Baltimore, 72 Md. App. 407, 416-18 (1987).

[4] Any further appeal of the circuit court's review must be pursued directly to the Court of Appeals through a petition for certiorari. Id. (citing Md. Code Ann., Cts. & Jud. Proc. ("**CJ**") § 12-305 (2006, 2013 Repl. Vol.).

Our decision in Karabetis is instructive. In that case, we were faced with a similar attempt by a party to an administrative hearing to collaterally attack an order from which no judicial review had been sought. There, the dispute concerned allegations that a bakery had not complied with the overtime requirements established by the Baltimore City Code and federal law. Id. at 412. The Baltimore City Wage Commission ("**Commission**") held an administrative hearing and found that the bakery (and its owners) were responsible for tens of thousands of dollars in restitution and penalties. Id. at 413.

Although the Baltimore City Wage Law provides an aggrieved party with the right to appeal the Commission's order to the Circuit Court for Baltimore City, the bakery and its owners declined to seek such review. Id. When they failed to pay the restitution and penalties, the Commission filed a complaint to enforce the administrative order. Id. In seeking to resist enforcement of the order, the bakery defendants attempted to contest the case on its merits, arguing that the Commission's action was preempted by federal law and that the facts in the record were insufficient to sustain its holding. Id. The circuit court ruled in favor of the Commission. Id. at 414.

The defendants appealed to this Court, arguing that they were entitled to defend the enforcement action by contesting the validity of the underlying order. Id. at 414-15. In affirming the circuit court, we noted that "the failure to file a timely appeal renders a judgment final even when the judgment of the lower tribunal was 'wrong or rested on a legal principle subsequently overruled in another case.'" Id. at 416 (quoting Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981)). Quoting the Supreme Court's decision in Moitie at length, we explained:

> An erroneous conclusion reached by the court in the first suit does not deprive the defendants in the second action of their right to rely upon the plea of res judicata. A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause of action. We have observed that the indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of res judicata to avert.

Id. (cleaned up). We noted that the principles stated in Moitie apply equally to administrative proceedings, and further held that "objections or questions which were not raised in the administrative proceeding will not be considered on review by an appellate court." Id. at 417.

The reasoning in Karabetis applies with equal force here. The MVA, like the bakery defendants in Karabetis, attempted to resist the enforcement of the administrative order by challenging its legality, including by raising arguments and issues that it had not raised before the ALJ.[5] In both cases, the party seeking to enforce the administrative order argued that the order was immune from a collateral attack under the doctrine of res judicata. Just as the collateral attack on the Commission's order failed in Karabetis, so too must the MVA's collateral attack on the ALJ's order fail here.

2. Given the Finality of the ALJ's Order, the MVA's Jurisdictional Challenge Fails

[5] The MVA could have argued before the ALJ, as it does here, that the statutory social security number requirement superseded the inconsistent regulation and computerized application. The MVA also could have argued before the ALJ that it would have been in violation of state and federal law if it was forced to issue the learner's permit notwithstanding Mr. Geppert's lack of a social security number despite being eligible for one. Having had the opportunity to make these arguments before the ALJ, the MVA has no basis to complain on appeal that the ALJ went astray when it reconciled the MVA's inconsistent regulation with its enabling statute.

The MVA also argues that the ALJ awarded "relief that it had no authority to order, and is thus a nullity." In support of this contention, it once again argues that the ALJ impermissibly elevated both the regulation and computerized application over the unambiguous statute. Even though it does not provide any supporting legal analysis, the MVA is essentially contending that the ALJ lacked jurisdiction to award the relief it granted to Mr. Geppert, just as the bakery defendants argued in Karabetis.[6] As we did in Karabetis, we consider and reject this contention. 72 Md. App. at 418-423.

A jurisdictional challenge implicates two concepts: (1) the tribunal's power to render a judgment; and (2) the propriety of awarding the relief sought. Id. at 418-419 (citing Stewart v. State, 287 Md. 524, 526 (1980)). The power of the tribunal to hear and decide the case must derive from "applicable constitutional and statutory provisions." Id. at 419. Here, the MVA delegated its right and obligation to conduct hearings and decide cases to the OAH, COMAR 11.11.02.07(A), and the ALJ has broad powers to, among other things, "rescind, continue, or modify any prior action." TR § 12-208. The ALJ, therefore, had the power to hear and decide this dispute.

The propriety of the ALJ's order, as opposed to the ALJ's fundamental jurisdiction, "merges into the final judgment and cannot be attacked once enrolled." Karabetis, 72 Md. App. at 419. Here, the MVA's argument as to the ALJ's authority goes not to the ALJ's fundamental jurisdiction, but rather to the propriety of the judgment, and therefore is an impermissive collateral attack. See id. at 416, 419. Accordingly, the ALJ's legal finding

[6] A jurisdictional challenge can be raised at any time. See id. at 419.

that Mr. Geppert *did* provide satisfactory documentation in compliance with TR § 16-103.1 remains valid and binding on both parties.

C. Interpreting the ALJ's Order

Having found that the ALJ's order was final, we must now determine exactly what the ALJ's order was intended to do. Specifically, we must determine whether the ALJ's order actually granted the relief sought by Mr. Geppert at the circuit court—namely, that Mr. Geppert be allowed to sit for the learner's permit examination for (and upon successful completion, be issued) a learner's permit.

1. The Order Should be Interpreted to Allow Mr. Geppert to Sit for the Examination

The MVA contends that the ALJ ordered relief that it had no authority to order by requiring the MVA to issue a learner's permit to Mr. Geppert even though he had not taken, let alone passed, the statutorily mandated written examination. The MVA asserts that the ALJ lacked authority "to expand its order of relief to determine that Mr. Geppert had met *all* requirements for the issuance of a learner's permit." In so arguing, the MVA is attempting to capitalize on the mismatch it perceives between the relief Mr. Geppert requested in his petition and the relief the ALJ provided.

The principles applicable to interpreting statutes apply to court orders as well. Taylor v. Mandel, 402 Md. 109, 125-26 (2007). If the order is unambiguous, "the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used." Id. at 125 (citation omitted). If ambiguous, the court must discern its meaning by looking at the circumstances surrounding the order, including the underlying

motion that produced it. Id. at 125-26 (internal cites omitted). Here, the ALJ's order is ambiguous because although it is intrinsically clear, its application in this case is uncertain. See id. (describing ways in which an order can be ambiguous). We must therefore look to the circumstances surrounding the order to ascertain how it applies to Mr. Geppert.

a. Any Imprecision in the Order was the Result of the MVA's Confusing Documentation

This exercise begins with looking at how the MVA presented the issue to the ALJ. Though it maintains the only issue before the ALJ was whether Mr. Geppert submitted sufficient documentation to show that he was ineligible for a social security number, the MVA's documents bely that contention.

In its initial notice, the MVA told Mr. Geppert that he had "the right to request a hearing under TR § 12-203(b) based on the MVA's determination that you do not meet the statutory license or identification (ID) card requirements *and the refusal of your Maryland driver's license or ID*." (emphasis added). Framing this issue so broadly and stating that the hearing would test the MVA's "refusal of your Maryland driver's license or ID," it is understandable that the ALJ did not see the issue as being as limited as the MVA now contends it is.

The OAH's notice of the hearing date identified the charge against Mr. Geppert as "Section 16-201(A) Not Entitled to be issued a license." But TS § 16-201(a) provides a basis for the MVA to *cancel* a license for a host of reasons, including where the licensee has made fraudulent representations in the license application. Similarly, the MVA's records stated that Mr. Geppert's application had been denied for having made a false

statement, and that the case was about a "cancellation." These are yet more examples of the MVA's confusing and unfocused framing of the issue, and its failure to cabin the ALJ's inquiry in the manner it now argues on appeal.

These instances aptly demonstrate that, given the information submitted by the MVA, the ALJ had every reason to resolve the case on the premise that the social security number requirement was the only issue standing in Mr. Geppert's way of obtaining the learner's permit. Accordingly, if the MVA has a problem with the manner in which the ALJ framed and decided the issues, it has only itself to blame because it: (1) prepared and submitted confusing, incorrect, and unclear explanations and allegations; (2) submitted its case on the problematic documentation and declined to appear in person to clarify its position and the issues; and (3) failed to seek judicial review of the ALJ's decision.

b. Mr. Geppert does not Contend that he Should be Given a Learner's Permit without First Successfully Passing the Requisite Examination

At any rate, the MVA's protest about the relief rings hollow because Mr. Geppert does not argue that he should have been awarded a learner's permit without sitting for and passing the test. The ad damnum clause in his petition for a writ of mandamus framed the requested relief as follows:

> Plaintiff respectfully requests this Court to issue a Writ of Mandamus ordering Defendants to comply with the final MVA decision, Administrative Law Judge Perez' April 1, 2014 Order that Karl Evan Geppert should be issued a license, and in accordance with said order, that Defendants allow him to sit for examination, and issue him a learner's permit or driver's license (whichever is appropriate) upon his appearance and successful completion of the examination at the MVA.

Further, Mr. Geppert's counsel confirmed at oral argument that the sole issue for our determination was whether Mr. Geppert is entitled to sit for the learner's permit examination.

The relief that Mr. Geppert requested, as well as his framing of the determinative issue on appeal, show that he interpreted the ALJ's order as stating that the MVA could no longer derail his learner's permit application process based upon its contention that he had not satisfied the social security number requirement. Put another way, Mr. Geppert has been seeking enforcement of the ALJ's order with the understanding that the specific relief granted by the ALJ—that the MVA "should issue a learner's permit" to him—was implicitly requiring the MVA to let him take the exam based on his prior application and provide him the opportunity to satisfy the other requirements for a learner's permit.

c. A Writ of Mandamus May Order Relief Implicitly Required by the Relief Expressly Stated

The MVA relies on two cases for the proposition that the circuit court was required to deny the petition because to grant it would have required the court to fill in holes, or deviate from, the ALJ's ambiguous order. These cases, however, tilt in favor of Mr. Geppert's position that he is entitled to sit for the learner's permit exam.

In the first case, Wilson, 380 Md. at 225-26, the Court of Appeals determined that an employee who had been reinstated by an ALJ had no right to a writ of mandamus compelling her employer to issue back pay and benefits, noting that although the administrative scheme had allowed such remedies, it had not specifically commanded them, and it would have been improper for a circuit court to compel compliance with a

duty that was not necessarily implied by the ALJ's order as written. The Court of Appeals explained that "[b]ecause ALJ Avery's Order does not refer to such, Wilson's argument is only tenable if there is legal authority clearly providing that reinstatement necessarily includes back pay, accrued leave, and/or retirement benefits." Id. at 224-25. There, the defendant had already complied with the specific relief granted in the ALJ's order, and the additional relief the defendant requested was not necessarily implied or required by the ALJ's order. The petition was therefore properly denied.

The MVA also relies on Dep't of Health and Mental Hygiene v. Rynarzewski, 164 Md. App. 252 (2005) for the proposition that the circuit court may not imply any obligations in an ALJ's order not specifically stated. There, we held that although an employee was entitled to a writ of mandamus ordering part of his requested relief, that writ could not extend to a finding that his reinstatement would be effective on a certain day. Id. at 260. However, we also held that the employee was entitled to certain benefits implied but not specifically stated in the administrative order. Id. at 262.

In Rynarzewski, an employee, claiming medical illness, had been fired when he refused to come to work. Id. at 254-57. The employee filed an administrative grievance, requesting reinstatement and an award of back pay and benefits. The ALJ found that the employee had been medically unable to work from May 17, 1998 through at least March 2, 1999; therefore, the employer's February 12, 1999 notice of termination (for insubordination based on the employer's refusal to return to work) was improper. Id. at 257-58. The ALJ's order read:

> I ORDER that the Notice of Termination filed against the Employee be reversed and that the Employee be reinstated with back pay and benefits retroactive to the date the Employee was fit to return to duty.

Id. at 258.

After the ruling, neither party could agree on the conditions relating to the reinstatement, prompting the employee to file a complaint in the circuit court to enforce the ALJ's order under SG § 10-222.1. Id. at 254. The employer filed a motion to dismiss the complaint, arguing that the ALJ's order could not be enforced because the "date the Employee was fit to return to duty," as specified in the order, had never been determined. Id. at 258. The circuit court, siding with the employee, determined that because the ALJ had determined that the employee was unable to work from May 17, 1998 through March 2, 1999, the circuit court could extrapolate that the ALJ had implicitly found that he had been fit to return to duty on March 3, 1999. Id. at 260. We reversed, finding that such a conclusion was "an erroneous leap in logic" and that the ALJ had never made a finding of affirmative fitness. Id. Instead, "[b]ecause the only issue before the ALJ was whether [the employee] had been properly terminated by the notice dated February 12, 1999, the specific date on which [he] was fit to return to work has never been adjudicated in a grievance proceeding." Id.

We did, however, determine that the issue of back pay was "separate and severable" from the issue of reinstatement and available benefits. Id. at 261. Further, because the ALJ conclusively determined that the employee had a valid medical reason for his failure to appear at work from May 17, 1998 through March 2, 1999, we determined that he was

entitled to any benefits that would have accrued to him through that period but-for the employer's improper notice of termination. Id. at 262.

In both Wilson and Rynarzewski, the petitioner was seeking *more*, or something different, than what the administrative order had expressly granted. In addition, in both cases, the circuit court was not permitted to grant such relief unless it was necessarily implied by the relief that had been expressly stated. Just as the employee in Rynarzewski was entitled to the benefits implied by the findings of medical unfitness in the ALJ's order, so too is Mr. Geppert entitled to the relief necessarily implied by the ALJ's decision that he should be issued the learner's permit. In other words, it would be illogical to conclude that the ALJ ordered a specific result (issuance of the learner's permit) but did not implicitly require the MVA to provide Mr. Geppert the opportunity to pass the exam that is required before he can obtain that result.

2. The REAL ID Issue

The MVA contends that "it is unclear what form" the ALJ's ordered "relief would take," because the order does not say whether Mr. Geppert is to be issued a "REAL ID Act compliant," or a non-compliant learner's permit. The MVA further rules out a REAL ID Act compliant learner's permit for the same reason it maintains the ALJ's order was unlawful—that is, that Mr. Geppert had not satisfied the social security number requirement. The MVA also dismissed the possibility of a non-compliant learner's permit because such permits may only be issued to those who cannot prove their lawful status in the United States. So, the MVA contends, the ALJ's order cannot be enforced because Mr. Geppert does not qualify for *either* type of permit.

The short answer to the MVA's argument is that its underlying premise is wrong: according to the ALJ, Mr. Geppert *did* satisfy the social security number requirement by checking the box on the MVA's computerized application stating that he did not have a social security number. And because the MVA did not raise the issue before the ALJ and chose not to seek judicial review of the ALJ's decision, it is too late for the MVA to collaterally attack the ALJ's order in this appeal.

II. THE CIRCUIT COURT'S DECISION IS APPEALABLE

The MVA contends that Mr. Geppert's appeal must be dismissed because there is no statute that permits him to take an appeal to this Court from the circuit court's denial of his petition. The MVA's argument begins with the entirely correct assertion that the right to appeal must be derived from a statute. Fuller v. State, 397 Md. 372, 382 (2007). The MVA also correctly points out that, generally speaking, SG § 10-223 authorizes an aggrieved party in an administrative proceeding to take an appeal from the circuit court to the Court of Special Appeals, but that subsection (a)(1) expressly excludes from that right of appeal any case that "arises under Title 16 of the Transportation Article." According to the MVA, Mr. Geppert's appeal arises under Title 16 of the Transportation Article because that is where the social security number requirement—which prompted this dispute in the first place—is established. The MVA contends, however, that Mr. Geppert was not without recourse, because he could have petitioned the Court of Appeals for a writ of certiorari to review the decision of the circuit court pursuant to CJ § 12-305. See, e.g., Motor Vehicle Admin. v. Sanner, 434 Md. 20, 24 (2013) (granting certiorari under CJ § 12-305 to review appeal of ALJ's order in circuit court).

We disagree. As explained above, the ALJ's decision became a final and binding order when the MVA decided not to seek judicial review of the decision. At that point, there were no remaining unresolved issues under Title 16 of the Transportation Article. As such, Mr. Geppert's appeal arises from his statutory right to enforce an administrative order under SG § 10-222.1, as well as his common law right to petition the circuit court for a writ of mandamus to compel a public official's compliance with a non-discretionary function. See Wilson, 380 Md. at 217 (noting that at common law, "[a] court of competent jurisdiction may issue a writ of mandamus in order to compel the performance of a non-discretionary duty"). It was the denial by the circuit court of those enforcement rights that is the subject to this appeal.

The MVA's contention that Mr. Geppert's sole appellate recourse would have been to file a petition for certiorari in the Court of Appeals pursuant to CJ § 12-305, while incorrect, nevertheless makes an instructive connection between SG § 10-223 and CJ § 12-305. These two statutes operate hand-in-glove. The former excludes from the general right to appeal to this Court cases "arising under Title 16 of the Transportation Article"; the latter provides for review by the Court of Appeals of a circuit court's "final judgment on appeal from an administrative decision under Title 16 of the Transportation Article. . ." In fact, CJ § 12-305 was amended in 1985 to provide a right to petition the Court of Appeals for certiorari because, pursuant to SG § 10-223(a), the circuit court's review of the ALJ's decision had been the end of the appellate road for both parties, leaving the MVA without recourse in "those few significant cases which involve constitutional and statutory questions and conflicts between" the circuit courts. MVA v. Lindsay, 309 Md. 557, 560

(1987).[7] Thus, both statutes apply to judgments of the circuit court from the appeal of an administrative decision on cases arising under Title 16 of the Transportation Article: SG § 10-223(a)(1) *bars* an appeal of such cases to this Court, and CJ § 12-305 *allows* the Court of Appeals to review such cases on certiorari. Accordingly, if the MVA had sought judicial review in the circuit court of the ALJ's decision, the circuit court would have reviewed and resolved the Title 16 issues, which would have left the right under CJ § 12-305 as the sole

[7] Section 12-305 was amended as the direct result of lobbying from the MVA. See Lindsay, 309 Md. at 560-61. Prior to 1985, as the Maryland Department of Transportation (the parent organization of the MVA) explained in the written statement it sent to the legislative committees:

> Section 10-216, State Government Article [the predecessor of SG § 10-223] permits an aggrieved party to appeal an adverse decision of the circuit court to the Court of Special Appeals, except in cases arising under the Motor Vehicle Law. Further, Section 12-305 of the Courts and Judicial Proceedings Article does not presently permit a party to petition for a writ of certiorari in a motor vehicle case. The result has been that no right of appeal exists beyond the circuit court level. Thus, there is not a law which can be uniformly applied throughout the State. Decisions from two circuit courts may be completely at odds because of the lack of appellate review.
>
> There is therefore a need to have a mechanism to develop a statewide law and this bill provides that mechanism.

The Attorney General, on behalf of the MVA, went on to explain that, while the current lack of appellate review was desirable in preventing the appeal of "several hundred garden variety . . . license suspension and revocation decisions," it also "unsuspectingly foreclosed the MVA from appealing those few significant cases which involve constitutional and statutory questions and conflicts between the circuits thereon, which demand resolution by the Appellate Courts." He, too, thus emphasized the need for a mechanism allowing the MVA "to appeal Circuit Court rulings deciding appeals from its decisions, to the Maryland Appellate Courts." As a result of this advocacy, the legislature passed Chapter 364 of the Acts of 1985, which allowed the Court of Appeals to issue a writ of certiorari for review of final circuit court judgments from appeals from administrative decisions under the Motor Vehicle Law. See Lindsay, 309 Md. at 560-61.

possibility for either party to have obtained further judicial review. Here, Mr. Geppert filed a new action in the circuit court in which the circuit court had original jurisdiction under both SG § 10-222 and common law. Because this is not an appeal from an administrative decision, but rather is an appeal from an action originally filed in the circuit court, neither SG § 10-223(a)(1) nor CJ § 12-305 applies here.

CONCLUSION

The MVA's protest notwithstanding, the ALJ found that Mr. Geppert had satisfied the social security number requirement. That the ALJ may have in fact been wrong is of no moment because the MVA declined to seek judicial review of the ALJ's decision in the circuit court.[8] The ALJ's decision therefore is final, and for Mr. Geppert's purposes, binds the MVA. The circuit court should have issued the writ of mandamus to compel the MVA to allow Mr. Geppert to sit for the learner's permit exam and, upon successful completion of the exam, to issue him the learner's permit.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH INSTRUCTIONS TO ISSUE A WRIT OF MANDAMUS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEES.

[8] Lest there be concern that our decision will open the floodgates to other license applicants who choose not to get social security numbers, it should be noted that the MVA has already closed this loophole by repealing COMAR 11.17.12.02.