Circuit Court for St. Mary's County
Case No.: C-18-CV-23-000208

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 730

September Term, 2024

ENCOMPASS ENTERPRISES, INC., ET AL.

v.

MARYLAND DEPARTMENT OF ENVIRONMENT

Albright,
Kehoe, S.,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: July 7, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellants, Encompass Enterprises, Inc. and Eugene J. Benton, filed applications for a marine contractor license with the Marine Contractor Licensing Board ("Board"), a part of the Maryland Department of the Environment ("MDE"), appellee. The Board denied the applications for failure to meet the license qualifications under Md. Code Ann., Environment § 17-302(c)(1). MDE agreed with the Board's determination. Appellants filed a complaint seeking a writ of mandamus in the Circuit Court for St. Mary's County. MDE filed a motion for summary judgment, which the court granted. Appellants noted the instant appeal, asserting that the circuit court erred in granting MDE's motion for summary judgment.[1] For the reasons we shall discuss, we disagree and we affirm the judgment of the circuit court.

BACKGROUND

a. Licensure for Marine Contractors

Pursuant to Environment § 17-301(a), "a person shall be licensed by the Board as a marine contractor or be employed by an individual or entity that is licensed as a marine contractor before the person may . . . [p]erform marine contractor services in the State[.]" Marine contractor services are defined as "construction, demolition, installation, alteration, repair, or salvage activities located in, on, or under State or private tidal wetlands."

[1] The issue presented in appellants' brief is:

> Did the trial court err as a matter of law when it granted summary judgment when there remained a genuine dispute as to the material fact of whether Appellant lacked similar contractor experience such that a Marine Contractor License should have been properly denied under § 17-302 of the Environment Article.

Environment § 17-101(f)(1). It includes "[d]redging and filling;" "[t]he construction, demolition, installation, alteration, repair, or salvage of structures, including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms, wetland walkways, and wharfs;" and "[t]he construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects." Environment § 17-101(f)(2).

The Board is responsible for the "licensing and regulation of individuals and entities that provide marine contractor services in the State." Environment § 17-201(b).[2] To qualify for a marine contractor license, an individual or representative member of an entity must meet several requirements, including having "at least 2 years of experience as a full-time marine contractor or demonstrate similar contractor experience[.]" Environment § 17-302(c)(1). An applicant may appeal the Board's denial of the application within thirty days of the Board's decision. COMAR 26.30.02.04E. Once the Board determines an application for a marine contractor license, the MDE secretary (or the secretary's designee) reviews the decision to ensure that it is consistent with state policy and that it will not result in an "unreasonable anticompetitive decision," pursuant to Md. Code Ann., State Government § 8-205.1(b), (d). Finally, "any person aggrieved by a final decision of the Board may take

[2] The Board consists of seven members appointed by the Governor, including an MDE employee, an employee of the Department of Natural Resources, three licensed marine contractors, and two private citizens. Environment § 17-202(a)(1)-(2).

an appeal [a petition for judicial review] as authorized under §§ 10-222 and 10-223 of the State Government Article." Environment § 17-310(d).

b. Appellants' Applications for a Marine Contractor License

In September of 2021, Encompass Enterprises applied to the Board for an "entity" marine contractor license. Benton was identified in the application as the entity's representative member. The Board reviewed the application at its November 2021 meeting. It requested more information regarding Benton's experience. He tendered an "updated submittal." In January of 2022, the Board voted unanimously to deny the application. The Board explained that "Mr. Benton has not demonstrated in his updated application, that he meets the required minimum qualifications for a marine contractor."

The following May, Benton applied to the Board for an "individual" marine contractor license. Several months later, the Board determined that he "has still not demonstrated in his application and supporting documents, that he has met the minimum work experience requirements[,]" and that "there was no documentation or evidence that Mr. Benton had worked for, or with, a licensed marine contractor." The Board submitted its recommendation to the Director of the Water and Science Administration within MDE, pursuant to State Government § 8-205.1. The Director, in September of 2022, agreed with the Board's determination.[3]

[3] No party disputes that the Director of the Water and Science Administration is the appropriate designee for the review required under State Government § 8-205.1.

In December of 2022, Benton appeared at a Board meeting to appeal the denial of the applications. He presented the Board with supplementary documentation of his construction and consulting experience, including what he described as "key examples" of his "organizational vision and strategic capabilities for the facilities services and [c]onstruction [m]anagement [e]nvironment." He highlighted various experiences "acquired while in . . . advanced roles within different organizations" and asserted that he sought to use that experience "to drive quality and strategic outcomes for the present and future clients of Encompass Enterprises Inc. as it relates to their [m]arine and [w]aterfront construction needs."

In January of 2023, the Board determined that "Mr. Benton has still not documented through his application, including this updated portfolio, that he meets the minimum marine contracting licensing requirements of having at least 2 years of experience as a full-time marine contractor or having similar contractor experience." The Board submitted its recommendation to the Water and Science Administration Director, who, in March of 2023, agreed again with the Board's determination.

Appellants filed a complaint for a writ of mandamus in the Circuit Court for St. Mary's County, asking the court to order MDE to "approve their applications to perform or solicit marine contractor services." Following discovery, MDE filed a motion for summary judgment, asserting that "there is no genuine dispute of material fact and applicable law precludes [MDE] from approving [appellants'] [l]icense applications until they meet all applicable requirements for licensure under Title 17 of the Environment Article." In response, appellants asserted that, whether Benton possessed the required

"similar contracting experience" was a "quintessential factual dispute[,]" and thus, summary judgment should be denied.

The court granted MDE's motion for summary judgment. Discussing only Benton's individual application, the circuit court found that "[t]here is no genuine dispute that [Benton] does not have the requisite experience" and that, "[b]y his own representation, his experience comes from management of employees." Applying the standard applicable to a petition for judicial review, the court concluded that "the Board and [MDE]'s decision meets none of the criteria [set forth in State Government § 10-222(h)] for the court to modify or reverse[.]"[4]

STANDARD OF REVIEW

Summary judgment is proper when "there is no genuine dispute as to any material fact and . . . the party is entitled to judgment as a matter of law." Md. Rule 2-501(a). "The burden is on the party opposing a motion for summary judgment to 'show disputed material facts with precision in order to prevent the entry of summary judgment.'" *Macias v. Summit*

[4] We note that, instead of filing a petition for judicial review as provided for expressly under Environment § 17-310(d), appellants filed a petition for a writ of mandamus. Granting or issuing a writ of mandamus under these circumstances, *arguendo*, would have been reversible error. *See Holloman v. Mosby*, 253 Md. App. 1, 21 (2021) ("[A] writ of mandamus will not be granted where an adequate legal remedy is available." (citing *Brack v. Wells*, 184 Md. 86, 90 (1944))); *see also Brown v. Bragunier*, 79 Md. 234, 242 (1894) ("[A] writ of *mandamus* will not be issued when there is an adequate remedy at law."). The circuit court declined appellants' request for a writ of mandamus when it granted summary judgment in favor of MDE. Accordingly, we may affirm under our jurisdiction pursuant to Md. Code Ann., Courts and Judicial Proceedings § 12-301 (providing the right of appeal "from a final judgment entered in a civil or criminal case by a circuit court"). *See also City of Seat Pleasant v. Jones*, 364 Md. 663, 670 n.7 (2001) (noting that, in determining appellate jurisdiction over an action, appellate courts "look[] to the substance of an action, rather than how it is characterized").

Mgmt., Inc., 243 Md. App. 294, 315 (2019) (quoting *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 634 (2009)). On appeal, "[w]e review a circuit court's decision to grant a motion for summary judgment *de novo*." *Prison Health Servs., Inc. v. Baltimore Cnty.*, 172 Md. App. 1, 8 (2006). In other words, "we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006).

Finally, "[t]he overarching goal of judicial review of agency decisions is to determine whether the agency's decision was made 'in accordance with the law or whether it is arbitrary, illegal, and capricious.'" *Sugarloaf Citizens Ass'n v. Frederick Cnty. Bd. of Appeals*, 227 Md. App. 536, 546 (2016) (quoting *Long Green Valley Ass'n v. Prigel Fam. Creamery*, 206 Md. App. 264, 274 (2012)). In other words, "if reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then it is based upon substantial evidence, and the court has no power to reject that conclusion." *Liberty Nursing Ctr., Inc. v. Dep't of Health & Mental Hygiene*, 330 Md. 433, 443 (1993).

DISCUSSION

Appellants assert that "the court should have found that [appellants'] contention that Benton had the requisite similar contracting experience was both material and genuine such that summary judgment was not warranted, and the case should have proceeded" to trial. MDE responds that the parties relied upon the same evidence and thus, that the circuit court concluded properly that there was no genuine dispute of material fact and that MDE was entitled to judgment as a matter of law. We agree with MDE.

For this Court to set aside the circuit court's grant of summary judgment, appellants must show that there was either a material fact in genuine dispute or that MDE was not entitled to judgment as a matter of law. Here, appellants have shown neither. They contend that it was "the factual dispute about experience [that] should have been resolved at a trial before the finder of fact, not foreclosed at the summary judgment stage[,]" but there is no factual dispute – regarding Benton's experience or otherwise – in the record before us. Indeed, the parties agree on each of the underlying facts. Benton presented various facts to the Board regarding his background and experience through documents and information submitted in his application.[5] MDE provided no additional facts and did not dispute that Benton had any of the experience that he proclaimed. Finally, neither party demonstrated that there was any additional material evidence for the court to consider in the event of a trial.

Rather, the only "dispute" in the record before us is appellants' contention regarding whether the Board concluded correctly, based upon the requirements set forth in Environment § 17-302, that Benton lacks the qualifications required by statute. Resolving that issue turns on a question of law, not one of fact. *See Davis v. Slater*, 383 Md. 599, 604 (2004) (noting that because the court's determination of "provisions of the Maryland Code

[5] Because the judgment of the circuit court addresses only Benton's individual application, and because Benton does not raise any issues specific to the entity application, we focus specifically on Benton's individual application. We note, however, that the Board's denial of both applications turned upon the same question: whether Benton (either as an individual in the individual application, or as the representative member in Encompass Enterprises' application) had the requisite experience under Environment § 17-302(c)(1).

. . . are appropriately classified as questions of law, we review the issues *de novo* to determine if the trial court was legally correct in its rulings on these matters"). A dispute of material fact does not arise upon appellants' mere disagreement with a legal conclusion. *See Macias*, 243 Md. App. at 315 ("Appellants cannot set material facts into dispute simply by raising a question of law.").

Accordingly, our role in determining whether the Board denied correctly Benton's application is to determine the legal question of whether the Board's decision was made in accordance with the law, or whether it was arbitrary or capricious. To determine whether the Board acted in an arbitrary or capricious manner, we must determine "if reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record[.]" *Liberty Nursing Ctr.*, 330 Md. at 443. If reasoning minds could reasonably reach the agency's conclusion, we have "no power to reject that conclusion." *Id*.

We agree that, based upon the facts in the record before MDE, reasoning minds could conclude that Benton's general construction and consulting experience was not "similar to" two years of providing full-time marine contractor services. Although some of Benton's qualifications included potentially relevant experience, such as "contract[ing] [m]arine contractors to manage MDE permits, pier repairs and boat lift installs[,]" the vast majority of the experience noted in his application focused on general management and contracting, as well as various consulting services for senior living facilities. Further, we note that the circuit court found that Benton did not have the personal experience required. Rather, his experience was in managing people. Benton does not challenge or dispute on appeal these findings. Nor does he assert that the Board failed to consider any relevant facts

or experience in making its determinations. Accordingly, with no material facts in dispute and no demonstration that the Board's decision was arbitrary or capricious, we hold that the circuit court granted properly summary judgment in favor of MDE.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.