Circuit Court for Baltimore City
Case No. 24-C-20-003824

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1111

September Term, 2020

ANDREW N. UCHEOMUMU

v.

ESTHER PETER ET AL.

Kehoe,
Wells,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kehoe, J.

Filed: June 17, 2021

This is an appeal from a judgment of the Circuit Court for Baltimore City that dismissed Andrew Ndubisi Ucheomumu's petition for the judicial review of a decision of the director of the Health Care Alternative Dispute Resolution Office (the "Office"). The decision in question was the director's denial of Mr. Ucheomumu's motion to intervene in a medical malpractice proceeding that was pending in the Office. The appellees are the plaintiff in that proceeding, Esther Peter; the defendants, the University of Maryland Medical System Corporation d/b/a University of Maryland Medical Center, and the University of Maryland Obstetrical and Gynecological Associates, P.A. (collectively the "UM parties"); and the Office itself.

In his brief, Mr. Ucheomumu raises four issues, which we have slightly re-worded and re-formatted:

> 1. Did the circuit court err and misapply the law when it did not realize that all the rules and statutes are plain on their faces that the Director cannot make an award, and that Md. Code, Courts & Jud. Proc. § 3-2A-05(i) makes clear that only an award made by the arbitration panel or the chairman is reviewable under Courts & Jud. Proc. § 3-2A-06 procedure?
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> 2. Did the circuit court err and misapply the law when it did not realize that the Director cannot prevent a named plaintiff from complying with Md. R. 15-1001(e)(3), as a matter of law, and that the Director is barred by law from making any factual determination?
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> 3. Did the circuit court err when it did not realize that the appellees' purported "stipulation of dismissal" without the appellant, a named plaintiff, is ineffective and void?
>
> 4. Does it offend the substantive and the procedural due process clauses of the 14th Amendment to the United States Constitution as well as Article 24 of the Maryland Constitution for a statute of limitations to be running against a class of fathers during a judicially-imposed disability?

The outcome of this appeal turns on other issues. The first is whether a petition for judicial review is the proper vehicle by which a person who is aggrieved by a decision of the director can obtain judicial relief. The second is whether Mr. Ucheomumu's petition for judicial review was timely filed. The third is whether he had standing to participate in the wrongful death action. Because our answer to each of these questions is no, we will affirm the judgment of the circuit court.

Background

In her statement of claim, Ms. Peter asserted that the UM parties provided medical services to Ms. Peter in 2016, who was pregnant with twins at the time. She gave birth prematurely in November 2016 to K.P. and O.P. K.P. survived but O.P. died on the same day.

When K.P. and O.P. were born, Ms. Peter was married to Marcellinus Peter. There was a dispute as to K.P.'s paternity. Eventually, Mr. Ucheomumu filed a civil action against Mr. and Ms. Peter in the Circuit Court for Prince George's County seeking a declaration that he was K.P.'s father, custody of K.P., and related relief. (We will refer to this case as the "custody action").[1] On April 26, 2019, and based on the results of DNA testing, the circuit court issued a bench opinion in the custody action that included a finding that Mr.

[1] Th custody action is docketed as Circuit Court for Prince George's County Case No. CAP 18-03166. We take judicial notice of the pleadings, court papers, and court orders filed in that case. *See* Md. Rule 5-201.

Ucheomumu was K.P.'s biological father. However, Mr. Ucheomumu did not ask the circuit court to enter a written judgment to that effect until May 28, 2020. The judgment was entered on November 16, 2020. There was no judicial determination that Mr. Ucheomumu was the biological father of O.P., nor did Mr. Ucheomumu seek such an adjudication.

At some point, Ms. P. retained counsel to explore the possibility of a lawsuit against the UM parties for O.P.'s death and injuries suffered by K.P. as a result of his premature birth. Her lawyers and the lawyers for the UM parties entered into a tolling agreement by which the UM parties waived their right to assert expiration of the statute of limitations as a defense to the wrongful death claim. The agreement is not in the record, but there is no dispute that Mr. Ucheomumu was not a party to it.

On March 30, 2020, Ms. Peter, as the parent and next friend of K.P. and as the surviving mother of O.P., filed a statement of claim in the Office for medical malpractice (as to K.P.) and wrongful death (as to O.P.) against the UM parties. Pursuant to Md. Rule 15-1001(d), Ms. Peter identified Mr. Ucheomumu as a use plaintiff in the wrongful death claim. On July 3, 2020, Mr. Ucheomumu received the notice required by Rule 15-1001(d) and filed a motion to intervene four days later. Ms. Peter filed an opposition.

Relying on Md. Rule 15-1001,[2] Ms. Peter asserted that the motion should be denied because it was not filed within three years of the date of O.P.'s death. The director of the Office granted the motion on July 28, 2020 and Mr. Ucheomumu received a copy of the director's decision on August 8, 2020. He filed a motion for reconsideration, which the director denied on September 1st.[3]

On September 9, 2020,[4] Mr. Ucheomumu filed a petition for judicial review pursuant to Maryland Rule 7-202, in which he raised a number of challenges both to the substance of the director's decision as well as his authority to make it. The Office and the UM parties

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[2] Md. Rule 15-1001 states in pertinent part:

> (d) Notice to use plaintiff. The party bringing the action shall serve a copy of the complaint on each use plaintiff pursuant to Rule 2-121. The complaint shall be accompanied by a notice in substantially the following form….
>
> (e) Waiver by inaction.
>
> * * *
>
> (2) Failure to Satisfy Statutory Time Requirements. An individual who fails to file a complaint or motion to intervene by the statutory deadline may not participate in the action or claim a recovery.

The "statutory deadline" is found in Courts & Jud. Proc. § 3-904, which provides that, subject to exceptions that do not apply to this case, a wrongful death action "shall be filed within three years after the death of the injured person."

[3] On September 18, 2020, Ms. P. dismissed her action against the UM parties without prejudice.

[4] In his brief, Mr. Ucheomumu incorrectly states that he filed his petition on September 10th.

filed responses. Their substantive contentions boiled down to the propositions that: (1) Mr. Ucheomumu's motion to intervene was filed more than three years after the date of O.P.'s death and was therefore untimely pursuant to Courts & Jud. Proc. § 3-904(g)[5] and Md. Rule 15-1001(e), and (2) the director of the Office had the authority to deny the motion to intervene. But the respondents raised an additional argument: They asserted that the exclusive remedy to challenge the director's decision was to file a notice of rejection pursuant to Courts & Jud. Proc. § 3-2A-06(a) and to follow through with civil action to nullify the decision pursuant to § 3-2A-06(b).

After a hearing, the court granted the motions to dismiss. In explaining its reasoning, the court made it clear that it was not addressing any of the substantive contentions made by Mr. Ucheomumu as to the director's decision because:

> [T]he sole issue that is determinative here is whether this action is properly brought . . . as an action to challenge the [decision] of the Health Claims Office. And I conclude that it is not. . . . [T]he exclusive means of recourse to the Circuit Court is through the mechanism provided in [Courts & Jud. Proc. § 3-2A-01–10], particularly in [§] 3-2A-06.
>
> And I find that that mechanism applies, even if the director was acting, as Mr. Ucheomumu contends, without authority under the statute. It also certainly applies if his decision was erroneous. . . .
>
> Whether [the] action by the director was authorized or unauthorized, or legally correct or incorrect, the mechanism for Mr. Ucheomumu to remove his claim or his interests from the Health Claims Office and bring them to the

[5] Subject to exceptions that aren't relevant to this appeal, Courts & Jud. Proc. § 3-904(g) provides that "an action under this subtitle shall be filed within three years after the death of the injured person."

> Circuit Court is provided [by § 3-2A-06]. And not by means of a separate action as he has styled it as a petition for review of an administrative agency.
>
> * * *
>
> But I conclude under the case law that the avenue under the statute was available to him once his rights before the Health Claims Office were disposed of by the director's decision [and] that he had the right to reject that decision, reject it as effectively an award of the Office, and bring the matter to the Circuit Court. . . .
>
> And therefore, this action must be dismissed.

Analysis

Because the dispositive issues in this appeal are matters of law, we review the circuit court's decision for legal correctness without deference to its reasoning. *See, e.g., Unger v. Berger*, 214 Md. App. 426, 432 (2013); *Kumar v. Dhanda*, 198 Md. App. 337, 342 (2011).

A

The circuit court ruled that the remedial path set out in Courts & Jud. Proc. § 3-2A-06 was the proper one for Mr. Ucheomumu to employ in the present case. The statute states in pertinent part:

> (a) A party may reject an award or the assessment of costs under an award for any reason. A notice of rejection must be filed with the Director and the arbitration panel and served on the other parties or their counsel within 30 days after the award is served upon the rejecting party, or, if a timely application for modification or correction has been filed within 10 days after a disposition of the application by the panel, whichever is greater.
>
> (b)(1) At or before the time specified in subsection (a) of this section for filing and serving a notice of rejection, the party rejecting the award shall file an action in court to nullify the award or the assessment of costs under the

> award and shall file a copy of the action with the Director. Failure to file this action timely in court shall constitute a withdrawal of the notice of rejection.
>
> * * *

It has long been established that "[t]he legislature has fashioned through the Health Care Malpractice Claims Act a mandatory framework for the resolution of health claims." *Tranen v. Aziz*, 304 Md. 605, 611–12 (1985) (cleaned up). This is because "[t]he Act unequivocally provides for the exclusiveness of its procedures. Section 3–2A–02(a) proclaims that a health claims action 'may not be brought or pursued in any court of this State except in accordance with this subtitle.'" *Id.*

For this reason, the "exclusive step by which the aggrieved party may initiate proceedings in court [pursuant to § 3-2A-06] is the action to nullify the award." *Ott v. Kaiser-Georgetown Community Health Plan*, 309 Md. 641, 646, 49 (1987).

In *Salvagno v. Frew*, 388 Md. 605, 618 (2005), the Court of Appeals explained that

> the order by the panel chair dismissing Frew's claim constituted a final determination of that claim. There was nothing left before [the Office], especially when Frew's motion for reconsideration was denied. Whether the order was right or wrong, authorized or unauthorized, it clearly disposed of the claim and thus constituted an award in favor of the defendants. It was therefore subject to rejection by Frew and an action in court to nullify it.

See also Elliott v. Scher et al., 114 Md. App. 334, 338 (1997) (holding that a party to a proceeding before the Office "may not obtain judicial review pursuant to Maryland Rule 7-202" of a procedural ruling by the chair of an arbitration panel).

Mr. Ucheomumu argues that *Ott*, *Slavagno*, and *Elliot* are inapposite. He points out that all of these cases arose out of awards made either by arbitration panels (*Slavagno* and

Ott) or by the chair of such a panel (*Elliot*). He also correctly points out that, for the purposes of the Health Care Malpractice Claims Act, an "award" is defined as "a final determination of a health care malpractice claim by an arbitration panel or by the panel chair." Md. Rule 15–402(b). According to Mr. Ucheomumu, § 3-2A-06 does not provide a remedy for a use plaintiff whose motion to intervene in a wrongful death action was denied by the director. He asserts that a petition for judicial review is the appropriate remedial path for someone in his situation.

In response, the Office and the UM parties point to Courts & Jud. Proc. § 3-2A-05(a)(2), which provides that in cases such as the present one in which no arbitration panel chair had been appointed, the director "may rule on all issues of law arising prior to the [arbitration hearing] that are not dispositive of the case[.]"[6] Relying on *Maryland–National Capital Park & Planning Comm'n v. Town of Washington Grove*, 408 Md. 37, 63–64 (2009), the Office asserts that the director's order denying Mr. Ucheomumu's motion to intervene was a "final decision" as to him and therefore constituted an award for purposes of COMAR 01.03.01.01B(4), which states that "award" "means a final decision under the Act, whether in favor of the claimant or defendant." We can't argue with the Office's logic insofar as it goes, but the Office does not attempt to explain how or why the regulation supplants the definition of "award" in Md. Rule 15–402(b) for the purposes of deciding

[6] As the Office points out in its brief, COMAR 01.03.01.08D mirrors the statute.

how a party to a proceeding before the Office seeks review in a court. The brief of the UM parties does not come to grips with the issue either.

In light of this, and for purposes of our analysis, we will assume without deciding that the director exceeded his authority in ruling on the motion to dismiss.[7] Nonetheless, we hold that Courts & Jud. Proc. § 3-2A-06 provides the exclusive remedy for a party to a proceeding before the Office who is aggrieved by the result of those proceedings, whether the result was reached by an award issued by an arbitration panel or its chair or a decision

[7] The Court of Appeals has stated that "the [Act] specifically prohibits the [d]irector of the [Office] from ruling on dispositive matters." *Kearney v. Berger*, 416 Md. 628, 665 (2010). In a footnote appended to this passage from *Kearney*, the Court emphasized that it is the chairman of an arbitration panel, and not the director of the Office, "who has the statutory authority to make rulings on issues of law" that are dispositive of actions. 416 Md. at 665 n.17.

In arguing that the director acted within the scope of his authority, both the Office and the UM parties point to Courts & Jud. Proc. § 3-2A-05(b), which states:

> Where a panel chairman has not been appointed or is temporarily unable to serve, and the Director is admitted to the Maryland Bar, the Director may rule on all issues of law arising prior to hearing that are not dispositive of the case and shall include the assessment of costs.

According to appellees, the director was acting within the scope of his authority because his ruling did not dispose of Ms. Peter's case. But *Kearney* did not speak of "cases" but of "matters." The director's ruling certainly disposed of Mr. Ucheomumu's ability to pursue his claim in the wrongful death action. Neither the Office nor the UM parties point to any authority for the proposition that the director has the authority to dismiss a party, whether a plaintiff or a defendant, from a malpractice case pending in the Office. There is nothing in the Act that appears to give the director that authority. And *Kearney* certainly does not support appellees' position on this issue.

rendered by the director of the Office. In our view, a contrary result would be inconsistent with reasoning the Court of Appeals and this Court in *Tranen*, *Ott*, *Salvagno*, and *Elliot.* Moreover, we can perceive no benefit in balkanizing the remedy provided in § 3-2A-06 into two mutually exclusive remedies depending on who in the Office ruled on what and when the ruling was made.[8]

B

Md. Rule 7-203 provides that a petition for judicial review must be filed within thirty days of the last to occur of

> (1) the date of the order or action of which review is sought;
>
> (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
>
> (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

Mr. Ucheomumu's case falls into the third category because Courts & Jud. Proc. § 3-2A-05(g)(2) requires the director to serve a copy of an award on each party to the proceeding.

[8] We recognize that there is a disconnect between the language of the statute and our result. But in our view, this does not necessarily support the notion that the General Assembly intended that there should be separate legal remedies for those who are aggrieved by an award of an arbitration panel or its chair and those aggrieved by a decision of the director. Instead, it may suggest that the Legislature did not intend the director to be ruling on motions of the sort at issue in this the appeal. *See* note 7, *supra*.

Mr. Ucheomumu received a copy of the director's decision on August 8, 2020. He filed a motion for reconsideration with the director on August 17, 2020, which was denied on Wednesday, September 2nd. Mr. Ucheomumu filed his petition for judicial review on Wednesday, September 9th. His petition was filed within 30 days of the director's denial of his motion for reconsideration but 32 days after he received notice of the director's initial decision. *See* Md. Code, Gen. Prov. § 1-302(a) (setting out rules for calculating the passage of time for purposes of Maryland law). For this reason, the circuit court was without authority to decide the merits of the director's initial decision. *See Colao v. County Council of Prince George's County*, 109 Md. App. 431, 444 (1996), *aff'd*, 346 Md. 342, (1997).

What was properly before the circuit was the correctness of the director's denial of Mr. Ucheomumu's motion for reconsideration, and that is the only issue properly before us. Mr. Ucheomumu's analysis of the director's denial of his motion for reconsideration is limited to one sentence in his brief.[9] His argument that the director erred in denying his motion for reconsideration is not preserved for appellate review. *See Silver v. Greater Baltimore Medical Center*, 248 Md. App. 666, 689 n.5 (2020) ("Md. Rule 8-504(a)(6) [requires] that briefs contain '[a]rgument in support of the party's position on each issue.'

[9] Mr. Ucheomumu's brief states (emphasis in original):

> On September 2, 2020 the Director once again without a hearing and without ANY LEGAL AUTHORITY denied Appellant's motion for reconsideration which illegally prevented Appellant from complying with Md. R. 15-1001(e)(3) and participation in the arbitration process.

A single sentence is insufficient to satisfy the rule's requirement."). We have no basis to reverse the judgment of the circuit court on the grounds asserted by Mr. Ucheomumu.

C

Standing "is a practical concept designed to insure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests[.]" *Superior Outdoor Signs v. Eller Media*, 150 Md. App. 479, 505–06 (2003). To have standing to sue, a plaintiff must have "suffered an injury in fact that is fairly traceable to the defendant's conduct and that is likely to be redressed by a decision in the plaintiff's favor." *Grueff v. Vito*, 229 Md. App. 353, 378, (2016), *aff'd*, 453 Md. 88 (2017) (quoting *State Ctr., LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 491 (2014)). A party who does not have an interest affected by the adjudicative decision at issue does not have standing to challenge it. Standing is an issue that can be raised for the first time on appeal and can be raised by the appellate court at its own initiative. *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 522 (2010); *Peterson v. Orphans' Court for Queen Anne's County*, 160 Md. App. 137, 172 (2004). It is clear that Mr. Ucheomumu does not have, and never did have, an interest in Ms. Peter's claim against the UM parties that arose out of O. P.'s death.

Because O.P. was born while Ms. Peter was married to Mr. Peter, the law presumes that he was O.P.'s father. Md. Code, Est. & Trusts § 1-206(a). This presumption may be rebutted, but a statement by the putative father is insufficient. *See*, *e.g.*, *Mulligan v. Corbett*, 426 Md. 670, 699 (2012) ("Merely claiming to be the father of a child . . . where the child

was conceived during a marriage, does not overcome the presumption" that the biological mother's spouse is the child's father.))

Courts & Jud. Proc. § 3-904(h) sets out the standing requirements for parents in wrongful death actions. It states:

> (h) For the purposes of [a wrongful death action], a person born to parents who have not participated in a marriage ceremony with each other is considered to be the child of the mother. The person is considered to be the child of the father only if the father:
>
> (1) Has been judicially determined to be the father in a proceeding brought under § 5-1010 of the Family Law Article or § 1-208 of the Estates and Trusts Article; or
>
> (2) Prior to the death of the child:
>
> (i) Has acknowledged himself, in writing, to be the father;
>
> (ii) Has openly and notoriously recognized the person to be his child; or
>
> (iii) Has subsequently married the mother and has acknowledged himself, orally or in writing, to be the father.

At oral argument, and in response to a question from the panel, Mr. Ucheomumu indicated that prior to O.P.'s death, he had neither acknowledged his paternity in writing nor openly and notoriously recognized O.P. as his child. Additionally, Mr. Ucheomumu conceded that he never sought, much less obtained, a judicial declaration that he was O.P.'s father.

We fully appreciate that the death of a child can result in parental grief and anguish that often never goes away. We also realize that in light of O.P.'s tragically short life, written acknowledgment or open and notorious acknowledgment of paternity would be very difficult to accomplish and unreasonable to expect. However, we must also recognize that

Maryland's Wrongful Death Act does not provide a remedy to Mr. Ucheomumu in this case. The source of a remedy for persons in Mr. Ucheomumu's situation is an amendment to the statute by the General Assembly.

For these reasons, we affirm the judgment of the circuit court.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY COSTS.