Circuit Court for Frederick County
Case No. C-10-CV-18-001012

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1241

September Term, 2019

ERIC WOODS

v.

MARYLAND SCHOOL FOR THE DEAF, ET AL.

Nazarian,
Gould,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 20, 2020

*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.

This appeal arises out of a challenge by Eric Woods, appellant, to a decision by the Maryland School for the Deaf ("MSD"), appellee, not to extend his contract as a teacher's aide. In a letter dated June 11, 2018, MSD notified appellant that it would not be offering him a contract for the 2018-19 school year. Appellant appealed that decision to the school's superintendent, James E. Tucker, who upheld the decision not to renew the contract. Thereafter, appellant filed in the Circuit Court for Frederick County a petition for writ of administrative mandamus. After a hearing on June 17, 2019, the circuit court issued a memorandum opinion and order denying the petition for writ of administrative mandamus. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether MSD erred in denying appellant's petition for writ of administrative mandamus.[1] For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

In August 2014, appellant began working as a teacher's aide at MSD, a state-run public-school which serves students who are deaf and hard-of-hearing. He was employed pursuant to a faculty contract, which MSD had the option to renew on an annual basis. Paragraph 10 of the contract, which governed contract renewal, provided:

> No later than May 15 of the school year, MSD will notify the faculty member in writing of its intention to either renew or not renew the contract upon its expiration. The faculty member shall inform MSD in writing of an acceptance or rejection of an offer, at MSD's sole discretion. It is specifically

[1] Appellant stated the issue presented as "[w]hether MSD erred in denying the Employee's appeal, where the termination at issue was substantively and procedurally in error?"

> understood and agreed that the faculty member shall not be deemed to be granted tenure or similar status by virtue of entering into or accepting renewal of this contract.

MSD renewed appellant's contract each school year from 2014 through the end of the 2017-18 school year, and then notified him that the contract would not be renewed for the 2018-19 school year.

At various points in the 2017-18 school year, staff at MSD complained to administrators about appellant's behavior, including repeated confrontations by appellant based on his belief that staff members were hacking his iPhone and Facebook accounts. Staff members described appellant as using "unpleasant," "ugly" and "angry" facial expressions, and his behavior as uncomfortable, unsafe and creating a work environment that felt hostile. Appellant's supervisors met with him to discuss his workplace behavior and, on February 22, 2018, appellant was placed on paid administrative leave for the remainder of the school year. On that date, in a written memorandum to appellant, the school principal, Kevin Strachan, and the personnel director, Anny Currin, wrote:

> As discussed in the meeting today, the principal has received complaints from employees that they feel you have harassed and intimated them throughout this school year. We have met and spoken several times about your concern that MSD employees have hacked your Face Book (sic) account. You admitted that you have approached staff about this during worktime even though you were told and given time in September to resolve the problem off campus. After our last meeting in January you were told that if you continued to speak to employees about this on campus we would have no alternative but to treat the complaints as a workplace bully grievance. The principal received several more complaints after that meeting and reported that you are creating a hostile work environment.

After explaining the State of Maryland's policy on bullying in the workplace, and stating that appellant's behavior "qualifies as offensive and intimidating," Strachan and Currin wrote, in part:

> For this reason we are keeping you on paid administrative leave for the remainder of the school year. You will continue to receive your bi-weekly pay and keep your health benefits but you may not come on to either campuses [sic] without prior permission from the principals. You may not communicate with MSD staff during the school day for the remainder of the school year. If you violate either of these conditions, it will result in immediate termination. In accordance with Maryland School for the Deaf policy you or your representative may appeal this action; the appeal must be filed within 15 calendar days after this meeting.

Appellant appealed the decision to place him on administrative leave to James Tucker, the superintendent of MSD. (E. 21) Appellant argued that he had "been charged with workplace bullying and creating a hostile environment," that those allegations were "arbitrary, capricious and lack[ed] merit," and that "management failed to consider his mitigating circumstances." His requested remedy was "that management rescind the charging document dated 2/22/18 and remove it and any and all supporting documentation from his personnel file." In a letter dated April 16, 2018, the superintendent of MSD advised appellant that "the letter and documents were not currently in [his] file therefore there is no action required by the school at this time on your appeal." Appellant took no further action with respect to the decision to place him on paid administrative leave.

On June 11, 2018, MSD notified appellant that it would not offer him a contract for the 2018-19 school year. Appellant appealed that decision to the superintendent of MSD, who conducted an informal hearing on October 18, 2018. On or about November 7, 2018, the superintendent upheld the decision not to renew appellant's contract, writing:

> I am aware that your behavior towards co-workers does not include physical aggression but you have intimidated MSD staff with behavior that borders on bullying by being intimidating. COMAR 17.04.05.04B(4) says an employee can be disciplined for being unjustifiably offensive in the employee's conduct toward fellow employees, wards of State or the public. Nothing you have presented to date indicates that your behavior is justified therefore I have no choice but to stand by the decision not to renew your contract for the 2018-2019 school year.

On December 6, 2018, appellant filed in the Circuit Court for Frederick County, a petition for administrative mandamus pursuant to Maryland Rule 7-401 *et seq*. Appellant characterized his petition as a challenge to the November 7, 2018 final administrative determination upholding "his termination from State service." He sought a reversal of that decision and reinstatement to his former position with back pay and benefits. After a hearing on June 17, 2019, the circuit court issued a written opinion in which it found that "the evidence did not show and the Court does not find that [appellant] was terminated" and the decision not to renew appellant's contract was not a violation of his constitutional rights because his "annually-contracted position secured no interest in re-employment for the next year."

We shall include additional facts as necessary in our discussion of the issue presented.

STANDARD OF REVIEW

An action for a writ of administrative mandamus is available for "review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law." *Headen v. Motor Vehicle Admin.*, 418 Md. 559, 567 n.4 (2011), quoting Md. Rule 7-401. Maryland Rule 7-403 provides:

> The court may issue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency:
>
> (A) is unconstitutional,
> (B) exceeds the statutory authority or jurisdiction of the agency,
> (C) results from an unlawful procedure,
> (D) is affected by any error of law,
> (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,
> (F) is arbitrary or capricious, or
> (G) is an abuse of its discretion.

Md. Rule 7-403.

In considering an appeal from the denial of a petition for writ of administrative mandamus, we apply the standard of review developed in judicial review proceedings. *Armstrong v. Mayor & City Council of Baltimore*, 169 Md. App. 655, 667-68 (2006) (standard of review is "essentially the same" in judicial review and administrative mandamus proceedings). Our focus is not on whether the circuit court erred, but "whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010), quoting *Consumer Protection Division v. Morgan*, 387 Md. 125, 'elf. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

Ordinarily, a court reviewing a final decision of an administrative agency shall determine the legality of the decision and whether there was substantial evidence from the record as a whole to support the decision. *Comm'r of Labor & Indus. v. Whiting-Turner Contracting Co.*, 462 Md. 479, 490 (2019). Purely legal questions are reviewed *de novo*, with considerable weight afforded to the agency's experience in interpretation of a statute that it administers. *Id.* "Substantial evidence is defined as 'such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion[.]'" *Id.*, quoting *Schwartz v. Md. Dep't of Nat. Res.,* 385 Md. 534, 554 (2005). "Under the substantial evidence test, we may not substitute our own judgment" for that of the agency. *Dakrish LLC v. Raich*, 209 Md. App. 119, 142 (2012), citing *Blackburn v. Bd. of Liquor License Comm'rs for Baltimore City*, 130 Md. App. 614, 623-24 (2000). Our task is to "determine 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Singley v. County Comm'rs of Frederick County*, 178 Md. App. 658, 675 (2008), quoting *Marzullo v. Kahl*, 366 Md. 158, 171-72 (2001).

DISCUSSION

Appellant contends that his termination from employment was illegal because MSD failed to adhere to applicable personnel law, specifically the State of Maryland's policy on bullying in the workplace. He argues that the disciplinary action against him, which was imposed on February 22, 2018, the date he was placed on administrative leave, was not taken within 30 days of the time the complaints of bullying were received on January 15 and 21, 2018. Appellant also argues that MSD took disciplinary actions against him not because of complaints of bullying, but rather, in response to allegations made by his ex-wife, Crystal Perri, to Dawniela Patterson, an assistant superintendent and principal at MSD. In a February 22, 2018 email to principal Kevin Strahan, Patterson wrote:

> Per your request, here is the info I shared with you a few minutes ago.
>
> I stopped by the dorm before 6 am this morning to check on the overnight dorm staff. Crystal Perri, who is an ex-wife of Eric Woods, asked to talk with me in private.
>
> Crystal is fearful of Eric Woods due to several reasons.

> 1) Crystal said that Tony, Eric's brother shared a few things with her. Eric is living with this father who is 81 years old and quite fragile. He has hunting guns in the cabinet. It was recently locked and he hid the key. Tony felt that Eric is getting worse and he needs help. He is denying that he needs any help. Crystal agrees to it.
>
> 2) Crystal said that Eric attempted to kill himself with a hunting gun when his ex-girlfriend broke up with him in college.
>
> 3) Crystal said that there was a story about a family in California who was killed by a husband who lost a job. Eric said he understood him. Crystal is afraid that Eric may kill her and her 3 children.
>
> 4) Crystal talked with Eric recently and said that it was the same story about the computer issues.
>
> 5) Crystal said that Eric took two of their older children to a shooting range a while ago.
>
> 6) Crystal is worried about him being fired because he will go maniac and she will no longer receive child support.
>
> 7) Crystal and Eric went to court recently. Eric asked to decrease the amount in child support, but it was found that he should have paid her more. So he withdrew his request. Judge asked her if she had an objection. She wanted to object, but was afraid that there would be a war again. So she did not object it. [sic]
>
> That is the summary of the conversation we had this morning.

Appellant asserts that these allegations were not shared with him, were not included in the school's "recitation of the sudden need on February 22, 2018 to send" him "home on paid administrative leave for the remainder of the school year," and that he was not "afforded the opportunity to rebut these allegations[.]" He maintains that he "was terminated from his position with the MSD as a result of allegations which he was never allowed to refute." He further maintains that he was entitled to a hearing prior to being

terminated and that "the actions of his employer in hiding the true basis for his termination made any and all such 'hearings' meaningless." Appellant requests that we reverse the administrative decision, rescind his "termination," and restore his position with full back pay and benefits. We disagree and explain.

The record makes clear that appellant was not terminated from employment with MSD. Appellant worked as a teacher's aide pursuant to a series of annual contracts. Paragraph 10 of the contract specifically provided that "[n]o later than May 15 of the school year, MSD will notify the faculty member in writing of its intention to either renew or not renew the contract upon its expiration." The same paragraph provided that "the faculty member shall not be deemed to be granted tenure or similar status by view of entering into or accepting renewal of this contract." Paragraph 5 of the contract, which governed suspension and termination, provided:

> Upon completion of the two-year probationary period, and except as otherwise provided in this contract, the faculty member may be suspended or dismissed only for cause during the term of each annual contract. "Cause" includes but is not limited to: immorality, misconduct, insubordination, willful neglect of duty, incompetency, misappropriation of funds, engaging in outside activities which conflict with faculty responsibilities without the express permission of the Superintendent or his designee, excessive absenteeism, and knowingly failing to report suspected child abuse in violation of Section 5-704 of the Family Law Article of the Maryland Code. The faculty member will receive written notice and an opportunity for a hearing before the Superintendent for a suspension or termination.

Appellant did not file a petition for writ of administrative mandamus following the superintendent's decision relating to MSD's decision to place him on administrative leave during the 2017-18 school year. Accordingly, that issue is not before us. Md. Rule 8-

131(a) (Ordinarily, we "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). Nor did appellant receive a notice of termination, and the record does not support his contention that he was terminated from employment. The issue before us involves only MSD's decision not to renew appellant's employment contract for the 2018-19 school year.

Appellant directs our attention to *W. Corr. Inst. v. Geiger*, 371 Md. 125 (2002) in support of his argument that MSD failed to take disciplinary action against him within 30 days of the time the complaints of bullying were received on January 15 and 21, 2018. In *Geiger*, the Court of Appeals interpreted § 11-106 of the State Personnel & Pensions Article to determine whether a 30-day period prescribed by that statute for the imposition of disciplinary action commenced when an appointing authority was first informed of an allegation of misconduct. *Geiger*, 371 Md. at 129. For two reasons, appellant's reliance on *Geiger* is misplaced. First, appellant did not challenge the superintendent's decision with regard to MSD's decision to place him on administrative leave and, therefore, that issue is not properly before us. Md. Rule 8-131(a). Second, appellant did not present any claim based on § 11-106 of the State Personnel & Pensions Article. As a result, any argument that § 11-106 might apply to the instant case has been waived. Md. Rule 8-131(a).

Appellant's employment contract provided for a hearing only if appellant was dismissed during the term of the contract. Appellant received notice on June 11, 2018, after the contract for the 2017-18 school year had ended, that his contract would not be

renewed for the following school year.[2] As appellant was not dismissed during the term of the contract, and was not terminated from employment with MSD, we need not determine whether substantial evidence existed to support the termination of his employment or whether MSD properly stated the basis for a decision to terminate his employment.

Appellant failed to demonstrate that the decision not to renew his employment contract prejudiced a substantial right or violated his constitutional rights. The plain terms of the employment contract and the evidence make clear that appellant did not have tenure or any right, property interest, guarantee, or reasonable expectation that he would be offered a contract each year. Appellant did not point to any statute, MSD rule, or policy that secured his interest in re-employment. As the circuit court noted, the United States Supreme Court addressed similar circumstances in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972). In that case, an assistant professor at a state university, who had no tenure rights to continued employment and who was informed that he would not be rehired after his first academic year at the university, alleged that the decision not to rehire him infringed his rights under the Fourteenth Amendment. *Roth*, 408 U.S. at 566. In rejecting Roth's appeal, the Supreme Court commented:

> Thus, the terms of the respondent's appointment secured absolutely no interest in re-employment for the next year. They supported absolutely no possible claim of entitlement to re-employment. Nor, significantly, was there any state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it. In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a property interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment.

[2] Appellant did not challenge the sufficiency of the notice.

Here, there is no doubt that appellant "had an abstract concern in being rehired," but he did not have a property interest in his employment so as to require MSD to give him a hearing when it declined to renew his contract of employment. *Id.*

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.