

Circuit Court for Baltimore City
Case No. 24-C-22-002382

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1578

September Term, 2022

IN THE MATTER OF THE PETITION OF
RIKER MCKENZIE-EL, JR.

Friedman,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

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

Riker McKenzie-El, Jr., appellant, appeals from an order issued by the Circuit Court for Baltimore City dismissing his petition for judicial review for failure to file a memorandum, as required by Maryland Rule 7-207(a). Appellant’s sole claim on appeal is that the Maryland Insurance Administration (MIA) “abuse[d] its discretion when it denied summary decision and reconsideration of its findings to reverse Allstate’s decision without performing the correct standard of review[.]” For the reasons that follow, we shall affirm.

In 2019, a lawsuit was filed against appellant, wherein the plaintiff sought damages as a result of personal injuries sustained in an automobile accident. Appellant was insured by Allstate Indemnity Company, appellee, who defended him in that lawsuit, and ultimately entered into a settlement agreement with the plaintiff, despite his claim that he had not been involved in the accident. Thereafter, appellant filed a complaint with the Maryland Insurance Administration, who ultimately determined that Allstate’s settlement of the claim was not “arbitrary and capricious.” Appellant then requested a hearing before the Office of Administrative Hearings (OAH). However, prior to that hearing, the assigned hearing officer granted Allstate’s Motion for Summary Decision, finding that, based on the undisputed facts, the MIA had correctly found that Allstate “did not commit an unfair claims settlement practice” or “otherwise violate Maryland Insurance laws.”

Appellant filed a timely petition for judicial review of that order and on July 7, 2022, the MIA transmitted the record to the circuit court.¹ Six days later the court sent a notice to the parties informing them that the record had been filed and directing appellant to file a memorandum, as required by Maryland Rule 7-207(a), within 30 days. A hearing on the petition for judicial review was then scheduled for October 18, 2022.

On September 30, 2022, Allstate filed a motion to dismiss the petition for judicial review on the grounds that appellant had failed to file the required memorandum. Appellant did not file an opposition, or attempt to file an untimely memorandum. On the date of the scheduled hearing, the court heard arguments on appellee’s motion to dismiss, and granted the motion, finding that Allstate had been “extraordinarily prejudiced by [appellant’s] failure to file the . . . required memorandum of law given the 1,461-page Office of Administrative Hearings record below[.]” This appeal followed.

Appellant’s sole contention on appeal is that the MIA “abuse[d] its discretion when it denied summary decision and reconsideration of its findings to reverse Allstate’s decision without performing the correct standard of review[.]” But this contention is not properly before us because the circuit court did not reach the merits of appellant’s petition for judicial review. Rather it dismissed the petition because appellant failed to file a memorandum.

¹ Although not set forth as a “question presented,” appellant briefly asserts in his statement of facts that the MIA failed to transmit the record to the circuit court. This claim is not preserved as it was not raised in the circuit court. And in any event, the record and docket entries indicate that the record was received on July 7, 2022.

As to that dismissal, Maryland Rule 7-207(a) requires that “[w]ithin 30 days after the clerk sends notice of the filing of the record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied on.” And Maryland Rule 7-207(d) further provides the circuit court may dismiss a petition for judicial review if the petitioner fails to file such a memorandum “if it finds that the failure to file or the late filing caused prejudice to the moving party.”

Here, appellant did not just fail to file a timely memorandum; he did not file a memorandum at all. Moreover, the circuit court specifically found that the failure to file the required memorandum prejudiced appellee in light of the voluminous record from the proceedings before the OAH. Appellant, however, does not challenge this finding or otherwise claim that the court erred in dismissing his petition for violating Rule 7-207(a).² And it is ultimately appellant’s burden on appeal to demonstrate that the circuit court erred in dismissing his petition for judicial review. Because he has not met that burden, we shall affirm.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

² In any event, there is an inadequate record to review such a claim as appellant has not provided a copy of the transcript of the October 18, 2022, hearing on the motion to dismiss. See *Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) (“The failure to provide the court with a transcript warrants summary rejection of the claim of error.”).