

Circuit Court for Baltimore City
Case No. C-24-CV-24-000506

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1620

September Term, 2024

GREGORY BRANCH

v.

MARYLAND DEPARTMENT OF HEALTH

Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 22, 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).

Appellant Gregory Branch, M.D., sought judicial review of the decision of the Secretary of the Maryland Department of Health upholding his removal as Baltimore County’s Health Officer. The Circuit Court for Baltimore City affirmed the Secretary, concluding that the correct procedures were followed in his removal.

Dr. Branch noted this timely appeal and presents two questions for our review,¹ which we have consolidated and recast as:

Did the circuit court err in upholding the Secretary’s determination that Dr. Branch’s removal from office was procedurally proper?

For the reasons to follow, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

From 2008 to 2024, Dr. Branch held three positions simultaneously: he was employed by the County as Director of Health and Human Services, by the Maryland Department of Health as Baltimore County’s Health Officer, and by the Maryland

¹ Dr. Branch raised the following questions in his brief:

1. Whether the Circuit Court for Baltimore City erred when it determined that the Secretary of the Maryland Department of Health was not required, when removing Health Officer Dr. Gregory Branch, to secure the concurrence of both the Baltimore County Executive and the Baltimore County Council as necessary components of the “governing body” referenced in Md. Health-General Code § 3-302(f)(3)?
2. Whether the Circuit Court for Baltimore City erred when it determined that the Baltimore County Council’s adoption of changes to the Baltimore County Charter in 2018 constituted concurrence by implication of the Baltimore County Council with the decision to remove Dr. Branch as Health Officer made by the Secretary of the Department of Health in 2024 under Md. Health-General Code § 3-302(f)(3)?

Department of Human Services as Baltimore County’s Director of Social Services. In 2023, the Baltimore County Office of the Inspector General received a complaint that Dr. Branch was “spending a significant amount of time” during the workday on tasks related to his church and stage plays he was directing. After an investigation, the Inspector General issued a report on February 13, 2024, substantiating the allegations. On March 4, 2024, the Department of Health sent Dr. Branch a letter informing him that he was being removed from his position as Baltimore County’s Health Officer.² The letter stated that the Secretary of the Department of Health and the County Executive concurred in the removal.

Dr. Branch requested a hearing before the Secretary to contest his removal as Health Officer. Relevant here, Dr. Branch argued that because Md. Code (1982, 2023 Repl. Vol.), § 3-302(f)(1) of the Health-General Article (“HG”) states that “The health officer for a county may be removed from office with the concurrence of the governing body of that county and the Secretary[,]” his removal required concurrence of the County Council as well as the County Executive. After the hearing, the Secretary confirmed the decision to remove Dr. Branch from his position as Health Officer. The Secretary provided the following reasoning for rejecting Dr. Branch’s argument that his removal was “procedurally defective” because of the failure to obtain the County Council’s concurrence:

No legal basis for this conclusion was provided, other than the reference to § 3-302(f)(1). Appointment and removal of health officers is governed by Health-Gen. § 3-302. Section 3-302(f)(1) states that “[t]he health officer may be removed from office with the concurrence of the governing body of that county and the Secretary.” In a code county or charter

² It is unclear from the record whether Dr. Branch was removed from his other positions as well. This appeal concerns only his removal as Health Officer.

county, such as Baltimore County, the governing body is *ex officio* the board of health for the county, *unless* the governing body establishes a board of health. Health-Gen. § 3-201(b); § 3-202(a)(2). Baltimore County, pursuant to its Home Rule Charter, created a board of health. Balt. Cnty. Char. § 539 (a). Because the governing body created a separate board of health, the terms of the Charter determine who is the “governing body” for purposes of removal of a health officer under § 3-302(f).

The board of health is part of the county department of health. Balt. Cnty. Char. § 539(a). The health officer is appointed by the county executive with the advice and consent of the Secretary of Health as required by Health-Gen. § 3-302(f). By virtue of this appointment, the health officer is the secretary of the board of health. Balt. Cnty. Char. § 539(b). The health officer also administers the county department of health, which is part of the Administrative Services of the executive branch. § 504(7). Section 404(b) of the Charter states that the county executive “may remove the heads of any offices and departments appointed under section 402.” The terms of the Charter are clear that the county executive is the “governing body” of the county that must concur in the removal of the health officer, not the county council, for purposes of Health-Gen. § 3-302(f).

Dr. Branch next sought judicial review in the Circuit Court for Baltimore City. The only issue on judicial review concerned the definition of “governing body” under HG § 3-302(f). After a hearing, the circuit court affirmed the decision, essentially adopting the Secretary’s analysis.

Dr. Branch noted this timely appeal.

MOTION TO DISMISS

The Department moved to dismiss this appeal, arguing that judicial review under HG § 3-302 is not appealable. Under CJP § 12-302(a),

Unless a right to appeal is expressly granted by law, § 12-301 of this subtitle [which provides a general right to appeal circuit court decisions] does not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of . . . an administrative agency[.]

The statute under which Dr. Branch sought judicial review does not expressly provide a right to appeal. Thus, according to the Department, this Court lacks appellate jurisdiction and must grant its motion to dismiss. Dr. Branch responds that the circuit court was not “reviewing the decision” of the Secretary to terminate Dr. Branch’s employment, but was only reviewing the Secretary’s decision regarding compliance with statutorily prescribed procedural requirements. Dr. Branch further emphasizes that he “had a constitutionally protected property interest in remaining in his position until the statutorily prescribed procedures . . . were followed.”

Even where it is not otherwise appealable, a judicial review action may be appealed if the relief sought is in the nature of a mandamus action. This determination is made based on the claims raised as a whole and whether the resulting order “resembled the type of order rendered in a mandamus proceeding.” *Prince George’s County v. Berretta U.S.A. Corp.*, 358 Md. 166, 183 (2000) (quoting *Gisriel v. Ocean City Elections Bd.*, 345 Md. 477, 496-97 (1997)); *see also Mayor of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 666 (2021). Merely having some claims that could have been raised in a mandamus action, where other claims could not, does not transform judicial review into an appealable mandamus action. *ProVen Mgmt.*, 472 Md. at 685. “Unless a review of the entire action leads to the conclusion that the substance of the action, including the relief sought, is in the nature of a common law mandamus action, our case law does not permit us to recharacterize the case as such[.]” *Id.* In *Murrell v. Mayor of Balt.*, the Supreme Court emphasized that, to be considered a mandamus action, the relief sought must be the

performance of “non-discretionary mandatory duties” requiring no fact-finding. 376 Md. 170, 196 (2003). The Supreme Court has also described the difference as: “common law mandamus relief arises from an official’s *failure to perform the duty at all*, whereas in a statutory judicial review action, relief may include a remand for further proceedings before the administrative agency arising from the agency’s *failure to perform the duty well*.” *ProVen Mgmt.*, 472 Md. at 671.

The only issue Dr. Branch presented before the circuit court in this case was whether the county council’s concurrence was necessary for his removal under HG § 3-302(f) as the “governing body” of the county. He requested that the Secretary’s decision be reversed and that he be reinstated as Health Officer. “Mandamus clearly lies ‘to reinstate a person in an office from which he has been illegally removed[.]’” *Mayor of Ocean City v. Johnson*, 57 Md. App. 502, 517 (1984) (quoting *Forami v. Reynolds*, 248 Md. 246, 253 (1967)). Furthermore, Dr. Branch did not request that the court make any determinations concerning any fact finding or discretionary decisions. Thus, although raised as a judicial review of the Secretary’s decision, Dr. Branch’s action before the circuit court was in the nature of a mandamus action, which this Court may review on appeal.

DISCUSSION

Dr. Branch’s argument is based on the meaning of “governing body” as used in HG § 3-302(f)(1), which provides: “The health officer for a county may be removed from office with the concurrence of the governing body of that county and the Secretary.” According to Dr. Branch, because Baltimore County is a charter county with a county executive,

“governing body” should be construed to mean both the County Council and the County Executive. Because the County Council never concurred in the decision to remove him from office, Dr. Branch contends that the statutory mandate was not satisfied and therefore he was improperly removed.

The Department responds that, because the Health-General Article does not contain a definition of “governing body,” the County Charter governs the interpretation of “concurrence of the governing body.” The Department relies on several County Charter provisions, which we shall discuss *infra*, to support its argument that the County Executive’s concurrence with the Secretary is sufficient to remove a Health Officer.

Because the issues presented in this appeal relate only to statutory interpretation, we shall review the decision *de novo*. *Wheeling v. Selene Fin. LP*, 473 Md. 356, 373 (2021). The primary statute at issue in this case is HG § 3-302, which provides in pertinent part:

- (a) The health officer for a county shall be nominated by the county and appointed by the Secretary.
- (b)(1) The governing body of each county shall establish, by ordinance or resolution, the process by which the county nominates an individual for health officer.
- (2) If a vacancy occurs in the position of health officer for a county, the governing body shall establish a process, in consultation with the Department, for making a recommendation to the Secretary for the appointment of a health officer.
- (3) The process established under paragraph (2) of this subsection shall include the requirements for recruiting, interviewing, and recommending applicants for the position of health officer.
- (c)(1) If the Secretary finds that a nominee meets the qualifications of this section, the Secretary shall appoint the nominee as health officer.

(2) If the Secretary finds that the nominee does not meet the qualifications of this section, the Secretary shall reject the nomination, and the county shall provide the Secretary with another nomination.

...

(f)(1) *The health officer for a county may be removed from office with the concurrence of the governing body of that county and the Secretary.*

(2)(i) Any information concerning the removal of a health officer from office is confidential in accordance with Title 4 of the General Provisions Article.

(ii) Any meeting of the governing body of a county or any meeting that includes the Secretary related to the removal of a health officer from office shall be closed.

(3)(i) If the Secretary and the governing body concur on the removal of a health officer, the Secretary shall provide written notification to the health officer that includes:

1. The basis for the removal;
2. Documentation supporting the removal; and
3. Notice of the opportunity to request a hearing with the Secretary within 10 days after receipt of the written notification and information on how to request the hearing.

(Emphasis added).

Although no definition of “governing body” is provided in the Health-General Article,³ in *Montgomery County v. Anchor Inn Seafood Restaurant*, the Maryland Supreme

³ Dr. Branch argues that we should apply the definition of “governing body” provided in the Local Government Article. Md. Code (2013, 2025 Supp.), § 1-101(f) of the Local Government Article (“LG”) (“‘Governing body’ means: . . . (2) for a charter county: . . . (ii) that has an elected chief executive officer, the county council or the county council and the county executive, as provided by the county charter[.]”). While this definition is informative, it is not controlling. As the Department notes in its brief, by its

Court considered the meaning of the term “governing body” as used in a different part of the same statutory scheme. 374 Md. 327 (2003). HG § 3-201(b) states: “In a code county or charter county, the governing body is ex officio the board of health for the county, unless the governing body establishes a board of health.” Montgomery County, like Baltimore County, is a charter county with both a county council and a county executive. Unlike Baltimore County, however, Montgomery County had not, at the time of the *Anchor Inn* case, established a county board of health. Thus, under HG § 3-201(b), the “governing body” of Montgomery County served as the board of health. In January 1999, the Montgomery County Council purported to convene as the board of health and adopted a resolution banning smoking in bars and restaurants in the county. *Id.* at 329. The resolution mirrored a bill passed by the county council, but which had been vetoed by the county executive. *Id.* Various restaurants located in Montgomery County challenged the resolution, and the circuit court concluded, *inter alia*, that the county council did not have the authority to act as the board of health without the participation of the county executive. *Id.* at 330. The Supreme Court affirmed. *Id.* at 331. The Court stated that “the critical issue in this case is whether the ‘governing body’ of Montgomery County, for purposes of § 3-201 of the Health-General Article, is the County Council alone, or is the County Council and County Executive together.” *Id.* at 333. Answering that question, the Court reiterated that it “has consistently taken the position that, with respect to home rule counties

own terms that definition applies only to the Local Government Article. LG § 1-101(a) (“In this article the following words have the meanings indicated.”).

with both an executive and a council, the reference to ‘governing body’ of a county, without further definition, means the executive and council together.” *Id.* at 335. Because the challenged resolution was passed by the county council purporting to act alone as the board of health, it was invalid. *Id.* at 336.

Both HG § 3-201 and HG § 3-302 are part of the same statutory scheme concerning local boards of health. We have been provided no indication that the Legislature intended the phrase “governing body” to be construed differently in adjacent sections of the same statute. *See Fenton v. Secretary, Dept. of Pub. Safety & Correctional Servs.*, 263 Md. App. 613, 629 (2024) (“The Legislature is presumed to be aware of our prior holdings when it enacts new legislation and, where it does not express a clear intention to abrogate the holdings of those decisions, to have acquiesced in those holdings.” (quoting *Allen v. State*, 402 Md. 59, 72 (2007))).⁴ Like Montgomery County, Baltimore County is a charter county with a county council and county executive. Thus, applying the reasoning of the Supreme Court in *Anchor Inn*, “the concurrence of the governing body” in HG § 3-302(f)(1) means both the Baltimore County Council and the Baltimore County Executive must concur. Accordingly, although the County Executive agreed to remove Dr. Branch, his unilateral agreement cannot constitute “concurrence of the governing body.”

⁴ HG § 3-302 has been amended twice subsequent to publication of *Anchor Inn*. 2014 Md. Laws, Ch. 619; 2022 Md. Laws, Ch. 53. Indeed, the 2022 amendment altered the removal process for health officers while retaining the language requiring “the concurrence of the governing body of that county and the Secretary.”

The Department argues that the County Council “concurred by introducing and adopting changes to the Baltimore County Charter in 2018.” The 2018 amendments included adding the following language to Balt. Cnty. Charter § 404(b): “the county executive may remove the heads of any offices and departments appointed under Section 402 in the executive branch of county government for which provision is made in this Charter.” Section 402(d) of the Charter lists all of the “express responsibilities, duties, and powers” of the County Executive, which include the power “[t]o appoint or reappoint . . . the heads of all offices and departments of the county government[,]” and “[t]o perform such other duties as may be prescribed by this Charter[.]” Section 539 of the Charter relates to the county department of health and provides, in part:

- (b) The county executive shall appoint a county health officer, with the advice and consent of the secretary of health of the State of Maryland, and the same shall constitute the appointment required by state law. . . .
- (c) All references in this Charter to the head of an office or department shall be construed to include the county health officer as head of the department of health[.]

Preliminarily, we note that § 404(b) does not appear to apply to removal of the health officer, because Dr. Branch’s position as the county health officer is not “in the executive branch of county government,” as he is a State employee for this purpose. HG § 3-304(b). Indeed, the Department admits that Dr. Branch was a State employee, stating that “the Department has never contended that Dr. Branch was a county employee.”

Furthermore, the Department’s argument is similar to an argument rejected by the Supreme Court in *Barranca v. Prince George’s County*, 264 Md. 562 (1972). In that case,

the Prince George’s County Executive announced that he had removed two commissioners of the Washington Suburban Sanitary Commission (“WSSC”). *Id.* at 564-65. At the time, the Washington Suburban Sanitary District law defined the “county governing body” of Prince George’s County as “the board of county commissioners” and stated that WSSC commission members may be removed by the “county governing body” that appointed them. *Id.* at 566-67. However, Prince George’s County became a charter county shortly before the removal of the two WSSC commissioners. *Id.* at 564. The Court concluded that the county council and the county executive together constituted the “county governing body,” and must act together to remove a commissioner. *Id.* at 569, 571. The Court rejected the premise that the county executive may act alone to remove a commissioner, despite a provision in the county charter stating that “a member of any appointed board or commission may be removed by the County Executive.” *Id.* at 568-69. The Court looked to Article XI-A § 2 of the Maryland Constitution, which provides that the “express powers granted to the Counties . . . shall not be enlarged or extended by any charter formed” by the counties, and the Express Powers Act, Art. 25A, § 5(Q), which allows charter counties “[t]o provide for the appointment and removal of all county officers except those whose appointment or election is provided by the Constitution or public general law[.]”⁵ *Id.* at 568. The two WSSC commissioners were State officials whose “manner of appointment

⁵ The current iteration of the Express Powers Act contains nearly identical language: “A county may provide for the appointment and removal of all county officers except those whose appointment or election is provided for by the Maryland Constitution or public general law.” LG § 10-303(b).

and removal [were] governed by State law[,]” and “the Charter could not legally have provided for the removal of State officials, even though they are concerned with local affairs and interests.” *Id.* at 568. The Court therefore rejected the trial court’s reliance on a Charter provision that purported to grant the county executive exclusive authority to remove “unworthy public officers[.]” holding instead that a proper interpretation of the “relevant constitutional and statutory provisions requires a finding that the power of removal [of a WSSC commissioner] lies in the hands of both the County Executive and the County Council.” *Id.* at 569, 571.

These principles apply here. Because HG § 3-302 is a public general law, and health officers are State employees, the Baltimore County Charter may not alter the procedure for removal of a health officer by purporting to authorize the County Executive to act alone to remove an appointed health officer. Concluding otherwise would run afoul of established caselaw.

In summary, HG § 3-302(f) requires the governing body of a county to concur in the removal of a health officer. In Baltimore County, the governing body consists of both the County Council and the County Executive. Because the County Council did not concur in the removal of Dr. Branch as Baltimore County’s Health Officer, his removal did not comply with the statute and was therefore invalid. We shall therefore reverse the judgment of the circuit court and remand for further proceedings consistent with this opinion.⁶

⁶ We reiterate that Dr. Branch’s appeal is limited to consideration of whether the procedures in HG § 3-302(f) were followed. We express no opinion on the underlying basis for termination or Dr. Branch’s claim for back pay and benefits. We also note that

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED
AND REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEE.**

Dr. Branch’s claim for back pay and benefits was not raised in his “Questions Presented,” documents relevant to the claim were not included in the record extract, and his argument is improperly supported in his opening brief by discussion of two pre-July 2023 unreported opinions. *See* Rule 1-104(a)(2) (Unreported opinions issued prior to July 1, 2023, may not be cited for either precedential or persuasive value.). Although Dr. Branch cites reported cases on this issue in his reply brief, “[a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant’s initial brief.” *Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241 (2004). Even if the issue were properly before us, we would decline to consider it. *See Francis v. Francis*, 263 Md. App. 307, 321-22 (2024) (declining to consider argument not supported by adequate legal authority).