

Circuit Court for Charles County
Case No. 08-C-16-000437

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1643

September Term, 2016

PAUL GENEVIE

v.

COUNTY COMMISSIONERS FOR
CHARLES COUNTY, MARYLAND

Woodward, C.J.,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 7, 2018

*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.

In considering this appeal from the Circuit Court for Charles County, we shall attempt to untangle the several strings of a lawsuit that sought the issuance of a writ of mandamus to compel the County Commissioners for Charles County to take a certain action; was heard as a motion to dismiss (and converted to a motion for summary judgment); and finally was dismissed on the basis of the plaintiff’s lack of standing, even though standing was not raised by the parties in the trial court.

The parties are appellant, Paul Genevie, plaintiff below, a registered master plumber and a resident of Charles County, and the County Commissioners of Charles County, appellee. The essence of Genevie’s complaint is that Charles County employs a person as a plumbing inspector who is not a registered master plumber, which he asserts is in violation of Maryland Law.¹

The County responded with a motion to dismiss, averring that the person in question, while not a registered master plumber, is not a plumbing inspector and does not perform the duties of a plumbing inspector; rather, she is the County’s Cross Connection Control Specialist² in the County’s Cross Connection Control Program.³

¹ Maryland Code (2000, 2010 Repl. Vol., 2015 Supp.) § 12-503 of the Business Occupations and Professions Article (B.O.P.).

² The Charles County Code defines a “Cross-Connection Control Specialist” as “[a]n employee or agent of Charles County designated by the commissioners to administer and enforce the provisions of this section.” Charles County Code § 291-29(D).

³ The Charles County Cross Connection Control Program is described in § 291-29 of the County Code, the description consuming some 16 ½ pages. It is more concisely described on the County’s website under the Department of Public Works’s section for
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Following the circuit court’s grant of the County’s motion to dismiss the complaint with prejudice, Genevie noted this appeal. Finding no error, we shall affirm.

BACKGROUND

Genevie’s Complaint for Mandamus Relief and Damages against Charles County asserts that B.O.P. § 12-503 requires that “all individuals that Charles County employes [sic] as a plumbing inspector shall: in addition to other requirements, require that said plumbing inspector for the County hold a master plumber’s license.” He complains that Charles County employs a person who does not hold such a license – Kristy McAndrew – as the plumbing inspector. In his complaint, he asked the circuit court to issue a writ of mandamus to compel the County to “employ as plumbing inspector an appropriate person with the appropriate credentials”⁴

The County moved to dismiss or, in the alternative, for summary judgment, asserting that McAndrew is not employed as a plumbing inspector and, therefore, the

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“Cross Connection Control,” as a program “charged with maintaining the high quality of the County’s drinking water by preventing actual or potential contamination of the potable (drinking) water with non-potable (contaminated) water and other sources of contamination[,]” which requires the installation of backflow prevention devices. Charles County Maryland, http://www.charlescountymd.gov/pw/cross_connection/cross-connection-control (last visited Oct. 4, 2018).

⁴ The genesis of the dispute appears from the record to have been a disagreement, in 2015, between Genevie and a County Pretreatment Specialist who disapproved an installation ostensibly done by Genevie but, in fact, was done by his son, who is not a master plumber. In an exchange of correspondence with the County Department of Public Works, it is asserted that Genevie charged that the installation was disapproved only because the inspector “is a [sic] ass.” In the course of the dispute, Genevie’s privileges to install backflow devices were suspended for 30 business days.

County is not in violation of B.O.P. § 12-503. In support of its motion, the County attached two affidavits from the Director of Human Resources for Charles County and from the Assistant Director of Public Works – Utilities for Charles County. The County’s response did not assert that Genevie lacked standing to seek mandamus.

Genevie filed an opposition with an affidavit, including seven additional documents. The County’s reply included an affidavit from McAndrew. Genevie then countered with three additional affidavits as well as additional documents.

Following a hearing on the motion, the court held its ruling *sub curia* and later entered an order granting the County’s motion to dismiss or, in the alternative, for summary judgment. The court dismissed the action with prejudice, stating in relevant part:

Even viewing the record in the light most favorable to [Genevie], [he] has not alleged any basis for standing. Even, *arguendo*, if [Genevie] had standing to pursue this suit, there is no material fact in dispute, and [the County] is entitled to judgment as a matter of law....

DISCUSSION

Genevie’s only question for this Court’s review is whether the circuit court “commit[ted] reversible error” when it granted Charles County’s motion to dismiss his complaint. He states that “[t]he Trial Court dismissed the Complaint for an alleged lack of standing and a lack of disputed material facts.” However, before this Court he discusses only the sufficiency of his complaint and does not address the standing issue.

Standard of Review

When we review the dismissal of a complaint, we analyze whether the trial court’s decision was legally correct and do not afford any special deference to its legal conclusions. *Patton v. Wells Fargo Fin. Maryland, Inc.*, 437 Md. 83, 95 (2014). As such, “[t]he decision to grant a motion to dismiss is a legal question,” and it will therefore be reviewed *de novo*. *Grueff v. Vito*, 229 Md. App. 353, 376 (2016) (citing *Gasper v. Ruffin Hotel Corp. of Md., Inc.*, 183 Md. App. 211, 226 (2008)), *aff’d*, 453 Md. 88 (2017).

When ascertaining “whether the trial court was legally correct[,] we must determine whether the complaint, on its face, discloses a legally sufficient cause of action.” *Kratz ex rel. Kratz-Spera v. MedSource Cmty. Servs., Inc.*, 228 Md. App. 476, 481 (2016) (internal citations omitted). In so doing, “[w]e presume the truth of all well-pleaded facts in the complaint, together with any reasonable inferences drawn therefrom.” *Id.* (citation omitted). Our factual consideration is “limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.” *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010) (citation omitted). “Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven.” *Kratz*, 228 Md. App. at 481-82 (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)).

Because the issue of standing is dispositive of this appeal, we need not address whether summary judgment was appropriate as a matter of law.

Writs of Mandamus

The law recognizes two distinct forms of mandamus actions, statutory and common law. Statutory administrative mandamus is utilized “for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.” Md. Rule 7-401(a). At common law, however,

[a]n action for a writ of mandamus shall be commenced by the filing of a complaint, the form and contents of which shall comply with Rules 2-303 through 2-305. The plaintiff shall have the right to claim and prove damages, but a demand for general relief shall not be permitted.

Md. Rule 15-701(b).

Although Genevie fails to identify under which modality he filed his action for mandamus, it is clear from the record that it was filed pursuant to common law mandamus, considering the relief being sought, as well as the fact that he is not seeking judicial review of an administrative decision. Instead, Genevie’s complaint for mandamus relief seeks only to compel Charles County to replace McAndrew with a qualified and licensed master plumber/inspector.⁵

The Court of Appeals outlined the long-established purpose and scope of an action for a writ of mandamus in *Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547 (2014), restating established law that:

The fundamental purpose of a writ of mandamus is to compel inferior tribunals, public officials, or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear right. Because the grant of a writ of

⁵ Despite the caption of his complaint, he does not allege or seek damages.

mandamus is an extraordinary remedy, the power to issue an extraordinary writ of mandamus is one which ought to be exercised with great caution.

439 Md. at 569–70 (internal quotations and citations omitted).

In its analysis, the Court determined that to prevail, a party seeking mandamus must satisfy two conditions. *Balt. Cty. FOP*, 439 Md. at 571. The Court explained:

First, the party against whom enforcement is sought must have an imperative, “ministerial” duty to do as sought to be compelled, i.e., a duty prescribed by law[.] Therefore, mandamus should not issue ordinarily when the act sought to be compelled of the official or administrative agency is discretionary in nature. [Second], the party seeking enforcement of that duty must have a clear entitlement to have the duty performed. The writ should not be issued where the right to the performance of the duty is doubtful. Where the obligation to perform some particular duty is unclear or involves the exercise of any ‘vestige of discretion,’ or where the party seeking enforcement of the duty does not have a clear right to the performance of the duty it seeks to compel, the writ of mandamus will not be granted.

Id. at 571–72 (internal quotations and citations omitted).

Addressing the first requirement, Genevie contends that the County is in violation of B.O.P. § 12-503 for employing McAndrew “in a role in which she continues to engage in activities that constitute those responsibilities of a plumbing inspector” without the required license. Section 12-503 provides, in pertinent part, that any person employed by a county as a plumbing inspector “*shall*” meet the minimum standards that are established and administered by either the county or the State Board of Plumbing in order to ensure that person “is qualified to inspect in accordance with the State Plumbing Code[.]” B.O.P. § 12-503(a)(2). With respect to Genevie’s argument, the statute provides also that “a county or local government *may* employ an individual as a plumbing

inspector *only if* the individual holds a master plumber license issued by the Board[.]”
B.O.P. § 12-503(b)(1) (emphasis added).

The language of subsection (b)(1) provides discretion and a contingent directive with its use of “may employ” and “only if.” The statute does not require the County to employ a plumbing inspector; but, if it does, the inspector must be licensed as a master plumber. B.O.P. § 12-503(b)(1). Neither Genevie nor the County address this conditional language and whether or not such a condition overrides the discretion implied by the use of “may” for the purpose of satisfying the requirement of an “imperative ministerial duty.”

Notwithstanding the conditional language of subsection (b)(1), the statute affords an exception in subsection (b)(2):

Paragraph (1) of this subsection does not apply to a county or local government that uses combination building code inspectors to conduct concurrent trade-specific inspections on residential or commercial buildings to determine compliance with adopted plumbing codes and building codes if the combination building code inspector, as part of the inspector’s training, has passed ... a master plumber examination ... [or] the plumbing inspector’s test administered by the Board.

B.O.P. § 12-503(b)(2).

Genevie did not recognize this exception in his complaint, or offer facts demonstrating its applicability to McAndrew’s employment. *See* Md. Rule 2-305 (requiring that “[a] pleading that sets forth a claim for relief ... shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for

judgment for the relief sought”). As such, the complaint did not sufficiently plead facts to demonstrate that the County had an “imperative ministerial duty.”

Secondly, Genevie needed to satisfy that he had a “clear entitlement” to the right to compel the County to perform its duty – that is, standing. Unlike statutory actions for mandamus, where prerequisites for standing are provided, standing for common law mandamus is not expressly provided, but is determined by the whether the party seeking mandamus has a right to compel the respondent to act.

Standing

“As a threshold issue, a litigant must have standing to invoke the judicial process in a particular instance.” *Long Green Valley Ass’n v. Bellevalle Farms, Inc.*, 205 Md. App. 636, 652 (2012) (internal quotations and citations omitted), *aff’d*, 432 Md. 292 (2013). Because standing is a threshold question, we agree with the circuit court’s *sua sponte* recognition of the issue.

Genevie’s complaint offers no assertion of his standing to seek mandamus or his right to compel the County’s performance. Nonetheless, in granting the County’s motion to dismiss, the circuit court recognized that Genevie failed to allege “any basis for standing.” In his opening brief to this Court, Genevie acknowledges the court’s lack of standing finding, but offers no argument with respect to that basic issue.⁶

Thus, we first consider whether Genevie has waived his standing argument.

⁶ At oral argument, Genevie’s counsel was dismissive of this Court’s inquiry into the issue of standing, insisting that standing was not the basis of circuit court’s decision in granting the County’s motion, and thus, was not an issue before this Court.

Maryland Rule 8-504 requires that an “[appellate] brief shall comply with the requirements of Rule 8-112 and include ... [a]rgument in support of the party’s position on each issue.” Rule 8-504(a)(6). Consistent with this Rule, the Court of Appeals has consistently held that “[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.” *Barnes v. State*, 437 Md. 375, 387 (2014) (quoting *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004)). The failure to adhere to the requirements of Rule 8-504(a)(6) confers upon this Court discretion, and we “may dismiss the appeal or make any other appropriate order with respect to the case[.]” Rule 8-504(c). *Accord Barnes*, 437 Md. at 388 (holding that despite our authority to dismiss the appeal, an “appellate court may exercise its discretion to consider an argument not specifically raised in the appellant’s brief” (citing *Moosavi v. State*, 355 Md. 651, 661 (1999))). We may, therefore, on that basis alone, exercise our considerable discretion and dismiss this appeal.

Because Genevie acknowledges the circuit court’s finding in his brief, but fails to offer any argument or challenge, the matter is deemed waived unless we choose to exercise our discretion. *See Anne Arundel Cty. v. Harwood Civic Ass’n, Inc.*, 442 Md. 595, 614 (2015) (explaining that “arguments not presented in a brief or not presented with particularity will not be considered on appeal” (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999))).

Because the issue of standing was decided by the circuit court, albeit *sua sponte*, we opt to review the court’s finding. *See* Rule 8-131(a) (providing that appellate courts

“will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court”).

We recall our discussion of *Baltimore County v. Baltimore County Fraternal Order of Police*, *supra*, wherein the Court of Appeals observed that the “fundamental purpose of a writ of mandamus is to compel” the performance by public officials of an imperative function “imposed upon them” and the performance of which a petitioner has “a clear right.” 439 Md. at 569-70 (internal quotations and citations omitted). The Court noted as well that, as always, mandamus is “an extraordinary remedy” and the power to issue the writ is one which is “to be exercised with great caution.” *Id.* at 570 (internal quotations and citations omitted).

Further, the Court noted the two elements that must be satisfied as a prerequisite to the issuance of mandamus. First, the party against which the writ is sought must have “an imperative, ‘ministerial’ duty” to do what is sought. 439 Md. at 571. Second, the party seeking the writ “must have a clear entitlement to have the duty performed.” *Id.*

Genevie asserts that the County is compelled to appoint a registered master plumber to the position of plumbing inspector. However, he refers only to a single statute, B.O.P. § 12-503 – Plumbing Inspectors, which is found under Subtitle 5 for Miscellaneous Provisions of the Plumber’s Title. That statute recognizes that “the State,

a county, *or* a local government” can hire a plumbing inspector.⁷ B.O.P. § 12-503(a) (emphasis added). Further, it provides that a county or local government can establish and administer minimum standards for the inspector to follow.⁸ B.O.P. § 12-503(a)(2). In fact, Charles County does not, within its governmental enforcement structure, have a designated position of “plumbing inspector,” despite Genevie’s allegation that it allows performance of similar duties by a *de facto* unqualified person. Moreover, Maryland law does not specifically compel the employment of a “plumbing inspector” by a local subdivision. Hence, a court cannot compel local officials to create a position that is not

⁷ In fact, B.O.P. § 12-502, also under the Miscellaneous Provisions subtitle, discusses inspection of State buildings, demonstrating the discretionary nature of the authority to employ plumbing inspectors, by providing in relevant part, that:

(b) To ensure that plumbing services provided in a State building meet or exceed the standards of the State Plumbing Code, the plumbing work shall be inspected:

(1) to the extent money is provided in the State budget, by a State plumbing inspector; or

(2) if not inspected by a State plumbing inspector, by an inspector of the county or local government where the plumbing services are provided.

⁸ County enforcement of the State Plumbing Code is governed by B.O.P. § 12-206, which provides, in relevant part, that “[a] county shall ... enforce the State Plumbing Code; or ... adopt and enforce a local plumbing code that meets or exceeds the minimum standards of the State Plumbing Code for the proper design, acceptable installation, and adequate maintenance of plumbing systems.” B.O.P. § 12-206(a). The statute also allows the State Board of Plumbing to make cooperative agreements with counties concerning enforcement of State and local plumbing codes. B.O.P. § 12-206(c)-(d).

mandated by law, or to appoint to a position which does not exist, and the creation of which would be discretionary.

For that reason, and for the further reason that appellant has not, either in the trial court, or in this court, adequately articulated his entitlement to have such a duty performed, we agree with the trial court that he has not established standing. We find no abuse of discretion in the dismissal of his complaint by the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED; COSTS ASSESSED TO
APPELLANT.**