

Circuit Court for Prince George's County
Case No. CAL 15-30605

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 01666

September Term, 2017

PRINCE GEORGE'S CORRECTIONAL
OFFICERS' ASSOCIATION, *et. al.*,

v.

PRINCE GEORGE'S COUNTY,
MARYLAND

Fader, C.J.,
Nazarian,
Reed,

JJ.

Opinion by Reed, J.

Filed: March 15, 2021

*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.

Adam Chaney, a correctional officer and member of the Prince George's Correctional Officers' Association (hereinafter "the PGCOA") was found guilty on three of five charges all stemming from his inappropriate contact with a former female inmate. On November 12, 2014, the Prince George's County Department of Corrections (hereinafter "the County") terminated Chaney's employment. Subsequently, the Maryland Department of Public Safety and Correctional Services (hereinafter "the Department") revoked Chaney's certification as a Correction Officer. On September 4, 2015, the PGCOA appealed Chaney's conviction through arbitration. The arbitrator ordered that Chaney's employment be reinstated with back pay and benefits.

The PGCOA filed a Petition to Confirm the Arbitration Award in the Circuit Court for Prince George's County. On February 12, 2016, the PGCOA filed a Motion to Amend the Petition to Confirm the Arbitration Award to Join the Department As An Additional Party. On March 26, 2016, the circuit court denied the PGCOA's Motion to Amend the Petition to Confirm the Arbitration Award to Join the Department As An Additional Party. The circuit court issued an Order confirming the arbitration award on January 10, 2017. Subsequently, on February 27, 2017, the PGCOA filed a Petition-Motion for Civil Contempt/Enforcement of Arbitration Award, asking the court to hold the County and the Department in contempt for failing to reinstate Chaney. The circuit court denied the PGCOA's Petition-Motion for Civil Contempt/Enforcement of Arbitration Award on September 22, 2017. It is from these denials that the PGCOA files this appeal. In doing so, the PGCOA brings the following questions for our review, which we have rephrased for

clarity:¹

- I. Did the Circuit Court err in denying the Motion to Amend the Petition to Confirm the Arbitration Award to Join the Department As An Additional Party?
- II. Did the Circuit Court err in denying the Petition-Motion for Civil Contempt/Enforcement of Arbitration Award?

For the following reasons, we affirm in part (as to the denial of the motion to add the Department as a party), reverse in part (as to the court's denial of the petition to enforce the award), and remand this case in accordance with this Opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Cpl. Adam Chaney was accused by the County of having improper contact with a former female inmate at the correctional facility.² In the fall of 2014, Chaney was charged with the following counts:

1. Count I- Conduct Unbecoming- Prince George's County Department of Corrections Policy and Procedure 3.2., I.

¹ The PGCOA presents the following questions:

1. Whether the Circuit Court erred in denying the motion to amend the petition to confirm the Arbitration Award to include Public Safety as an indispensable party.
2. Whether the Circuit Court erred in denying the petition for civil contempt and to enforce the Arbitration Award.

² A male inmate alleged that Chaney entered his cell and stole a piece of paper with a former female inmate's phone number for the purpose of initiating a personal relationship. Although it was disputed whether the male inmate gave Chaney the phone number voluntarily or not, there was evidence that Chaney did send several text messages to the former female inmate that included photographs of himself shirtless. Chaney asserted he did not realize it was against policy to contact a former inmate.

2. Count II- Conduct Unbecoming (Unreported Misconduct) - Prince George's County Department of Corrections Policy and Procedure 3.2., I.
3. Count III- Failure to Notify a Supervisor (Unreported Misconduct) - Prince George's County Department of Corrections Policy and Procedure 3.2.B, 2.
4. Count IV- Fraternalization (Unreported Misconduct) – Prince George's County Department of Corrections Policy and Procedure 3.2, IV, C, 3.
5. Count V- Violation of Restricted Items and Materials – Prince George's County Department of Corrections Policy and Procedure, 3.20, IV, G, 5.

Chaney pled guilty to Count IV and the Administrative Hearing Board (the “Board”) found him guilty on Counts I through III and not guilty of Count V.³ After considering Chaney's guilty plea to the most serious charge, carrying the highest penalty, and concluding he had been deceptive about his culpability, the Board recommended that Chaney's employment be terminated.

The Board's recommendations were followed by the Maryland Department of Public Safety and Correctional Services (“the Department”), who then terminated Chaney's employment and revoked Chaney's correctional officer's certification. The PGCOA, on behalf of Chaney, submitted the termination action to arbitration and on September 4, 2015, the Arbitrator reversed the termination action. Upon finding that Chaney's right to due process was denied and the Board violated sections of the parties' collective bargaining agreement (hereinafter “CBA”) in the process of conducting the

³ The Board recommended the following sanctions: Count I- ten day suspension without pay; Count II- ten day suspension without pay; Count III – ten day suspension without pay; Count IV – termination; and Count V – not guilty, therefore no penalty imposed.

hearing, the Arbitrator concluded that termination was unreasonable.⁴

The Arbitrator ordered that Chaney's employment be reinstated and that Chaney receive back pay to be calculated from the date of his termination. The Arbitrator did not address the issue of Chaney's recertification in its decision, nor did the Arbitrator address the fact that Chaney's certification had been revoked as a result of his termination.⁵ On October 20, 2015, the PGCOA filed a Petition to Confirm Contractual Arbitration Award in the Circuit Court for Prince George's County. The County filed an Answer to the Petition to Confirm Contractual Arbitration Award, stating that it would comply with the Arbitrator's award subject to the Department's decision to approve Chaney's correctional officer's certificate.

Subsequently, the County informed Chaney that it submitted an application to the

⁴ In her Opinion and Award, the Arbitrator explained her grounds for reversal of Chaney's termination:

The Arbitrator finds the denial of due process and the Board's refusal to provide the data regarding comparative violators requires a finding that the penalty of termination is unreasonable, too far out of line with those imposed on correction officers who were found of far more egregious conduct. The Board selection process, the Board Chair's refusal to recuse himself on denial of the Grievant's request for comparative data taints the Board's recommendation and caused a "prejudicial void" in the record. The critical void was the requested information that was not made part of the record regarding similarly situated violators. There is no evidence that the Board or the Director considered the comparatives; i.e. similarly situated corrections officers' penalties. This data was duly requested and denied in violation of the parties' CBA Article 16, as discussed above.

⁵ The Collective Bargaining Agreement ("CBA") between the PGCOA, on behalf of correctional officers, and the County specifies in Article 15-Step 3 that "[t]he Arbitrator shall have the authority to make decisions only on issues presented to him." Of the seven issues presented to the Arbitrator, none referenced Chaney's certification. They all related to allegations that the Hearing Board violated articles of the CBA and Chaney's rights to due process.

Department to have Chaney recertified so that his employment could be reinstated. Upon completion of a separate recertification investigation, mandated by law,⁶ the investigator concluded that Chaney presented a pattern of dishonesty evidenced by several findings that included, *inter alia*, failure to disclose unrelated disciplinary actions and being deceptive to his supervisor about the events that resulted in his termination. On January 13, 2016, the Department held a separate hearing and, after considering the evidence, testimony, and investigative report, denied the County's application on behalf of Chaney's recertification. On February 12, 2016, the PGCOA filed a Motion to Amend the Petition to Confirm the Arbitration Award to Join the Department As An Additional Party. On March 26, 2016, the circuit court issued an Order denying the Motion to Amend without explanation. On January 10, 2017, the circuit court issued an Order confirming the arbitration award, mandating the County pay Chaney back pay, the costs of the proceeding, and closed the case statistically. Subsequently, after Chaney still had not been reinstated or awarded back

⁶ In a letter dated September 23, 2015 from the Director of the Prince George's County Department of Corrections, the County informed Chaney that his reinstatement was pending recertification by the Maryland Police and Correctional Training Commission:

In an effort to comply with the arbitrator's award while the decision is being reviewed, the department is required by State and County law to complete certain processes before a reinstatement can occur. By State law, to perform the duties of a sworn correctional officer, the Maryland Police and Correctional Training Commission (MPCTC) must provide a certification on you...Please note, MPCTC is an independent State agency and the department has no control on its determination of your eligibility to be certified as a sworn officer. These processes will take some time. Therefore, your reinstatement is pending until these processes have been completed.

pay, on February 27, 2017, the PGCOA filed a Petition-Motion for Civil Contempt/Enforcement of Arbitration Award asking the circuit court to hold the County and the Department in contempt. On September 22, 2017, the circuit court denied the PGCOA’s Petition-Motion for Civil Contempt/Enforcement of Arbitration Award on the grounds that it lacked the authority to mandate the Department, which was not a party to the arbitration, CBA, or case, to recertify Chaney so that he could be reinstated. It is from this denial that the PGCOA files this appeal.

STANDARD OF REVIEW

There is an abuse of discretion “where no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to any guiding rules or principles.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997). “An abuse of discretion may also be found where the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court,’ or when the ruling is ‘violative of fact and logic.’” *Id.* (Citations omitted).

Because a trial court does not have discretion to misapply the law, we review the circuit court’s ruling of law nondeferentially, even when the rulings are made in the course of deciding a discretionary matter. *Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 675-76 (2008) (“trial judges do not have discretion to apply inappropriate legal standards, even when making decision that are regarded as discretionary in nature”); *Ehrlich v. Perez*, 394 Md. 691, 708 (2006) (“[E]ven with respect to discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards. We review de novo a trial judge’s decision involving a purely legal question”). (Citations and internal quotation

marks omitted).

DISCUSSION

I. Overview of the Authority to Terminate and Reinstate Maryland Correctional Officers

There are many intricacies and a lack of clarity with regards to what authority local county Departments of Corrections have compared to the state’s Department of Public Safety and Correctional Services when terminating and reinstating correctional officers. To effectively address the arguments before us, we review the disciplinary and appeal structure illustrated by a case decided by this Court not very long ago.

In *Miller v. Dept. of Public Safety & Correctional Services*, 228 Md. App. 439 (2016), Shania Miller (“Miller”) a correctional officer at the Maryland Reception, Diagnostic & Classification Center (“MRDCC”) held a certification from the Correctional Training Commission (“the Commission”). *Miller*, 228 Md. App. at 442. In 2010, the warden at the MRDCC terminated Miller’s employment. *Id.* The warden discovered that Miller was involved in a sexual relationship with an inmate (“First Termination”). *Id.* Miller appealed her termination to the Office of Administrative Hearings (“OAH”) (“First Appeal”). *Id.* Subsequently, an Administrative Law Judge (“ALJ”) ordered that Miller’s termination be rescinded. The ALJ ordered that Miller be reinstated with full back pay and benefits. *Id.* However, the ALJ did not reinstate Miller’s certification without further examination (“First ALJ Order”). *Id.*

Miller was reinstated to her position and completed non-inmate related tasks pending recertification. *Id.* at 443. During Miller’s recertification process, the Commission

learned that Miller failed to disclose a prior job on her application. *Id.* As a result, the Commission refused to recertify Miller and she was again terminated (“Second Termination”). Miller appealed her second termination (“Second Appeal”). *Id.* The ALJ found that Miller’s Second Termination “was pretextual and that the Department failed to follow the recertification process.” *Id.* The ALJ ordered that Miller’s “Second Termination be rescinded and that she be reinstated ‘with no further examination or condition’ (“Second ALJ Order”) as is specifically permitted pursuant to CS § 8–209.2(a).” *Id.* Miller was reinstated to her position and was issued a new certification. *Id.*

After Miller’s second reinstatement, the Commission had a hearing to determine if Miller’s certification should be revoked based on her alleged sexual relationship with an inmate. *Id.* The Commission concluded that Miller was involved in a sexual relationship with the inmate. *Id.* The Commission ordered that Miller’s certification be revoked and, as a result, Miller was terminated for a third time. *Id.* Miller appealed the revocation of her certification. *Id.* at 443-44. The ALJ held that the Commission “did not violate the Second ALJ Order by revoking Miller’s certification after she had been reinstated.” *Id.* The ALJ noted that “[n]othing in section 8–209.[2](b) of the Correctional Services Article prevents [the Commission] from revoking [Miller’s] certification after it was reinstated according to the ALJ’s order.” *Id.*

Subsequently, Miller filed a petition for judicial review in the Circuit Court for Baltimore City. *Id.* The circuit court upheld the ALJ’s decision and Miller appealed to this Court. The question before this Court was whether the Commission could revoke a correction officer’s certification “after that officer has been recertified pursuant to an

administrative order.” *Id.* at 446. Before we answered the question presented before this Court we addressed the structure of the Department of Public Safety and Correctional Services. *Id.* at 444-46. We stated the following:

There are two paths through which a correctional officer may lose his or her position. To understand Miller’s various firings, certifications, reinstatements, and recertifications, it is necessary to understand the structure of the Department of Public Safety and Correctional Services (“the Department”) and those two paths. At the top of the organizational chart for the Department is the Secretary of Public Safety and Correctional Services. CS § 2–102(a)(2). There are several units below the Secretary, each with its own distinct duties. CS § 2–201. Relevant to this appeal are the two units that participate in the certification, supervision, and termination of correctional officers. Those units are (1) the Correctional Training Commission (referred to above as “the Commission”), CS §§ 2–201(7), 8–203; and (2) the Operations unit.

While the Commission comprises the entirety of its unit, the Operations unit further divides. At the top of the Operations unit is the Commissioner of Correction. CS § 3–202. Below the Commissioner of Correction is the Warden of each facility. CS § 3–211. One of the facilities included in the Operations unit is MRDCC. The powers of a Warden are limited to the specific facility that the Warden supervises. CS § 3–211 (stating that each Warden “is in direct charge of the correctional facility to which the warden ... is appointed” and that the warden shall “supervise the government, discipline, and policy of the correctional facility.”). If a correctional officer is accused of misconduct, the Warden, as the appointing authority for that facility, is tasked with investigating the alleged misconduct, meeting with the employee, and determining the appropriate disciplinary action. SP § 11–106(a). The Warden may take a number of disciplinary actions including a written reprimand, suspension without pay, up to termination of employment. SP § 11–104. A correctional officer's certification, which is issued by the Commission, is no longer valid upon termination by a Warden. COMAR 12.10.01.06B(2)(a). A correctional officer may appeal his or her termination to the Secretary, who then may refer the appeal to the OAH. SP §§ 11–109; 11–110. On appeal, an ALJ may uphold, rescind, or modify the termination. SP § 11–110(d) (1). The ALJ may also order recertification with or without examination. CS § 8–209.2(b).

When a correctional officer is hired, he or she must “meet[] minimum qualifications established by the Commission” and apply for certification.

CS §§ 8–209; 8–209.1. Correctional officer candidates must obtain certification from the Commission within one year of appointment. CS § 8–209 (allowing probationary appointment of correctional officers for no more than one year “for the purpose of enabling the individual seeking permanent appointment to take a training course prescribed by the Commission.”). The Commission also has the power to revoke a certification. CS § 8–209.2. If an ALJ rescinds or modifies a disciplinary action, at the ALJ’s discretion, the ALJ may order the Commission to reinstate the correctional officer’s certification with no further examination or condition. CS § 8–209.2(b).

Thus, there are two paths, or chains of command, through which a correctional officer may be terminated. The correctional officer may be directly terminated through a disciplinary action by the Warden of the institution at which he or she is employed. SP §§ 11–104; 11–106. Or, the Commission may revoke the correctional officer’s certification, CS § 8–209.2(a), the result of which is that the officer may no longer perform his or her job functions and must be terminated. COMAR 12.10.01.06D(2) (stating that “An agency head may not permit a mandated employee to perform the duties of a mandated position if the mandated employee’s certification has lapsed.”).

Miller, 228 Md. App. at 444-446.

As it relates to the Commission’s revocation of Miller’s license, we held the following:

The Commission may revoke an officer’s certification “in conjunction with” the Warden taking disciplinary action, as permitted by CS § 8–209.2(a), but the Commission may also act independently to revoke a certification and to fulfill its mandate to assure that all correctional officers are fit and prepared for their duties. CS § 8–208. Moreover, Miller’s argument ignores the implications of the structure of the Department. As discussed above, the Commission belongs to a separate unit from the Wardens of the facilities. The Commission’s process for certification and revocation of certification, although complimentary to the hiring and termination decisions made by the Wardens, is *a separate process involving separate procedures*. Thus, although the Correctional Services Article allows the Commission to revoke a correctional officer’s certification in conjunction with disciplinary action by the warden, this path is not exclusive and we hold that *the Commission may also may revoke a correctional officer’s certification on its own initiative*.

Miller, 228 Md. App. at 449.

Miller clarifies that, although an ALJ or Arbitrator can award reinstatement of a correctional officer's position, reinstatement is subject to the decision of an independent agency's separate process. Under CS 8-209.2, an ALJ or Arbitrator may order reinstatement with *or* without further examination or condition but when the award or order fails to use these magic words, it blurs whether the decisionmaker intended reinstatement to encompass recertification independent of further examination or not.

II. Motion to Join the Department As An Additional Party

a. Parties' Contentions

The PGCOA contends that the County refused to comply with the arbitration award because of the Department's denial of Chaney's recertification application. The PGCOA argues that its Motion to Amend the Petition to Confirm the Arbitration Award to Join the Department As An Additional Party should have been granted because the Department's recertification of Chaney is necessary to reinstate him and fully comply with the Arbitration Award, making the Department an indispensable party to the circuit court's Order confirming the Arbitration Award. Specifically, the PGCOA asserts that the Department has a "regular practice of recertifying correctional officers whose terminations, pursuant to administrative procedure or action are determined to be unjustified or erroneous '*without further examination or condition.*'" Md. Code, Correctional Services Art. § 8-209.2 (emphasis added). The PGCOA further argues that the circuit court's order did not refer to any guiding principles in denying both the PGCOA's motions.

The County responds that this Court should, pursuant to Md. Rule 8-603(c), dismiss

this action in its entirety. Specifically, the County asserts that the PGCOA’s appeal of the circuit court’s denial of its Motion to Amend the Petition to Confirm the Arbitration Award to Join an Additional Party is untimely. The County argues that the PGCOA failed to file a notice of appeal within the 30-day statutory period. The County maintains that this Court and the Maryland Court of Appeals has held that a denial of “a motion to join a necessary party... is an appealable final order.” The County asserts that the PGCOA’s motion was denied on March 29, 2016, and the PGCOA did not file an appeal until October 11, 2017, “some 561 days after the circuit court’s denial” of the PGCOA’s motion.

Alternatively, the County contends this Court should affirm the circuit court’s denial of the PGCOA’s Motion to Amend the Petition to Confirm the Arbitration Award to Join an Additional Party because the Department was not a proper party to the case. Specifically, the County argues that after the Department denied Chaney’s recertification application, the PGCOA failed to follow the proper procedure for appealing the Department’s decision. To support its argument, the County relies on the Code of Maryland Regulations (“COMAR”) 12.10.03.12, which states that “a person aggrieved by the [Department’s] decision is allowed to seek judicial review provided under Section 10-222 of the State Government (“SG”) Article.” The County contends that instead of filing a petition for judicial review to challenge the Department’s decision, the PGCOA “sought to add [the Department] to a case involving an arbitration proceeding and collective bargaining agreement – neither of which they were a party to.” Additionally, the County argues that “failing to follow proper procedure does not create a situation under Md. Rule 2-211 whereby a party is then required to be joined in an action.”

The County argues that although the arbitrator reinstated Chaney’s employment, which was affirmed by Order of the circuit court, Chaney was still required to have a certification to be able to work as a correction officer. Specifically, the County argues that it cannot reinstate Chaney’s employment and the County cannot make the Department approve Chaney’s recertification application because the Department is an independent state governing commission.”

b. Analysis

Appealability Of A Purported Necessary Party

The PGCOA contends that its Motion to Amend the Petition to Confirm the Arbitration Award to Join an Additional Party should be granted. However, the County asserts that the PGCOA’s appeal of the circuit court’s denial of its Motion to Amend the Petition to Confirm the Arbitration Award to Join an Additional Party is untimely. The County argues that the PGCOA failed to file a notice of appeal within the 30-day statutory period.

As a preliminary matter, we shall first address whether this issue must be dismissed pursuant to Md. Rule 8-602. Md. Rule 8-602(b)(2) states “[t]his Court shall dismiss an appeal if the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202. Md. Rule 8-202(a) provides “[e]xcept as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.”

Here, the PGCOA filed its Motion to Amend the Petition to Confirm the Arbitration Award to Join An Additional Party on February 12, 2016. On March 29, 2016, the circuit

court denied the PGCOA’s motion. Thus the question before this Court is whether the denial was a final judgment pursuant to Md. Code Ann., Courts & Judicial Proceedings Article (“CJP”) §12-101 (Generally, a party may appeal only from a “final judgment entered in a civil or criminal case by a circuit court”). A party is authorized to appeal a final judgment. *See Deer Automotive Group, LLC v. Brown*, 454 Md. 52, 63 (2017); *see also Brewster v. Woodhaven Bldg. and Development Inc.*, 360 Md. 602, 610 (2000) (stating “it is well settled that an order need not necessarily dispose of the merits of a case to be a final judgment.”).

The Court of Appeals has noted that for a judgment to be final and appealable it must possess three attributes: “(1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601.” *Hiob v. Progressive American Ins. Co.* 440 Md. 466, 489 (2014). *See also Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). However, when an Order of the court fails to adjudicate an entire claim or all the claims presented rendering it subject to revision any time before final judgment, it is an interlocutory order. Md. Rule 2-602 distinguishes final judgements from interlocutory orders:

- (a) **Generally.** Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:

- (1) is not a final judgment;
- (2) does not terminate the action as to any of the claims or any of the parties;
and
- (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

Md. Rule 2-602(a).

There are merely three exceptions to the final judgment rule: appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Md. Rule 2-602(b); and appeals from interlocutory rulings permitted under the common law collateral doctrine. *Johnson v. Johnson*, 423 Md. 602, 607 (2011) (quoting *Salvagno v. Frew*, 388 Md. 605, 615 (2005)) (quotations omitted).

Denial of the PGCOA's Motion to Amend the Petition to Confirm the Arbitration Award to Join An Additional Party did not provide a final disposition on the matter in controversy. By filing the Petition to Confirm the Arbitration Award, the PGCOA clearly sought just that; confirmation of the award. As the Petition was pending final judgment from the circuit court, the PGCOA filed its Motion to Amend, seeking to add the Department for the sole purpose of enforcing the arbitration award. Whether the circuit court granted the motion or not, an order on the Petition still needed to be provided, rendering any order on the Motion an interlocutory order.

Under the general rule, an interlocutory order is not a final judgment and thus not appealable, unless it falls into one of the exceptions to the final judgment rule. CJP 12-303 identifies a limited amount of interlocutory orders that are appealable. The circuit court's denial of the PGCOA's Motion to Amend the Petition does not fall within one of the provisions of CJP 12-303. The circuit court also did not make a determination pursuant to

Md. Rule 2-602(b), rendering that exception inapplicable as well. The common law collateral order doctrine, an extremely limited exception to the final judgment rule, may only be invoked under exceptional circumstances when a four element conjunctive test is met: (1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, and (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment. *Ehrlich v. Grove*, 396 Md. 550, 563 (2007) (quoting *Pittsburgh Corning v. James*, 3535 Md. 657, 660-61 (1999)). See *Washington Suburban Sanitary Comm’n v. Bowen*, 410 Md. 287, 296 (2009) (“Time after time, this Court’s opinions have emphasized that the collateral order doctrine is extremely narrow and that it is applicable only under extraordinary circumstances.”). Denial of the PGCOA’s Motion to Amend to Join An Additional Party fails to satisfy every element of this exception as well.

When the circuit court issued its Order confirming the arbitration award and closed the case statistically on January 10, 2017, it entered a final and appealable judgment on the PGCOA’s Petition to Confirm the Arbitration Award. However, that did not address enforcement of the arbitration award, which led the PGCOA to file its Petition-Motion for Civil Contempt/Enforcement of Arbitration Award. It was not until the circuit court denied the Petition-Motion for Civil Contempt/Enforcement of Arbitration Award, in September 2017, that a final judgment had been rendered on the issue of enforcement, which was initially raised through the Motion to Amend to Join An Additional Party. At the conclusion of a case, a party’s appeal of a final judgment allows for review of *all* interlocutory orders previously entered during the case that were not decided on the merits. Md. Rule 8-131(d).

Because the interlocutory order failed to address the merits of the enforcement issue *and* a final judgment on that issue was not rendered until September 22, 2017, we hold the PGCOA’s appeal filed on October 11, 2017 was timely and proper for appellate review.

The County’s Inaccurate Reliance on COMAR 12.10.03.12

For clarification, it is essential to note the County’s contention that Chaney failed to follow proper procedure following the denial of his recertification is not supported by the code the County cites to. Specifically, the County relies on COMAR 12.10.03.12 to assert Chaney could have appealed denial of his recertification through judicial review:

**COMAR 12.10.03.12
.12. Judicial Appeal.**

A party aggrieved by the Commission's final decision, or by an interlocutory order, is entitled to judicial review as provided in State Government Article, §10-222, Annotated Code of Maryland, or any other applicable provision of law.

Namely, the County’s argument is incorrect because under the scope provision of that COMAR chapter, recertification decisions by the commission are expressly excluded:

**COMAR 12.10.03.01
.01. Scope.**

A. These regulations apply to administrative hearings before the Correctional Training Commission (Commission), where issues concerning the legal rights, duties, statutory entitlements, or privileges of specific parties are decided as required by law or constitutional right.

B. These regulations do not apply to:

- (1) An employee grievance hearing;
- (2) An informal investigation;
- (3) A Commission action on an application for certification or recertification to a mandated position;**
- (4) A decision made by the Executive or Deputy Director pursuant to authority delegated by the Commission;
- (5) A decision to conduct or not to conduct a hearing; or
- (6) A proceeding where a hearing is not required by law.

(emphasis added). Thus, confirmation of the arbitrator's award was Chaney's only recourse.

Denial of the Motion to Amend was Not An Abuse of Discretion or Error

Maryland Rule 2-211(a) states the requirement to join a necessary party. The rule prescribes as follows:

(a) Persons to Be Joined. Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence

- (1) complete relief cannot be accorded among those already parties, or
- (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

As previously stated, the PGCOA filed its Motion to Amend the Petition to Confirm the Arbitration Award for the purpose of joining the Department to compel enforcement of the award. However, adding the Department as a party was unnecessary to confirm the arbitration award. When the County failed to challenge confirmation of the award, the circuit court was left with no choice but to confirm it. Once the award was confirmed by the circuit court, then it became enforceable by the circuit court. Because the award did not impose any obligations on the Department, which was not a party to the arbitration, the Department was not a proper party to the confirmation proceeding. Accordingly, we hold the circuit court committed no error when it denied the PGCOA's Motion to add the Department as a necessary party.

III. Motion for Civil/Enforcement of the Arbitration Award

a. Parties' Contentions

The PGCOA maintains that the circuit court erred when it denied its contempt petition and failed to hold a hearing on the petition for contempt. Specifically, the PGCOA contends that the County failed to comply with the Arbitrator's confirmation of the arbitration award, which has an effect of reducing the award to a judgment by the court. To support its argument the PGCOA relies on *Dep't of Pub. Safety & Corr. Servs. v. Donahue*,⁷ stating that “an employee who desires to be reinstated upon Order of reinstatement may ‘institute statutory or common law proceedings against the employer to coerce compliance.’” The PGCOA argues that the circuit court erred when it suggested that the circuit court lacked the authority to enforce the arbitration award by ordering both the County and the Department to reinstate Chaney's employment. The PGCOA also argues that the circuit court erred when it failed to order the County to pay attorney fees and costs. The PGCOA request that this Court remand this case to “the circuit court for contempt proceedings and the necessary proceedings to reduce the relevant portions of the award to money judgment.”

The County responds that the PGCOA's appeal of the circuit court's denial of the Motion for Civil Contempt of the Arbitration Award is not allowed by law. Specifically, the County relies on CJP 12-304(b), stating that this section limits the right to appeal a contempt order to persons “adjudged” in contempt. The County contends that an appeal of

⁷ 400 Md. 510 (2007).

a contempt order is only allowed to a party that was held in contempt, “not those who filed the contempt petition and were unsuccessful.”

Lastly, the County argues that this Court should affirm the circuit court’s denial of PGCOA’s Motion for Civil Contempt. Specifically, the County argues that it was unable to comply with arbitrator’s instructions to reinstate Chaney’s employment. The County maintains that it could not reinstate Chaney’s employment because Chaney’s recertification application was denied and Chaney is required to be certified as a correctional officer. The County further maintains that as a part of the recertification investigation, “the investigator concluded that [Chaney showed] a pattern of dishonesty” and based on this information Chaney’s application for certification was denied. The County asserts that “even if the arbitrator in this case was aware of the recertification process and ordered the [Department] to recertify Chaney ‘with no further examination or condition’ the [Department], on its own accord, could have still... denied Chaney’s certification.” The County further argues that the arbitrator’s order directing that Chaney’s employment be reinstated “was not self-executing” and the circuit court was not “in a position to direct the [Department]- neither a party to the arbitration, the collective bargaining agreement, or the case- to do anything.” As such, the County and this Court is not in the position to direct the Department to recertify Chaney because the Department is not a party to this case.

b. Analysis

Appealability of Denial of Motion for Civil Contempt/Enforcement of Arbitration Award

To address Appellant’s contention that the circuit court erred when it denied the Motion for Civil Contempt, “we begin our inquiry with [the] appeals statutes for, if there is a right to appeal in this case, it must be grounded there.” *Pack Shack, Inc., v. Howard County*, 371 Md. 243, 246 (2002). CJP 12-304 governs appeals from contempt proceedings and states in pertinent part:

- (a) Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action.

CJP 12-304(a). This language establishes two significant prerequisites to appeal a contempt case. “Firstly, there must be an ‘order or judgment passed to preserve the power or vindicate the dignity of the court’ and secondly, the appeal must be prosecuted by the person adjudged to be in contempt.” *Becker v. Becker*, 29 Md. App. 339, 344-45 (1975). Neither prerequisite is met here.

No contempt proceedings were held to enforce an order or judgment that vindicates the dignity of the court and this appeal was not brought by the party adjudged to be in contempt. In Maryland, “a party that files a petition for constructive civil contempt does not have a right to appeal the trial court’s denial of that petition.” *Pack Shack Inc.*, 371 Md. at 246. “[O]nly those adjudged in contempt have the right to appellate review. The right of appeal in contempt cases is not available to the party who unsuccessfully sought to have another’s conduct adjudged to be contemptuous.” *Becker*, 29 Md. App. at 345. We recognize there is one narrow exception acknowledged by the Court of Appeals where “refusing to impose the order for civil contempt is so much a part of or closely intertwined

with a judgment or decree which is appealable as to be reviewable on appeal as part of or in connection with the main judgment.” *Id.* (quoting *Tyler v. Baltimore Cty.*, 256 Md. 64, 71 (1969)). However, the Court has since cautioned “that exception likely would not apply when the appeal is filed by a person who was not held in contempt, however closely related and intertwined it is with other orders or judgments also pending appeal.” *Pack Shack, Inc.*, 371 Md. at 260.

The PGCOA concedes that neither prerequisite to successfully appeal a contempt case is present. In fact, the PGCOA dismisses the County’s assertion that it cannot appeal the denial of the Petition for Civil Contempt because that is not the subject of the appeal at all. The PGCOA clarifies that it is appealing the circuit court’s refusal to exercise its discretion to even consider its Petition or hold contempt proceedings. “Under Maryland law, a trial judge who encounters a matter that falls within the realm of judicial discretion must exercise his or her discretion in ruling on the matter.” *Greater Metro. Orthopaedics, P.A. v. Ward*, 147 Md. App. 686, 699 (2002) (quoting *Gunning v. State*, 347 M.d. 332, 351 (1997)) (internal quotations omitted). “Failure to exercise discretion is itself an abuse of discretion.” *Barufaldi v. Ocean City, Chamber of Commerce*, 196 Md. App. 1, 36 (2010). Accordingly, we shall grant appellate review to determine if the circuit court failed to exercise its discretion in denying the PGCOA’s Petition for Civil Contempt/Enforcement of Arbitration Award.

Lack of Contempt Proceedings

In its Order denying the PGCOA’s Petition for Civil Contempt/Enforcement of Arbitration Award, the circuit court explained PGCOA could not seek relief in the current

action:

The Petitioners have filed a Petition-Motion [f]or Civil Contempt/Enforcement of Arbitration Award in this action. While Petitioners may have the right to seek enforcement of the Arbitration Decision under a contract theory for either declaratory relief or as a claim for monetary damage, that is a matter for a new and separate cause of action. The issue in this case was the confirmation of an arbitration award. That issue was fully addressed in the Order confirming the award.

When evaluating whether a circuit court judge has exercised any discretion on a matter requiring so, we have stated the following:

Although the abuse of discretion standard for appellate review is highly deferential to the many discretionary decisions of trial courts, we nevertheless will reverse a decision that is committed to the sound discretion of a trial judge if we are unable to discern from the record that there was an analysis of the relevant facts and circumstances that resulted in the exercise of discretion.

Maddox v. Stone, 174 Md. App. 489, 502 (2007) (internal citations omitted).

After the County failed to file any opposition to the PGCOA's Petition to Confirm the Arbitration Award, the circuit court issued an Order confirming the award on January 10, 2017, which ordered the County to pay costs of the proceeding and closed the case statistically. "A trial court must confirm an arbitration award unless the [arbitration] award is challenged within the applicable time constraints." *Prince George's Cty. Police Civilian Employees Ass'n v. Prince George's Cty. Ex. Rel. Prince George's Cty. Police Dep't*, 447 Md. 180, 195-96 (2016) (quoting *Bd. Of Educ. Of Charles Cty.*, 286 Md. 358, 366 (1979)). Shortly after confirmation of the arbitration award, the PGCOA filed a separate Petition-Motion for Civil Contempt/Enforcement of Arbitration Award on February 27, 2017. It was not until September 22, 2017, that the circuit court denied the PGCOA's Petition-

Motion for the reasons quoted above.

In effect, confirmation of the arbitration award mandated compliance with the award as a court order. (When a court grants confirmation of an arbitration award, it is required under CJP 3-228 to enter a judgment “in conformity with the order” CJP 3-228(a)(1)). The PGCOA took appropriate action by filing a *separate* Petition alleging noncompliance and seeking enforcement after the award was confirmed. The circuit court had the authority to exercise its discretion and determine whether compliance with its order was met. Although the circuit court’s Order denying the PGCOA’s Petition reiterates facts relevant to the timeline of events, it fails to adequately explain why the circuit court refused to review compliance with its Order via contempt proceedings despite the PGCOA doing exactly what was recommended: instituting a separate cause of action by filing a separate petition. Arguably, the circuit court’s Order only addressed the PGCOA’s requests for enforcement of the award and lacked any explanation for disregarding the issue of constructive civil contempt. Accordingly, we hold the circuit court abused its discretion when it failed to provide relevant facts and analysis to support its refusal to initiate contempt proceedings.

Enforcement Of The Arbitration Award.

The PGCOA contends that the County failed to comply with the Arbitrator’s confirmation of the arbitration award, which has an effect of reducing the award to a judgment by the court.

Maryland Code, Courts and Judicial Proceedings, 3-228 prescribes as follows:

MD Code, Courts and Judicial Proceedings, § 3-228
§ 3-228. Judgments entered in conformance with order

In general

- (a)(1) If an order confirming, modifying, or correcting an award is granted, a judgment shall be entered in conformity with the order.
- (2) The judgment may be enforced as any other judgment.

The Arbitrator ordered that Chaney’s employment be reinstated and that Chaney receive back pay to be calculated from the date of his termination. However, the Arbitrator’s award failed to explicitly mention anything about recertification. As we saw in the *Miller* case, Miller was also reinstated after appealing her termination to an ALJ although the Order failed to specify if Miller would be recertified with or without further examination. *Miller*, 228 Md. App. 443. Similarly, in *Fraternal Order of Police Metro Transit Police Labor Committee, Inc. v. Washington Metropolitan Area Transit Authority*, 780 F.3d 238 (4th Cir. 2015), two metro officers had their terminations overturned after appealing to an arbitrator. However, a fact of great importance which distinguishes these two cases from the present matter is the action taken by the employers to comply with the award.

In *Miller*, the officer was reinstated and completing non-inmate related assignments pending her recertification. *Miller*, 228 Md. App. 443. Although the metro officers did not return to their original posts, the parties conceded that placement of the officers on paid administrative leave pending recertification qualified as “temporary reinstatement” and thus adequately complied with the arbitrator’s award. *Fraternal Order of Police Metro Transit Police Labor Committee, Inc.*, 780 F.3d at 242. In the current case, the record does not confirm the County actively complied with the arbitrator’s award. It appears the circuit court relied on promises made by the County to comply with the arbitration award instead of concrete evidence that compliance was met. While it is not unreasonable for the County to delay Chaney’s return to work until he is recertified by the Department, in an effort to

comply with the arbitration award, he should have received back pay during that period or alternatively been placed on “administrative leave with pay” as illustrated by the cases above.

The Arbitrator specifically included in her award payment of back pay and benefits from the date of Chaney’s termination. This back-pay award was also required by the circuit court in its Order confirming the arbitration award. The Court of Appeals has made clear that

where parties have voluntarily and unconditionally agreed to submit issues to arbitration and to be bound by the arbitration award, a court will enter a *money judgment* on that award and enforce their contract to be so bound unless, notwithstanding that the arbitrator's decision may have been erroneous, the facts show that he acted fraudulently, or beyond the scope of the issue submitted to him for decision, or that the proceedings lacked procedural fairness.

Chillum-Adelphi Volunteer Fire Dept., Inc. v. Button & Goode, Inc., 242 Md. 509 (1966) (Emphasis added). No such procedural unfairness in the underlying arbitration proceedings has been found or alleged.

Both parties voluntarily and unconditionally agreed to submit the instant issues to arbitration. Moreover, the arbitrator’s decision included the award of back pay, which is readily reduceable to a money judgment and was subsequently included in the circuit court’s Order. If nothing else, the circuit court should have enforced its own Order and required the County to immediately comply with its obligation to supply Chaney with back pay and benefits from the date of his termination. Additionally, the circuit court’s Order required the County to pay the costs of the proceeding. Nevertheless, the circuit court failed to hold proceedings to determine the amount of back pay and attorney’s fees owed to

Chaney. We hold that the circuit court erred in not ordering that the County pay Chaney back pay calculated from the date of his termination because the arbitration award in effect was a judgment by the circuit court that must be enforced.

CONCLUSION

Accordingly, we hold that the circuit court erred when it did not order the County to pay Chaney back pay calculated from the date of his termination. We remand this case for further proceedings in which the circuit court shall award back pay calculated from the date of termination to denial of recertification, attorney's fees owed to Appellant, and reduce the same to a money judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED IN PART, REVERSED IN
PART, AND REMANDED IN
ACCORDANCE WITH THIS OPINION;
COSTS TO BE PAID BY THE COUNTY.**