Circuit Court for Baltimore City
Case No: 24-C-18-001804

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1671

September Term, 2019

RANDALL MARTIN

v.

BALTIMORE POLICE DEPARTMENT

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 16, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In February 2018, Randall Martin, appellant, submitted a Maryland Public Information Act ("MPIA") request with the Baltimore Police Department ("Department"), appellee, specifically seeking the "Standard Procedures for the Baltimore City Police Department Protocols for 911 Emergency Calls." In his request, Mr. Martin also stated that he "anticipate[d] that [he would] want copies of some or all the records sought during the year 2010." The request did not contain any further description of the records sought.

Affixed to its written response, the Department provided Mr. Martin with two "responsive record[s]" including 1) the Department's "General Order G-1" and 2) the Department's "Amendment of General Order G-1." Each document purported to address the "Departmental Radio Communications System – Emergency Response." The Department also notified Mr. Martin that he was permitted to "contest [the] response by filing a petition for [j]udicial [r]eview" in the circuit court pursuant to § 4-362 of the General Provisions Article.

Accordingly, Mr. Martin filed a complaint seeking judicial review in the Circuit Court for Baltimore City. With his complaint, Mr. Martin included his February 1, 2018 MPIA request letter and the Department's February 21, 2018 response thereto. His complaint was ultimately followed by a "Revised Petition for Judicial Review," which Mr. Martin filed to comply with a court order directing him to "state a claim against an identified Defendant with a valid basis for relief." In the revised petition, Mr. Martin contended that the "specific records provided [by the Department] were insufficient." He also clarified in his petition that the "request was not made to obtain records of any specific 911 calls made in Baltimore City during the year 2010, but instead, the concern was to

obtain the standard procedures for the Baltimore City Police Department Protocols for 911 Emergency Calls."

On April 16, 2019, following the filing of Mr. Martin's revised petition, the Department filed a motion to dismiss or, in the alternative, a motion for summary judgment. In pertinent part, the Department alleged that Mr. Martin's petition for judicial review had "failed to identify any denial of records that were responsive to his request." Because § 4-362 of the General Provisions Article permits judicial review only to persons "denied inspection of a public record," the Department contended that Mr. Martin's complaint failed "to state a claim upon which relief [could] be granted." Mr. Martin did not file a timely opposition to the Department's motion to dismiss.[1] Accordingly, on June 4, 2019, the court entered an order granting the Department's motion to dismiss with prejudice and without leave to amend. On June 26, 2019, Mr. Martin filed a motion for reconsideration which was ultimately denied by order of the court entered on July 30, 2019.

Mr. Martin noted his appeal to this Court on August 29, 2019. On appeal, Mr. Martin raises the following questions for our review, which we rephrase for clarity:

1. Did the circuit court err by dismissing Mr. Martin's petition for judicial review?

2. Did the court abuse its discretion by considering documents which purportedly contained fabricated statements?

[1] On June 13, 2019, Mr. Martin filed a "Petitioner's Memoranda" which briefly referenced the Department's motion to dismiss or, in the alternative, motion for summary judgment. This pleading, if intended to serve as an opposition, was filed 58 days after the Department's motion and was, therefore, untimely. *See* Md. Rules 2-311 ("a party against whom a motion is directed shall file any response within 15 days after being served with the motion").

3. Did the circuit court err in allowing the Department to withhold records which were purportedly subject to a "Records Retention and Disposal Schedule"?

For the following reasons, we shall affirm the judgment of the circuit court.[2]

DISCUSSION

SCOPE OF REVIEW

We first note that Mr. Martin did not note a timely appeal of the circuit court's June 4, 2019 order dismissing his petition for judicial review. Pursuant to Maryland Rule 8-202(a), a notice of appeal must be "filed within 30 days after entry of the judgment or order from which the appeal is taken." However, Mr. Martin did not file his notice of appeal until August 29, 2019, more than two months after the entry of the court's order. While Mr. Martin did file a motion for reconsideration, it was filed more than ten days after the court's June 4, 2019 order and, therefore, did not act to toll the 30-day period for noting his appeal of that order. *See* Md. Rule 8-202(c); *see also Sydnor v. Hathaway*, 228 Md. App. 691, 707–08 (2016) ("[w]hen a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion.").

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[2] In its brief, the Department moves to dismiss this appeal for various procedural defects, including 1) the untimely filing of Mr. Martin's brief, 2) Mr. Martin's failure to include a certificate of service with his brief, and 3) Mr. Martin's failure to file a record extract. However, Maryland Rule 8-603(c), only permits that a motion to dismiss included in the appellee's brief be based "on subsection (b)(1), (b)(2), (c)(1), (c)(7), or (c)(8) of [Maryland] Rule 8-602." The procedural defects alleged by the Department do not fall under these subsections. We, therefore, deny the Department's motion to dismiss appeal.

Mr. Martin did, however, note a timely appeal from the court's July 30, 2019 order denying his motion for reconsideration. We review a circuit court's "decision to deny a motion for reconsideration…for abuse of discretion." *Id.* at 708. An abuse of discretion occurs "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." *Azizova v. Suleymanov*, 243 Md. App. 340, 373 (2019) (internal citation omitted). However, because a "court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case," when considering appeals from the denial of a post-judgment motion, "reversal is warranted in cases where there is both an error and a compelling reason to reconsider the underlying ruling." *Sydnor*, 228 Md. App. at 708.

RECONSIDERATION OF THE CIRCUIT COURT'S DISMISSAL OF PETITION

To the extent that Mr. Martin's first question on appeal asks this Court to consider whether the circuit court erred in granting the Department's motion to dismiss, we will not consider this issue on appeal because, as we have explained, Mr. Martin did not note a timely appeal of the court's June 4, 2019 order. However, a generous reading of the arguments raised by Mr. Martin on appeal permits the Court to consider whether the circuit court abused its discretion in denying his motion for reconsideration of the dismissal.

In his motion for reconsideration, Mr. Martin contended that his February 1, 2018 MPIA request sought "the 911 Emergency Call policy for 2010," but that the Department had produced documents in which there was no "mentioning of the 'word' 911." Similarly, on appeal, Mr. Martin contends that "[t]he information produced by the Baltimore Police Department had no relevance to the request for 911 Emergency Calls." We do not discern

that the circuit court abused its discretion in denying Mr. Martin's motion for reconsideration on these grounds because these arguments did not and do not address the sufficiency of Mr. Martin's complaint, which was squarely at issue in the Department's motion to dismiss.

When considering the Department's motion to dismiss, the court was tasked with determining whether "the Complaint, on its face, disclose[d] a legally sufficient cause of action." *Scarbrough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019) (citation omitted). More specifically, Mr. Martin needed to advance argument which addressed whether his petition had sufficiently alleged that the Department had "denied inspection of a public record" as required by § 4-362 of the General Provisions for judicial review. He failed to do so.

On the contrary, Mr. Martin's petition for judicial review did not set forth with sufficient particularity that the Department's record production was nonresponsive to his MPIA request, nor did it clarify which documents he specifically sought from the Department. His petition did not specifically allege that the Department's response was deficient because the records produced did not mention the word 911. This contention was raised for the first time in Mr. Martin's motion for reconsideration. Moreover, his petition expressly stated that his "request was not made to obtain recordings of any specific 911 calls made in Baltimore City during the year 2010." Therefore, his claim on appeal that the Department should have produced records relevant to a "request for 911 [e]mergency [c]alls," is inconsistent with the language used in his petition.

Because Mr. Martin's motion for reconsideration did not address the sufficiency of the information actually contained in his petition for judicial review, the court did not abuse its discretion in denying the motion.

COURT'S CONSIDERATION OF "FABRICATED STATEMENTS"

Mr. Martin also sought reconsideration on the grounds that the circuit court purportedly considered a document, attached to the Department's Motion for Dismissal and Summary Judgment as exhibit 4, which he asserted "was a complete fabrication of facts." He reasserts this argument on appeal. However, the circuit court did not abuse its discretion in rejecting this argument because Mr. Martin failed to file a timely opposition to the Department's motion to dismiss when the exhibit was initially submitted for the court's consideration. The court was, therefore, permitted to rule on the Department's motion. *See* Maryland Rule 2-311(b) ("if a party fails to file a response…the court may proceed to rule on the motion."). Moreover, in his motion for reconsideration, Mr. Martin offered no explanation as to why he failed to raise the issue of exhibit 4's authenticity in a written opposition to the Department's motion.

Further, the court specifically granted the Department's motion to dismiss, not the Department's alternative motion for summary judgment. As we have previously explained, the grant of the Department's motion to dismiss was based on the sufficiency of Mr. Martin's petition for judicial review itself, not on outside documents submitted to the court. Therefore, regardless of its authenticity, the court did not give weight to Exhibit 4 in dismissing Mr. Martin's petition and it was reasonable for the circuit court to reject reconsideration on these grounds.

UNPRESERVED ARGUMENT

Mr. Martin's third issue raised on appeal, that the Department withheld records purportedly subject to a "Records Retention and Disposal Schedule," was not raised in his motion for reconsideration. The trial court could not have abused its discretion by denying the motion for reconsideration based on arguments that were not made to it. Moreover, by failing to raise this argument in the circuit court, Mr. Martin failed to preserve this argument for our review and we will not consider it. *See Baltimore Cty., Maryland v. Aecom Servs., Inc.*, 200 Md. App. 380, 421 (2011) ("[a] contention not raised below…and not directly passed upon by the trial court is not preserved for appellate review.").

APPELLEE'S MOTION TO DISMISS APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.