

Circuit Court for Anne Arundel County
Case No.: C-02-CV-16-003511

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1679

September Term, 2017

KENNETH JOLLY

v.

WASHINGTON SUBURBAN SANITARY
COMMISSION

Fader, C.J.
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 2, 2019

*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.

Kenneth Jolly, appellant, filed a petition for judicial review in the Circuit Court for Anne Arundel County of a decision by the Washington Suburban Sanitary Commission (WSSC), appellee. The circuit court dismissed the petition for Mr. Jolly’s failure to comply with Maryland Rule 7-207(a). Mr. Jolly appeals and presents two issues for our review: (1) whether the trial court erred in concluding that he failed to comply with Maryland Rule 7-207(a) and, if so, (2) whether the trial court erred in dismissing the petition and finding that the WSSC was prejudiced. Because we find no prejudice to the WSSC from Mr. Jolly’s technical failure to comply with Rule 7-207(a), we reverse and remand.

BACKGROUND

After a pipe leak at Mr. Jolly’s vacant property, he received a nearly \$7,000 water bill from the WSSC. The WSSC agreed to reduce the bill by 50% but Mr. Jolly still disputed the charges and requested a refund. After a hearing, the WSSC issued a “Final Decision and Order” granting in part Mr. Jolly’s refund request. Still dissatisfied, Mr. Jolly, a self-represented litigant, filed a timely petition for judicial review. The nine-page petition included a detailed written explanation of Mr. Jolly’s disagreements with the WSSC decision.

On June 29, 2017, the circuit court sent Mr. Jolly a notice advising him that the record had been received and that a hearing was scheduled for October 2, 2017. Maryland Rule 7-207(a) requires that, within 30 days after the clerk sends such notice, “a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied

on.” Mr. Jolly’s memorandum was due on or before July 31, 2017. In September 2017, the WSSC filed a motion to dismiss the case based on Mr. Jolly’s failure to file a memorandum. The Rule authorizes such dismissal, providing: “If a petitioner fails to file a memorandum within the time prescribed by this Rule, the court may dismiss the action if it finds that the failure to file or the late filing caused prejudice to the moving party.” Md. Rule 7-207(d).

Mr. Jolly filed an opposition to the motion in which he argued that his nine-page petition was substantively equivalent to the memorandum required by the Rule. Two weeks later, the circuit court granted the WSSC’s motion and dismissed the case, stating that Mr. Jolly failed to file a memorandum that complied with the Rule and that, even if the court treated Mr. Jolly’s petition as a memorandum, the petition failed to (1) present a concise statement of the questions presented for review; (2) present argument on each question presented for review, including citations of authority; and (3) make reference to pages of the record and exhibits relied on. The court further found that the WSSC was prejudiced by the failure to file the memorandum but it did not explain how the WSSC was so prejudiced. Mr. Jolly appeals that decision.

DISCUSSION

We review the circuit court’s decision to dismiss the judicial review proceeding for abuse of discretion. *Swatek v. Board of Elections of Howard County*, 203 Md. App. 272, 284 (2012).

Mr. Jolly first contends that his petition was equivalent to the memorandum required by the Rule and, therefore, that the court erred in finding that he did not comply with the

Rule. He claims that his petition was sufficiently thorough and specific to satisfy the purpose of the Rule, which is “to inform the opposing parties and the trial court of the issues involved in the case . . . in sufficient time for the opposition to respond in kind and for the court to make an informed decision.” *Id.* at 283.

The WSSC responds that “the memorandum is a pleading which is wholly separate and distinct from a Petition for Judicial Review, both in nature and in procedural purpose.” We agree with the WSSC. The Rule requires a memorandum separate and distinct from the petition. Mr. Jolly’s failure to file a memorandum therefore violated the Rule.

The Rule, however, only permits dismissal if a failure to comply with it causes prejudice to the opposing party. As a result, we turn to whether Mr. Jolly’s failure to file such memorandum prejudiced the WSSC. Mr. Jolly argues that the court erred in dismissing the case because there was no prejudice to the WSSC. He asserts that his petition was specific and detailed as to his disagreements with the WSSC’s decision, that the WSSC had been aware of his contentions on several other occasions, and that the issue is “exceedingly simple with only one essential matter of dispute – ‘how much water leaked?’” He further contends that when looking at the totality of the circumstances, his petition was sufficient to inform the WSSC and the circuit court of the issues involved in the case in time for a response and a decision. We note that in his petition, Mr. Jolly provided notice that he intended his petition to also serve as his memorandum, stating, “This petition is intended to be the basis for my argument to provide the burden of proof entitlement to a refund, to be supplemented by my oral testimony at the Judicial Petition Review Hearing.”

Our decision in *Swatek* is instructive. There, Mr. Swatek sought to place a zoning issue on the upcoming election ballot by a citizen petition, but the Board of Elections found that many of the signatures on the petition were invalid and so refused to put the initiative on the ballot. *Id.* at 274. Mr. Swatek then filed a petition for judicial review but never filed a memorandum. *Id.* at 275. The Board filed a motion to dismiss and Mr. Swatek responded by arguing that the Board “knows what the issues are, knows what the law is, and should be prepared to proceed.” *Id.* at 276. Even though the Board admitted to having a “general grasp of the issues,” we noted that that does not mean the Board “would have been prepared for every material argument, given the totality of the circumstances.” *Id.* at 284. Furthermore, we agreed that “the circuit court was prejudiced by the absence of a memorandum” because a “memorandum would have narrowed the arguments and framed their issues, thereby assisting the court in making an informed determination.” *Id.* “Absent this, appellant may have spearheaded an unguided argument that could have convoluted the purpose of the judicial review.” *Id.* As a result, we affirmed the dismissal of the petition. Notably, though, there was no indication that Mr. Swatek’s petition for judicial review itself contained a detailed statement of the issues and his arguments. Also, in that case, the ballot question that was at issue was time sensitive so that a postponement of the judicial review hearing likely would have rendered the issues moot.

Here, Mr. Jolly narrowed and sufficiently framed the issues in his nine-page petition for judicial review such that any prejudice was minimal. Mr. Jolly’s petition itself responded to the WSSC order point by point, detailing his disagreements with the WSSC’s findings and conclusions. Indeed, if Mr. Jolly had filed a memorandum, it likely would

have repeated the contentions in his petition. Given the specificity of those arguments, unlike in *Swatek*, there was little risk that Mr. Jolly would have “spearheaded an unguided argument that would have convoluted the purpose of the judicial review.” Neither the WSSC nor the circuit court were denied notice of the issues Mr. Jolly was raising or the basis for them by his failure to file a memorandum.

We recognize that due to Mr. Jolly’s failure to file a memorandum, the WSSC was not put on notice to file an answering memorandum, which would have better prepared both parties and the court for the hearing. Because the WSSC waited until shortly before the hearing to file its motion to dismiss, a postponement would likely have been necessary to allow the WSSC time to respond in writing. Unlike in *Swatek*, we find nothing in the record to indicate that a postponement here would have prejudiced the WSSC. We therefore hold that the circuit court abused its discretion in dismissing the case. We reverse and remand for further proceedings.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED. CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY WASHINGTON SUBURBAN
SANITARY COMMISSION.**