

The Circuit Court of Cecil County  
Case No. 07-C-15-002037

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2088

September Term, 2016

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LISA BLACKSTON

v.

MARYLAND INSURANCE  
ADMINISTRATION

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Wright,  
Kehoe,  
Battaglia, Lynne A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: February 22, 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.

This appeal arises out of the Circuit Court for Cecil County’s denial of appellant’s, Lisa Blackston’s (“Ms. Blackston”), motion for reconsideration. Ms. Blackston filed a petition for judicial review (“petition”) of the Maryland Insurance Administration’s (“MIA”) Final Order regarding the Truck Insurance Exchange’s (“Farmers”) denial of her claim for uninsured motorist coverage arising out of a motor vehicle accident.<sup>1</sup> Ms. Blackston filed motions for extension of time, all of which went unopposed by Farmers. On August 30, 2016, Ms. Blackston filed a fourth motion for extension of time, and on September 15, 2016, Farmers opposed the motion, and moved for the circuit court to dismiss Ms. Blackston’s petition. The circuit court granted Farmers’s motion and dismissed the petition. Ms. Blackston filed a motion for reconsideration, which the court denied.

On appeal, Ms. Blackston asked this Court eight questions that we have reduced to one:

Did the trial court properly deny Ms. Blackston’s motion to reconsider?<sup>2</sup>

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<sup>1</sup> MIA did not participate in this appeal.

<sup>2</sup> Ms. Blackston presented her questions as follows:

1. Should my case have been dismissed because of the transcription actions or refusal to transcribe the record?
2. Did the Judge take the law into consideration when making a decision to dismiss my case?
3. Was a copy of the transcript necessary for a Circuit Court Judge to make a decision regarding the errors and omissions in Judge Dargan’s order?

For the reasons below, we answer yes, and affirm the circuit court’s decision.

### **BACKGROUND**

On December 29, 2009, Ms. Blackston was involved in an accident and went to the hospital for treatment. Thereafter, Ms. Blackston notified Farmers of the accident. On February 19, 2010, Farmers denied Ms. Blackston’s claim for uninsured motorist coverage for damages arising from the accident. After an investigation, Farmers concluded that Ms. Blackston did not qualify as a family member covered under the policy, because she was not a resident of the named insured’s household at the time of the accident.

After the denial from Farmers, Ms. Blackston filed suit against Farmers in the District Court of Kent County alleging that Farmers was in breach of her insurance contract, and she sought damages for medical bills, pain and suffering, and rental costs. On December 13, 2013, after a trial on the issue of coverage, the court ruled that Ms. Blackston was a temporary resident of the named insured’s household at the time of the

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4. Was the Appellant given a fair opportunity to file a motion for reconsideration?
  5. Should the Judge have granted my request for a hearing?
  6. Did the Truck Insurance Exchange pay the correct amount of my remaining medical bills?
  7. Is the Truck Insurance Exchange responsible for damages because they did not consider me a family member on the policy?
  8. Is the Truck Insurance Exchange still in violation for failing to settle my Claim by refusing to pay the amounts due?

accident and entitled to uninsured motorist coverage under his automobile policy.

Subsequently the case went to trial, on the issue of damages, and Ms. Blackston obtained a judgment in the amount of \$2,047.24 for medical bills and general damages, which Farmers paid.

On May 27, 2014, Ms. Blackston filed a complaint with MIA alleging that Farmers unfairly denied her claim for uninsured motorist coverage arising from the accident. After an investigation, the MIA determined that Farmers did not violate any Maryland laws in denying her claim. Ms. Blackston filed an appeal of the MIA's determination, and a hearing was held at the Office of Administrative Hearings ("OAH") on July 30, 2015. OAH issued its Proposed Decision on August 31, 2015. In its Proposed Decision, OAH concluded that, as a matter of law, Farmers "arbitrarily and capriciously failed to settle" Ms. Blackston's claim and refused to pay the amount due to Ms. Blackston "without just cause." The OAH Proposed Order was to find that Farmers "be ordered to pay [Ms. Blackston] \$3,841.99 to cover the outstanding balance of medical bills." The MIA entered its Final Order on November 23, 2015, adopting OAH's Proposed Decision in its entirety.

After MIA's Final Order, Ms. Blackston filed a petition for judicial review in the Circuit Court of Cecil County on December 23, 2015, alleging that MIA's Final Order, "did not rule against [her] claim for rental damages in [its] order, but rather 'overlooked' it." Ms. Blackston then filed for a motion to stay, which the circuit court declined to rule on. Ms. Blackston filed three unopposed motions for extension of time to provide time to

secure a transcript; the first on February 12, 2016; the second on April 18, 2016; and the third on June 7, 2016.

In the first motion for an extension of time, dated February 12, 2016, Ms. Blackston claimed that she sent payment to the OAH for audio CD's of her hearing, but she did not receive anything after waiting three weeks. In her second motion, dated April 18, 2016, she alleged that a transcription company "assured [her] that they would have her transcripts available to place on the court record," but they "made a lot of broken promises through e-mail and discontinued the chat conversation through their website." Ultimately, she requested a refund and filed complaints with the Better Business Bureau, Federal Trade Commission, and the Maryland Office of the Attorney General. In her third motion for extension of time, dated June 7, 2016, she alleged that the transcription company "stole her money and CD's." She also again claimed that OAH was taking too long to send her a new copy of the CD's, and therefore, she needed more time because she did not want to pay "for a rush job."

In her fourth motion for an extension of time, dated August 30, 2016, Ms. Blackston alleged that she inquired about working with two out-of-state transcription companies, but had eventually settled on a Maryland company, because both out-of-state companies were unsure if the hearing could be transcribed outside the State of Maryland. Ms. Blackston claims that she made an "upfront payment of [\$350.00]," but after repeatedly calling the company, "a man answered the phone and told [her] to stop calling." She again alleged that this second company "was a scam," requested a refund, and again filed complaints with the Better Business Bureau, Federal Trade Commission,

and the Maryland Office of the Attorney General.<sup>3</sup> Farmers filed a response in opposition and moved for the circuit court to dismiss Ms. Blackston’s petition, pursuant to Md. Rule 7-206. On September 22, 2016, the circuit court granted Farmers’s motion to dismiss.

Twenty-one days later, on October 13, 2016, Ms. Blackston filed a motion for reconsideration.<sup>4</sup> Farmers opposed Ms. Blackston’s motion, and the circuit court denied

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<sup>3</sup> In Farmers’s Motion to Dismiss, they included two e-mails from the transcript company. The first e-mail, dated September 6, 2016, stated:

Attached is the hiring letter - - it was cut off - - that’s how it came to us, printing at the bottom of the page, *et cetera*. I believe the estimate was over the phone and my business partner handled that. As I stated on the phone with you earlier, she was to give us a [\$500.00] deposit, but instead gave us [\$350.00] and was to call that Friday when she got paid to give us the balance of the deposit, but never did so. We were waiting on her.

The second e-mail, also dated September 6, 2016, stated in part:

As per our telephone conversation, here is the letter you requested.

I sent and e-mailed this letter to Ms. Blackston this morning. As we discussed, she e-mailed our company this past weekend accusing us of stealing money from her account when she, in fact, hired us to transcribe four CD’s and called us to give her credit card information.

The CD’s have now been returned to her without a transcript, and we will no longer be conducting business with her.

<sup>4</sup> In her reply brief, Ms. Blackston alleged that she “had no information regarding the Judge’s decision until more than two weeks later,” and that the circuit court order “was not docketed until October 4th.” After reviewing the record that Ms. Blackston provided, we find that these claims lack merit. The docket entries from September 15, 2016, stated: “*Opposition to Petitioner’s Fourth Request for Extension of Time and Motion to Dismiss ttc sent to Charles L. Simmons, [Jr.], Lisa [Blackston] & Maryland Insurance Administration MOTION TO DISMISS GRANTED 9/22/16 KAB [true test copy] TO ALL PARTIES on 10/4/16.*” The electronic docket entry reflected that the

the motion on November 3, 2016. Ms. Blackston filed a Notice of Appeal on December 2, 2016.

Additional facts will be included as they become relevant to our discussion, below.

### DISCUSSION

Except as otherwise provided in Md. Rule 8-202, a notice of appeal must be filed within 30 days after the entry of the judgment or order from which the appeal is taken. Md. Rule 8-202(a).<sup>5</sup> In the context of this case, the only exception to that requirement would be if Ms. Blackston had filed a motion under Md. Rule 2-534 to alter or amend the judgment, which must be filed within ten days after entry of the judgment.<sup>6</sup> Ms.

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motion was granted on September 22, 2016, and that a true test copy was mailed on October 4, 2016.

<sup>5</sup> Md. Rule 8-202(a) states:

**Generally.** Except 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. In this Rule, “judgment” includes a verdict or decision of a circuit court to which issues have been sent from an Orphans’ Court.

<sup>6</sup> Md. Rule 2-534 states:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Blackston missed this filing deadline. Ms. Blackston did not file a timely appeal of the September 22, 2016 order dismissing her petition for judicial review. The only timely appeal is the denial of Ms. Blackston’s motion for reconsideration. The standard of review as to a trial court’s denial of a motion for reconsideration is whether the trial court abused its discretion in denying the motion. *See Furda v. State*, 193 Md. App. 371, 377, n.1 (2010); *Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 674 (2008).

An appeal from a “motion for reconsideration” does not serve as an appeal from the underlying judgment, and the applicable standard is whether the court abused its discretion. *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999). “The ‘abuse of discretion’ standard of review is premised, at least in part, on the concept that matters within the discretion of the trial court are ‘much better decided by the trial judges than by appellate courts[.]’” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 436 (2007). Furthermore, we will not reverse a decision vested in the trial court’s discretion, merely because we would have reached a different conclusion. *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 242 (2011). When we review an appeal under an abuse of discretion standard, we will not reverse the trial court unless “[t]he decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994). Therefore, we will only find that an abuse of discretion occurred in the most extraordinary, exceptional, or egregious cases. *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).



The failure to secure a transcript, pursuant to Md. Rule 7-206, is at the heart of the appeal. The rule states:

(a) Applicability. This Rule does not apply to judicial review of a decision of the Workers' Compensation Commission, except as otherwise provided by Rule 7-206.1.

(b) Contents; Expense of Transcript. The record shall include the transcript of testimony and all exhibits and other papers filed in the agency proceeding, except those papers the parties agree or the court directs may be omitted by written stipulation or order included in the record. **If the testimony has been recorded but not transcribed before the filing of the petition for judicial review, the first petitioner, if required by the agency and unless otherwise ordered by the court or provided by law, shall pay the expense of transcription, which shall be taxed as costs and may be apportioned as provided in Rule 2-603.** A petitioner who pays the cost of transcription shall file with the agency a certification of costs, and the agency shall include the certification in the record.

(c) Statement in Lieu of Record. If the parties agree that the questions presented by the action for judicial review can be determined without an examination of the entire record, they may sign and, upon approval by the agency, file a statement showing how the questions arose and were decided and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, any exhibits to it, the agency's order of which review is sought, and any opinion of the agency shall constitute the record in the action for judicial review.

(d) Time for Transmitting. Except as otherwise provided by this Rule, the agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings within 60 days after the agency receives the first petition for judicial review.

(e) Shortening or Extending the Time. Upon motion by the agency or any party, the court may shorten or extend the time for transmittal of the record. The court may extend the time for no more than an additional 60 days. The action shall be dismissed if the record has not been transmitted within the time prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.

(f) Duty of Clerk. Upon the filing of the record, the clerk shall notify the parties of the date that the record was filed.

(Emphasis added).

Ms. Blackston was well aware of her duty to provide the circuit court with a transcript in order for the circuit court to review the administrative proceeding. When MIA issued its Final Order, it informed Ms. Blackston that if she wanted to file an appeal she would be “responsible for the cost of preparing the transcript of the agency proceedings.” Moreover, in its May 18, 2016, and July 20, 2016 orders granting Ms. Blackston’s motion for an extension of time, the court advised her that if she did not provide the transcript of the hearing to the court that “the court may dismiss the . . . matter without prejudice.”

We said in *Montgomery County v. Post*, 166 Md. App. 381, 388-89 (2005)

(internal citations omitted):

An administrative agency has the initial responsibility for transmitting the record to circuit court, although the petitioner may be required to pay the cost of any transcription. *See* [Md.] Rule 7-207. Nevertheless, it is “incumbent upon . . . [petitioner] to initiate the process of obtaining a transcript,” and the petitioner bears the responsibility for compliance with the rules. The penalty for noncompliance is dismissal of the petition. [Md.] Rule 7-206(d). A defense to possible dismissal is that noncompliance was caused by the agency.

The transmittal of an administrative record is not jurisdictional and is not in the nature of a statute of limitations. Consequently, the rule governing transmittal is subject to substantial compliance. It is established that a petitioner’s substantial compliance with the rules will prevent dismissal of a petition, even though the petitioner is partially responsible for the rule violation. In sum, the burden is on the petitioner to ensure that its petition is properly presented for decision, but if the failure to achieve that is not caused by the petitioner, the petitioner should not suffer the consequences of dismissal.

The burden on a petitioner for judicial review to ensure compliance with the rules is the same as the burden on an appealing party within the court system. A person who notes an appeal from a trial court’s decision has the burden to ensure that the record is complete and transmitted timely. If the appellate rules are not complied with, the appellate court may dismiss the appeal.

After a generous reading of Ms. Blackston’s motion, the most we can glean is that she alleged that she was “deceived” by a transcription company because they “misrepresented themselves and misled” her to believe that the transcript would be completed before the due date. Ms. Blackston did not provide the circuit court with any evidence that she paid a transcription company the full cost for its services. In its motion to dismiss, Farmers provided evidence that Ms. Blackston caused the delay by failing to complete her contract for transcription service. Initially, Ms. Blackston received a cost estimate of \$699.15 in December 2015 from the Record, Inc. but thereafter sought out other court reporting companies to get a lower price, in disregard of the requirement of Maryland Rules or order of court. As to timeliness, we in no way criticize Ms. Blackston for her attempts to find the most affordable transcription service, but her efforts resulted in her failure to meet the court deadline for submitting the transcript, after having abundant time to do so.

Accordingly, we find no abuse of discretion in the circuit court’s decision to deny Ms. Blackston’s motion to reconsider. “When a court exercises its discretion [in denying a motion for reconsideration] . . . the court’s exercise of its discretion is presumed correct until the attacking party has overcome such a presumption by clear and convincing proof of abuse.” *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725 (2002). The circuit court

judge's decision was eminently reasonable and is not well removed from the center mark imagined by this Court.

**JUDGMENT OF THE CIRCUIT COURT  
FOR CECIL COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**