

Circuit Court for Prince George's County
Case No. CAL19-14488

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2118

September Term, 2019

LARAY J. BENTON

v.

WOODMORE OVERLOOK COMMERCIAL,
LLC, *et al.*

Arthur,
Leahy,
Wright, Alexander
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 18, 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.

Laray J. Benton, appellant, filed a Petition for Judicial Review in the Circuit Court for Prince George’s County, seeking review of a final order of the Prince George’s County Planning Board of the Maryland-National Capital Park and Planning Commission (“Planning Board”). On October 25, 2019, the circuit court denied the petition. Mr. Benton filed a pleading entitled, “Motion to Reopen Case, Motion for Reconsideration, & Motion for a Hearing According to His Constitutional Due Process Rights,” which the court also denied.

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

BACKGROUND

On March 7, 2019, the Planning Board held a public hearing on the application of Woodmore Overlook, LLC (“Woodmore”), appellee, for approval of Preliminary Plan of Subdivision 4-18007 for Woodmore Overlook Commercial in Prince George’s County (the “subdivision plan”).

Mr. Benton appeared at the hearing and opposed Woodmore’s application arguing that the “natural resources inventory” (“NRI”) submitted with Woodmore’s application was invalid. Mr. Benton informed the Planning Board that the NRI submitted by Woodmore had actually been prepared for him and his company, Woodmore Manor, in connection with a separate application.

According to Mr. Benton, he had previously contracted to purchase the property that was the subject of the subdivision plan but the sale did not close. He indicated that the failed transaction had resulted in a contract dispute. The Chair of the Planning Board

informed Mr. Benton that the hearing was not the proper forum for the presentation of a contract dispute. Mr. Benton stated that he did not intend to present a contract dispute to the Board, and, in fact, he had filed “a civil suit for breach of contract enforcing the contract.” The Chair advised Mr. Benton that the Board would not accept “anything into the record that’s not germane to these proceedings.”

The Planning Board took a brief recess to allow the Planning Board’s counsel an opportunity to confer with Mr. Benton and review his proposed exhibits. When the hearing resumed, the Chair advised Mr. Benton that the Planning Board would not accept a document which appeared to be a “general release and waiver” into the record because “it ha[d] no bearing on this subdivision case.” The Chair asked Mr. Benton whether he had any additional documents to present. Mr. Benton informed the Planning Board that he had spoken with the Planning Board’s counsel and that he understood that he had presented “some concerns . . . that [were] better suited [for] other . . . venues[.]” Mr. Benton stated that he would reserve his comments at that time and asked that the Board note his opposition to Woodmore’s application for the subdivision plan.

At the conclusion of the hearing, the Planning Board unanimously approved Preliminary Plan of Subdivision 4-18007 together with several associated variances. The Planning Board subsequently adopted a resolution memorializing its approval of the preliminary subdivision plan.

Mr. Benton filed a petition for judicial review in the circuit court. The circuit court scheduled a hearing on Mr. Benton’s petition for October 22, 2019. According to Mr. Benton, he had traveled to Georgia on or about August 28, 2019, to assist his ailing mother

and disabled father. On October 10, 2019, Mr. Benton’s mother was rushed to the hospital for surgery, and he remained with her while she recovered following the surgery.

On October 18, 2019, Mr. Benton contacted the Clerk of the circuit court to advise that he would not be returning to Maryland in time for the hearing scheduled for October 22, 2019. On October 21, 2019, Mr. Benton emailed a Motion for Continuance to the court. The court denied the motion. When Mr. Benton failed to appear at the hearing on October 22, 2019, the court denied Mr. Benton’s petition and closed the case. The court’s order denying the petition was entered on October 25, 2019.

On November 4, 2019, Mr. Benton filed a “Motion to Reopen Case, Motion for Reconsideration, & Motion for a Hearing According to His Constitutional Due Process Rights.” On December 9, 2019, the court denied Mr. Benton’s motion. Mr. Benton noted an appeal on December 19, 2019.

DISCUSSION

Mr. Benton contends that the circuit court erred or abused its discretion in: (1) denying his motion for a continuance of the October 22, 2019 hearing, (2) denying his petition for judicial review and violating his due process rights, and (3) failing to provide him a hearing on his motion for reconsideration.¹

Appellees assert that the merits of Mr. Benton’s petition for judicial review are not properly before this Court because he only appealed the circuit court’s denial of his motion

¹ In his brief, Mr. Benton presents an additional fifteen “questions of law,” which, as far as we can discern, were not raised before the Board or circuit court, and are therefore unpreserved. *See* Md. Rule 8-131(a).

for reconsideration. We disagree. Pursuant to Md. Rule 8-202(a), a notice of appeal must be “filed within 30 days of the entry of the judgment or order from which the appeal is taken.” The filing of a motion invoking the trial court’s revisory power, however, will toll the time for filing an appeal if it is filed within ten days of the judgment or order. *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010). Because Mr. Benton filed his motion to reconsider within ten days of the court’s entry of the order denying his petition for judicial review, the time for filing his appeal from that order was tolled and his notice of appeal was timely. Accordingly, we shall review the underlying order as well as the denial of his motion for reconsideration.

I.

We review a denial of a motion for a continuance for an abuse of discretion. *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). “Absent an abuse of that discretion we historically have not disturbed the decision to deny a motion for a continuance.” *Id.* An abuse of discretion is a decision “well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994).

Mr. Benton argues that he provided good cause for a continuance because he was tending to his mother’s health issues, and therefore, the circuit court abused its discretion in denying his request. Though we are mindful of the reasons for Mr. Benton’s request, he nonetheless filed his motion for a continuance one day prior to the October 22, 2019 hearing. On this record, we conclude that the circuit court did not abuse its discretion in denying his last-minute request for a continuance of the hearing.

II.

In reviewing a judicial review proceeding, the issue before an appellate court “is not whether the circuit . . . court erred, but rather whether the administrative agency erred.” *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (citations, internal quotation marks, and brackets omitted). We must “look through” the circuit court’s decision “and evaluate the decision of the agency.” *People’s Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008) (citation, internal quotation marks, and brackets omitted). The party “challenging an agency decision must show that the agency exercised its discretion unreasonably or without a rational basis.” *Maryland Office of People’s Counsel v. Maryland Public Service Commission*, 461 Md. 380, 399 (2018).

Mr. Benton contends that the Planning Board erred in approving the subdivision plan over his opposition. At the hearing, Mr. Benton urged the Planning Board not to consider the NRI, arguing that it had been misappropriated by Woodmore. Mr. Benton offered one exhibit in support of his opposition, which the Planning Board refused to admit into the record, finding it to be irrelevant.

Administrative agencies “in conducting their hearings, are not bound by the strict rules of evidence of a trial at law, but are permitted a reasonable amount of discretion in admitting or excluding evidence.” *Bonnie View Club v. Glass*, 242 Md. 46, 54 (1966). Agencies are bound by “the basic rules of fairness to parties appearing before them.” *Hyson v. Montgomery County Council*, 242 Md. 55, 69 (1966). *Accord In re Bennett*, 301 Md. 517, 527 (1984).

Maryland Rule 5-401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Admissible evidence is evidence that is “relevant to the issues in the case and tends to either establish or disprove them.” *Parker v. State*, 156 Md. App. 252, 268 (2004) (citation omitted). Md. Rule 5-402 makes clear that “evidence that is not relevant is not admissible.”

In this case, the Planning Board did not abuse its discretion in excluding irrelevant evidence pertaining to Mr. Benton’s private dispute as to the ownership of the engineering documents submitted by Woodmore. As Mr. Benton acknowledged at the hearing, any contract dispute between him and Woodmore was not a proper consideration for the Planning Board in the course of the application review process. Mr. Benton presented no evidence showing that the Planning Board’s approval of the subdivision plan was not reasonable or that it lacked a rational basis. Accordingly, the circuit court did not err in denying his petition for judicial review.

Mr. Benton also contends that the circuit court failed to afford him due process by denying his petition and denying him the opportunity of a fair and equitable trial. “To establish a violation of due process, one must show that the State deprived him or her of a protected liberty or property interest through constitutionally inadequate procedures.” *Town of La Plata v. Faison-Rosewick, LLC*, 434 Md. 496, 526 (2013). Due process claims may be waived, however, if not timely asserted. *See Lomax v. Comptroller of Treasury*, 88 Md. App. 50, 57 (1991) (“If a party receives notice, opportunity to respond and/or to request a hearing, yet fails to do so, the party has waived any due process claim.”). In this

case, the court provided Mr. Benton with a hearing on his petition for judicial review. His failure to attend that hearing resulted in a waiver of his procedural due process rights.

III.

Mr. Benton argues that the circuit court erred in failing to hold a hearing on his motion for reconsideration. He contends that the court was required to hold a hearing on his motion pursuant to Md. Rule 2-311(f), which provides that, when a party to a civil action desires a hearing on a motion, “the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.”

Maryland Rule 2-311(f) is inapplicable in this case because the court’s denial of Mr. Benton’s motion for reconsideration was not “dispositive” of his claim. The dispositive order was the denial of his petition for judicial review. *See Lowman v. Consolidated Rail Corp.*, 68 Md. App. 64, 75 (1986) (“By denying the motion for reconsideration, the court merely refused to change its original ruling which had disposed of appellant’s claims. That ruling was not ‘dispositive of a claim or defense,’ and thus no hearing was mandated under Md. Rule 2-311(f) even though a hearing was requested.”). Thus, Mr. Benton was not entitled to a hearing on his motion for reconsideration, and the court did not err in not providing one.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**