

Circuit Court for Howard County
Case No. 13-C-13-93496

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2133

September Term, 2017

IN THE MATTER OF LYDIA PIETZ

Wright,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 5, 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.

Lydia Pietz, appellant, filed a Petition for Judicial Review in the Circuit Court for Howard County, seeking review of a final order of the Maryland Home Improvement Commission (“Commission”). On November 17, 2017, the circuit court dismissed the petition, *sua sponte*, because the record of the proceedings before the Commission was not timely filed. Ms. Pietz filed a motion for reconsideration of the order of dismissal, which the court denied. This appeal followed. For the following reasons, we shall vacate the order of dismissal and remand to the circuit court for further findings.

Pursuant to Maryland Rule 7-206(d), which governs review of administrative agency decisions, the agency must transmit the record of its proceeding, including a transcript of any testimony, within 60 days of the agency’s receipt of the petition for judicial review. Rule 7-206(e) allows the court to extend the time for transmittal of the record “for no more than an additional 60 days.” That rule further provides that “[t]he 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.”

“[A] failure to transmit timely a record, in literal violation of Rule 7-206(d), does not mandate dismissal of a petition for judicial review[,]” however. *Wormwood v. Batching Systems, Inc.*, 124 Md. App. 695, 697, *cert. denied*, 354 Md. 113 (1999). In an agency appeal, the transmittal of the record “is neither jurisdictional nor in the nature of a statute of limitations” and, therefore, “the rule governing transmittal is subject to substantial compliance.” *Id.* at 705. Where there is substantial compliance, the court should not grant a motion to dismiss unless the opposing party demonstrates unfair

prejudice as a result of the untimely filing of the record. *Id.* In other words, “[w]here there is compliance with the substance of the requirements of statutes or rules and the other parties have not been prejudiced, technical irregularities cannot be made the basis of depriving persons of the opportunity to assert their legal rights.” *Id.* (quoting *Town of Somerset v. Montgomery County Board of Appeals*, 245 Md. 52, 61 (1966)).

In *Wormwood*, we held that it was error for the circuit court to dismiss a petition for judicial review for failure to timely transmit the agency record, where the court believed that dismissal was mandatory upon a finding that the moving party had contributed to the delay. *Id.* at 701. Here, it appears that the circuit court committed the same error, as evidenced by the court’s December 14, 2017 order, denying Ms. Pietz’s motion for reconsideration of the order of dismissal, where the court stated that:

[u]nder Rule 7-206(e), the [c]ourt is required to dismiss the Petitioner’s petition if the administrative record is not timely received, unless the [c]ourt finds the failure is the result of failures other than . . . the Petitioner. Here, the [c]ourt finds the delays in the filing of the administrative record to be caused, at least in part, by the Petitioner’s own failures. Petitioner did not file her Motion for Dismissal of Transcript Requirement until the final day permitted to transmit the administrative record. Further, . . . Petitioner waited until November 8, 2017 to order the transcripts. Accordingly, the [c]ourt is required by the Maryland Rules to deny the Petitioner’s request.

Because the court apparently believed that dismissal was mandatory, it made no finding, either at the time it issued the order of dismissal or at the time it ruled on Ms. Pietz’s motion for reconsideration, as to whether there was substantial compliance with the rule governing transmittal of the record, or whether the Commission had been

unfairly prejudiced by the delay. Accordingly, we vacate the order of dismissal and remand to the circuit court so that the court may address these issues.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY VACATED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS WAIVED.**