

Circuit Court for Montgomery County
Case No. 433951V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2193

September Term, 2019

KEVIN MIDDLETON

v.

BOARD OF EDUCATION OF
MONTGOMERY COUNTY

Nazarian,
Beachley,
Zic,

JJ.

Opinion by Beachley, J.

Filed: December 15, 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.

On February 3, 2011, appellant Kevin Middleton was employed as a teacher by the Board of Education of Montgomery County (the “County”) when he slipped on ice and fell, injuring his neck. After Middleton filed a workers’ compensation claim, the Maryland Workers’ Compensation Commission (“Commission”) found, by an Order dated October 26, 2012, that Middleton sustained a compensable accidental injury. The October 26, 2012 Order expressly provided that Middleton’s claim for compensation remained “pending until such time as the nature and extent of [Middleton’s] disability, if any, can be determined.”

On January 8, 2016, Middleton filed a claim for permanent partial injury.¹ The parties do not dispute that Middleton filed his January 8, 2016 claim within the five-year statute of limitations prescribed in Md. Code (1991, 2016 Repl. Vol.), § 9-736(b)(3) of the Labor and Employment Article (“LE”).

The Commission heard Middleton’s January 8, 2016 claim on January 30, 2017. At that hearing, Middleton affirmed that he was still experiencing “discomfort,” including headaches “at the base” of his neck and “tenderness” in his left shoulder. Although he was not receiving “active treatment” as of the date of the hearing, Middleton expressed a desire to seek further medical treatment. Because Middleton had not reached maximum medical improvement, the parties agreed that the permanency claim could not “go forward” at that hearing. Middleton’s counsel stated that she could not withdraw Middleton’s claim

¹ Independent of Middleton’s January 8, 2016 permanent disability claim, the Commission held a hearing on that same date resulting in an Order requiring the County to provide “causally related, reasonable and necessary medical treatment.”

because of a “statute of limitations problem.” The County’s attorney responded that he “underst[ood] the issue with limitations but, of course, it’s the County’s position that this [] reserving on the issue or continuing the issue would be an improper use of the Commission’s authority to essentially extend the limitations period[.]” The Commission granted a continuance, providing in its January 30, 2017 Order that “the issues were raised but not litigated.”

The hearing was rescheduled for May 1, 2017. At the outset of that hearing, the County raised a statute of limitations defense. The County asserted two separate theories in support of its limitations defense. First, the County argued that under COMAR 14.09.03.02F,² Middleton’s claim was withdrawn as a matter of law on January 30, 2017, when he was not prepared to litigate his permanency claim. Thus, according to the County, limitations expired on February 3, 2016, five years after Middleton’s accidental injury. Second, though the County conceded that the January 8, 2016 claim was timely filed, the County contended that Middleton’s claim was barred because he did not have a written evaluation of permanent impairment when he filed his permanency claim on January 8, 2016, as required by COMAR 14.09.09.02B.³

² COMAR 14.09.03.02F states: “A party that has filed issues and is not ready to proceed at the hearing shall withdraw the issues.”

³ COMAR 14.09.09.02B states: “Prior to filing an Issues Form raising permanent disability, the party filing the issue shall have obtained a written evaluation of permanent impairment prepared by a physician, psychologist, or psychiatrist in accordance with Regulation .03 of this chapter.”

In its June 1, 2017 Order, the Commission awarded Middleton permanent partial disability benefits. Relevant to this appeal, the Commission determined that the “claim for permanent partial disability was timely filed and the statute of limitations has not run.”

On June 29, 2017, the County filed in the Circuit Court for Montgomery County a “Petition For Judicial Review On The Record.” Middleton filed a response to the County’s petition and a separate request for *de novo* judicial review and request for jury trial pursuant to LE § 9-745(d). The court subsequently denied the County’s Motion to Strike Request for *De Novo* Jury Trial.

The County thereafter moved for summary judgment, asserting the same two grounds that it had raised before the Commission:

Although issues were filed within the five year limitations period, the issues did not toll the running of the five year statute of limitations for filing for indemnity benefits for the following reasons: (1) the issues were not filed in compliance with the applicable COMAR regulations as [Middleton] did not obtain a medical evaluation regarding impairment prior to the time of filing and (2) even if the issues were filed timely, they were effectively withdrawn when [Middleton] was not ready to proceed with the hearing on permanent partial disability. By ordering an increase in permanent partial disability when [Middleton] did not have a timely written evaluation of permanent impairment and was not ready to proceed at the time of the hearing on permanent partial disability, the Commission exceeded its authority under the Maryland Worker’s Compensation Act[.]

The County continued to press both grounds at the summary judgment hearing in the circuit court.

In granting summary judgment in favor of the County, the court stated in pertinent part,

The question is whether, if the regulatory scheme requires you to do A before doing B and you don’t do it, does the statute run? Here it did under a plain

reading of the statu[t]e and the regulation harmoniously. I certainly understand why the commissioner did what she did, but looking at what the Court of Special Appeals said in [*McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242 (2012)] and other cases, respectfully, neither the Courts nor the Commission have the power to change the statute of limitations and how it is implemented by the regulations, and that’s at least in my view, respectfully, what happened here.

The commissioner saw that the claimant did it backwards, if you will. That the statute was gone, but took the position that, well since he could have done it later but didn’t, I’m going to toll the statute. I mean that’s certainly an equitable result but that’s a policy judgment that’s not for me and motion is granted. If you get a different result, let me know and we’ll apply it.

When reviewed in the context of the arguments made at the summary judgment hearing, it appears to us that the court granted summary judgment on the basis that Middleton’s January 8, 2016 filing was untimely because he had not obtained a written evaluation of permanent impairment prior to filing as required by COMAR 14.09.09.02B.⁴ The court’s reference to “do[ing] A before doing B” clearly refers to the issue of having a written evaluation of permanent impairment prior to filing a permanency claim. We see no reference in the court’s summary judgment ruling concerning the County’s argument that Middleton’s permanency claim was withdrawn as a matter of law pursuant to COMAR 14.09.03.02F when he was not prepared to present evidence at the January 30, 2017 hearing. This distinction is important because the County, recognizing the issuance of our opinion in *Montgomery Cty. v. Rios*, 244 Md. App. 629 (2020), has now abandoned its argument that Middleton was required to have a written evaluation of permanent

⁴ We appreciate the County’s candor that it is uncertain whether the circuit court granted summary judgment based on its argument that Middleton withdrew all issues by failing to present evidence at the January 30, 2017 hearing.

impairment prior to his January 8, 2016 filing. Although the County asks us to affirm summary judgment on its alternative argument that Middleton’s claims were withdrawn pursuant to COMAR 14.09.03.02F, we decline to do so because:

If we should reach a different conclusion than the circuit court on the basis on which it granted summary judgment, we ordinarily do not try to sustain the circuit court’s decision on a different ground. Such a course would interfere with the discretion that a trial court normally enjoys to deny, or defer until trial, the merits of summary judgment on a particular issue. We may nonetheless affirm summary judgment on a different ground if the trial court would have no discretion as to the particular issue.

Young Elec. Contractors, Inc. v. Dustin Constr., Inc., 459 Md. 356, 383 (2018) (citations omitted) (citing *Mathews v. Cassidy Turley Md., Inc.*, 435 Md. 584, 598 (2013)). The exception to the general rule—that an appellate court may affirm on an alternative ground where “the trial court would have no discretion” to withhold judgment in the movant’s favor on another ground—is inapplicable here because we cannot say that the court was required to grant summary judgment in favor of the *County* based on COMAR 14.09.03.02F. We accordingly reverse the judgment of the circuit court and remand for further proceedings.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY REVERSED.
CASE REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS. COSTS TO BE
PAID BY MONTGOMERY COUNTY.**