

Circuit Court for Harford County
Case No. C-12-CV-18-000779

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2303

September Term, 2019

HARFORD COUNTY HOUSING AGENCY

v.

TIFFANY KNOX

Fader, C.J.,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 19, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The Harford County Housing Agency (“the County”) terminated Tiffany Knox’s participation in the Housing Choice Voucher Program in August 2018. At an informal agency hearing, the termination was upheld and Knox filed a petition for judicial review of the decision.¹ After a hearing, the Circuit Court for Harford County remanded the case to the County for reconsideration. The County did not appeal the decision. Without conducting a new hearing, the County reconsidered the termination decision and again upheld its ruling. Knox filed another petition for judicial review. The Circuit Court for Harford County determined that the prior order remanding the case required the County to hold a new hearing. The court issued another order directing the County to hold a second hearing. On appeal, the County presents one question for this court’s review, which we have rephrased slightly, as follows:

Was the Circuit Court’s Order on December 17, 2019 legally erroneous?

For the reasons set forth below, we affirm the circuit court.

BACKGROUND & PROCEDURAL HISTORY

Knox became a participant in the Housing Choice Voucher Program² in 2017. Knox is disabled and informed the County of her disability. She worked part time at a Dollar Tree and was required to give a two week notice to her supervisor if she was

¹ Knox also styled her action as one for administrative mandamus relief.

² The Housing Choice Voucher Program is a “federally-funded, locally administered rental assistance program that subsidizes the rent of lower-income families, the elderly and disabled to afford decent, safe housing in the private market through the use of federal funds.” <https://dhcd.maryland.gov/Residents/Pages/HousingChoice/default.aspx>

unavailable to work. The County scheduled the annual Housing Quality Standards Inspection for Knox's unit on August 16, 2018. Knox gave her employer the requisite notice and took off work that day. No inspector showed up for an inspection. That same day the inspection was rescheduled for August 23, 2018. Knox was scheduled to work that day and was unable to request off due to the two-week notice requirement. On August 23, 2018, the County sent Knox a notice that her participation in the Housing Choice Voucher Program would be terminated effective September 30, 2018 for failure to comply with regulations requiring access to the home for a housing inspection on both August 16 and August 23. Knox never had a previous program violation. At Knox's request, the County held an informal hearing to review the termination of her housing voucher. Knox was unrepresented at the hearing and failed to give testimony regarding her disability, lack of violations, or the effect of losing her voucher. After the informal hearing, the County upheld the termination.³

On October 18, 2018, Knox challenged the decision by filing a petition for judicial review and administrative mandamus. Knox alleged the County erred due to the lack of formal fact finding and conclusions of law. Knox also claimed the County failed to consider all mitigating circumstances, including her disability and lack of prior program violations. After a hearing, Judge Mahoney of the Circuit Court for Harford County

³ After upholding the decision to terminate Knox's housing voucher, Knox was evicted from her home in November 2018 and remained homeless. Neither party has raised the issue of mootness, though because the decision will likely have a future impact on Knox's ability to participate in the housing voucher program, the issue is not moot.

issued a memorandum opinion stating his reasons for granting Knox’s petition for judicial review⁴ and remanded the case to the County for reconsideration. The language of the opinion indicated that the County should hold a new hearing to make new factual determinations with respect to Knox’s individual circumstances. In the attached order, the court granted Knox’s petition for administrative mandamus and remanded the case to the County for reconsideration “consistent with the Opinion of even date.”

On May 2, 2019, Knox inquired of the County about scheduling a new hearing. The County responded that the court’s mandate did not order a new hearing. The County reconsidered the decision to terminate Knox’s housing voucher without a hearing, and on May 14, 2019, it issued a new written decision upholding the termination. Knox filed another petition for judicial review and administrative mandamus on June 4, 2019. In her second petition, Knox alleged that the County erred by failing to conduct a hearing on remand from the circuit court and by failing to consider mitigating circumstances.

Another hearing was held in the circuit court before Judge Eaves on December 17, 2019. Prior to the hearing, Judge Eaves communicated with Judge Mahoney, who indicated that the April 24 order intended for the County to conduct a new hearing where Knox would be provided the opportunity to present information to support her claim for mitigating circumstances. Judge Eaves ruled that the order from the previous hearing by Judge Mahoney required the County to hold a new hearing when reconsidering the

⁴ In his opinion, Judge Mahoney described Knox’s petition as a “Petition for Judicial Review, styled as a Petition for Administrative Mandamus[.]”

termination. Judge Eaves issued a new order on December 17, 2019. The order did not grant or deny Knox’s petition, but instead remanded the case to the County for a hearing “as directed by the Order entered on April 24, 2019, with sufficient time for Petitioner to schedule time off from work to attend the hearing.”

This timely appeal followed.

DISCUSSION

The County contends that the court erred in issuing the December 17 order for three reasons. The County asserts that Judge Eaves did not have the authority to issue the order because the April 24 order was final and could not be revised under Maryland Rule 2-535, and additionally, that the court failed to comply with Maryland Rule 7-403. Finally, the County claims the December 17 order was clear on its face that it did not grant a new hearing. Knox, on the other hand, asserts that the April 24 order was ambiguous and the court properly determined the order intended for the County to conduct a new hearing. We agree.

First, Maryland Rule 2-535 is inapplicable in this case. Rule 2-535 permits the court to exercise revisory power over a judgment in the case of fraud, mistake, or irregularity. The court in this case is not revising a previous order, the court is simply interpreting the language of a previous order. Rule 2-535 does not apply to this particular set of facts. Similarly, Rule 7-403 is not at issue in this case. The County argues that the court had no authority to issue the December 17 order because it did not issue the writ on a specified ground under Rule 7-403. Rule 7-403 provides that the court “may issue an

order denying the writ of mandamus, or may issue the writ ... remanding the case for further proceedings.” (emphasis added). That is precisely what the court did with respect to the December 17 order; the court remanded the case to the County for further proceedings, specifically a new hearing. The rule does not require the court to issue the writ remanding the case on a specified ground.

At the hearing preceding the December 17 order, Judge Eaves explained that the issue before the court was a matter of interpretation, and the April 24 order was “subject to misinterpretation.” In order to analyze whether the court had authority to grant a new hearing in the December 17 order, we must address the April 24 order.⁵ We begin our analysis with the effect of the mandate issued by Judge Mahoney on April 24, 2019. At the conclusion of the opinion, the court stated “Petitioner’s Petition for Judicial Review is GRANTED. The case shall be remanded to the Harford County Housing Agency for reconsideration.” The order stated that “Petitioner’s Petition for Administrative Mandamus is GRANTED,” and “the case be remanded to the Harford County Housing Agency for reconsideration consistent with the opinion of even date.” (emphasis added). A new hearing was not explicitly ordered in the language of this order.

We find that the April 24 order is ambiguous. “Where a mandate is ambiguous, one must look to the opinion and other surrounding circumstances to determine the intent of the court.” *Balducci v. Eberly*, 304 Md. 664, 670 (1985). The mandate from the April

⁵ As our review is limited to the appeal of the December 17 order, however, we decline to address the merits of the April 24 opinion.

24 order did not of itself amount to a denial of a new hearing nor did it prohibit the interpretation that a new hearing was intended.

Judge Mahoney’s opinion held that the case was remanded to the County. The court cited 24 C.F.R. 982.552(c)(1)(i) for the proposition that termination from the housing voucher program is not mandatory if an individual misses an annual inspection. Further, the hearing officer “may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of the individual family members, mitigating circumstances related to the disability of the family member, and the effects of denial or termination of assistance...” 24 C.F.R. § 982.552(c)(2)(i). Additionally, “[t]he person who conducts the hearing must issue a written decision... Factual determinations relating to the *individual circumstances* of the family shall be based on... evidence presented at a hearing.” 24 C.F.R. § 982.555(e)(6).

The court determined that Knox was a disabled woman with no previous program violations, and was presently homeless as a result of the termination of her housing voucher. Knox was unrepresented at the informal hearing and the court noted “there is no indication in the record that the petitioner gave testimony regarding her disability, lack of violations, or the effect of losing her voucher.” The final decision by the Hearing Officer only indicated that Knox testified that she was unable to attend the August 23 appointment because “she was notified of it too soon to request off work.” The court found “no indication that the Hearing Officer recognized that she had the discretionary

authority to consider any mitigating circumstances.” Ultimately, Judge Mahoney held that:

[I]n a case like this, where there is one violation at issue and termination is discretionary, the Hearing Officer should form factual determinations relating to the *individual circumstances* of the family, demonstrate that she recognizes that she has discretionary authority to consider mitigating circumstances, and indicate whether or not she chose to exercise that discretion.

These are compelling indications that the circuit court did not intend to preclude a new hearing on remand. In fact, the opinion of the court specifically stated that the Hearing Officer’s factual determinations should be based on “evidence presented at a hearing.” *See* 24 C.F.R. § 982.555(e)(6). Judge Mahoney determined there was “no indication in the record” that Knox’s individual circumstances regarding her disability, lack of violations, or effect of losing her voucher were addressed at the first hearing, thus it follows that the court intended a new hearing. It is not disputed that had the circuit court explicitly stated in its opinion that a new hearing was awarded, it would have had the authority to do so.

The language in the opinion leads to the conclusion that a new hearing is required. Though the mandate and order do not expressly state a new hearing is required, the order is consistent with the language of the opinion. The requirement for a new hearing has become express by the incorporation of the opinion into the order. The County’s interpretation of the opinion and order creates a conflict. The opinion is clear that a new hearing must be held to provide for new factual determinations, and the County’s

interpretation that the order does not require a new hearing is conflicting with the language of the opinion.

With respect to the December 17 order, we agree that Judge Eaves, in her capacity to review the decision of the County and prior proceedings, determined that Judge Mahoney's April 23 order was ambiguous and corrected the error. In the April 23 opinion, Judge Mahoney addressed the inadequacies of the informal hearing and the Hearing Officer's written decision by failing to address relevant individual circumstances. The court determined that factual determinations made by the hearing officer shall be based on "evidence presented at a hearing." The mandate ordered that the case be remanded "for reconsideration consistent with the Opinion." The opinion clearly indicates the court's determination that a new hearing is necessary for Knox to testify to all individual circumstances that the Hearing Officer should take into consideration.

The Court of Appeals has determined that the court has the authority "to correct or amend clerical errors and irregularities on the part of the court in its issued mandate...if anything has been omitted from a judgment which is necessarily or properly a part of it, and which was intended and understood to be part of it, but which failed to be incorporated in it." *Balducci v. Eberly*, 304 Md. 664, 674 (1985). Judge Eaves inquired of Judge Mahoney with respect to the April 23 order⁶ to ascertain the intention of the court,

⁶ Judges are permitted to consult with other judges to further their adjudicative responsibilities. Maryland Rule 18-102.9(a)(4) provides:

A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or

and determined the requirement to conduct a new hearing was omitted from the judgment and was intended and understood to be a part of it. Judge Eaves' decision to remand the case to the County and require a new hearing was not based solely on her conversation with Judge Mahoney, but also based on the language of the opinion and order. We find that the court did not err by issuing the December 17 order remanding the case to the County for a new hearing.

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

with other judges, provided the judge does not decide a case based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

Judge Eaves advised the parties of her conversation with Judge Mahoney. This is not impermissible hearsay as contended by the County. Rather, this disclosure was simply part of Judge Eaves' decision-making process sanctioned by Rule 18-102.9(a)(4).