UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2785

September Term, 2008

JAMES RIFFIN

v.

BOARD OF APPEALS OF BALTIMORE COUNTY, MARYLAND, ET AL.

Graeff,
Kehoe,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 9, 2015

In his latest appeal, James Riffin, appellant, appeals from the order of the Board of Appeals for Baltimore County (the "Board"), which affirmed the decision of the Baltimore County Code Enforcement Hearing Office for the Department of Environmental Protection and Resource Management ("DEPRM") imposing a civil penalty of $36,000 for performing clearing, grading, and construction work on a property in Cockeysville, Maryland without a permit.[1] Mr. Riffin filed a Petition for Judicial Review of the Board's decision in the Circuit Court for Baltimore County, which affirmed the Board's order.

On appeal, Mr. Riffin, an unrepresented litigant, presents multiple issues for our review, which we have reorganized and rephrased, as follows:

1. Did the Code Enforcement Officer who originally imposed the fine have authority to issue a final order?

2. Does federal law preempt the regulatory actions undertaken by Baltimore County?

3. Was the Board's decision that Mr. Riffin violated Article 33, Title 5, Section 103 and 108 of the Baltimore County Code ("BCC") supported by substantial evidence and legally correct?

4. Was the fine imposed by the Code Enforcement Officer and affirmed by the Board unreasonable?

5. Did the Board err in refusing to strike Baltimore County's summary of testimony from a previous hearing?

[1] Mr. Riffin has generated "a multitude of cases before trial and appellate courts" regarding this property, leading the Circuit Court for Baltimore County to declare him a "frivolous" or "vexatious" litigant who was required to seek judicial approval before filing future proceedings. *Riffin v. Circuit Court for Baltimore County*, 190 Md. App. 11, 13-18 (2010). *See also Riffin v. Md. Dep't of the Env't*, Nos. 1593 and 1902, Sept. Term, 2004 (Filed Feb. 3, 2006) ("*Riffin I*"); *Riffin v. Md. Dep't of the Env't*, No. 2379, Sept. Term, 2007 (Filed Nov. 13, 2009) ("*Riffin II*"); *Riffin v. Wisnom & Baltimore County*, Nos. 1804, Sept. Term, 2008 & 147 Sept. Term, 2009 (Filed Apr. 30, 2013) ("*Riffin IV*").

6. Did Baltimore County abandon its right to participate in the circuit court proceedings by filing a late opposition to Mr. Riffin's petition?

7. Did the circuit court err in affirming the decision of the Board rather than the decision of the Code Enforcement Officer?

8. Did the circuit court err in denying Mr. Riffin's "Motion to Reschedule and Reconsider"?

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

FACTUAL AND PROCEDURAL BACKGROUND

In *Riffin I*, we discussed the genesis of litigation regarding Mr. Riffin's property at 10919 York Road:

> In February 2004, appellant began construction of what he claimed would become a railroad storage yard at the site. Over the next few months appellant cleared, filled, and graded approximately 9,000 square feet of land, stockpiled soil and crushed stone, and constructed a make-shift berm and concrete retaining wall. All of this work was performed within the 100-year floodplain of Beaver Dam Run. Appellant had neither applied for nor received any of the permits and approvals required under state and local law.

Slip op. at 5-6. Substantial litigation ensued, which we will discuss only as relevant to reach the issues presented here.

The present litigation began with a March 28, 2007, visit to the site by Kevin Sharbonda, an agent with DEPRM. Because Mr. Riffin had not obtained any permits allowing him to conduct clearing, grading, or construction work at the site, Mr. Sharbonda issued a correction notice, stop work order, illegal continuance, and complaint (the "Notice"). The Notice stated that Mr. Riffin was conducting "unauthorized construction activities with no permits and in floodplain with inadequate sediment and erosion controls"

in violation of BCC § 33-5-103.[2] The Notice required Mr. Riffin to do the following within 30 days: (1) install a silt fence below all disturbed areas; (2) stabilize all disturbed areas with seed and mulch; (3) cease all unpermitted activities; and (4) restore the site to its original condition or obtain a permit.

On April 10, 2007, DEPRM issued a citation charging Mr. Riffin with violating BCC § 33-5-103 and BCC § 33-5-108, alleging that Mr. Riffin had failed to comply with the Notice issued to him on March 28, 2007.[3] The citation stated: "To date, no corrections have been completed and construction activities without permits is [sic] continuing." The citation proposed a fine of $20,000.

On May 2, 2007, a hearing was held before Raymond S. Wisnom, Jr., a Code Enforcement Hearing Officer (the "Hearing Officer"), regarding Mr. Riffin's violations.

[2] Article 33, Title 5, Section 103 of the Baltimore County Code (2003) ("BCC") provides, in part, as follows:

> A person may not change the natural ground level of any lot or parcel in any way that results *or may result* in any changing of the direction, volume, distribution, or velocity of the flow of surface water on or over any adjoining private or public property without a valid grading permit.

(Emphasis added).

[3] BCC § 33-5-108 provides, in part, as follows:

> (a) Restoration required. The owner of a property on which any clearing, filling, or grading activity is undertaken in a watercourse, wetland area, floodplain, buffer, habitat protection area, or forest buffer in violation of the provisions of this title shall, on notification, restore the areas in accordance with the requirements of the Department of Environmental Protection and Sustainability.

The tape of the hearing apparently was destroyed, but the record before us indicates that Mr. Riffin testified, and Mr. Sharbonda "presented the case for Code Enforcement." Mr. Sharbonda indicated that he issued the citation because "Mr. Riffin ignored the [March 27, 2008] Notice."

Mr. Sharbonda presented an affidavit that contained pictures of the site and descriptions of the violations he observed. He stated that he had visited the site on many occasions, and on March 28, 2007, he observed active construction with no valid permits, grading activities, earthmoving, inadequate sediment and erosion control, unstable terrain, deforestation, construction of a "large retaining wall," unpermitted installations of manholes and drains dumping directly into the stream next to the site, and damage to County sidewalks due to heavy equipment being parked thereon. Mr. Sharbonda further stated that "the existing drainage patterns of the site have been altered to force water onto the adjoining properties without authorization." He issued the Notice after observing these violations.

Mr. Sharbonda returned to the site on April 2, 5, 10, 19, and 27, 2007, and he found that Mr. Riffin had made no attempt to comply with the Notice. On each date, he observed active, unpermitted construction and no remedial actions. Mr. Sharbonda documented his observations with photographic evidence. Among the photographs attached to the affidavit were several that Mr. Sharbonda stated "reflect changes in drainage patterns to send flows of [sic] the property to the North and East into an area next to the bridge across Beaver Run Lane into the river."

Mr. Riffin did not object to the introduction of Mr. Sharbonda's affidavit, and he did not offer any evidence of his own. Rather, he argued that Baltimore County did not have regulatory authority in this matter, as federal law preempted the County's powers.[4]

The Hearing Officer ultimately found that "Mr. Riffin has continued to conduct grading, earthmoving, construction and dumping on [the Site] despite notices from DEPRM and an Order from the Circuit Court of Baltimore County." It rejected Mr. Riffin's argument regarding preemption and stated that "[t]he evidence is overwhelming to support a finding of violation" of BCC § 33-5-103 and BCC § 33-5-108.[5] Accordingly, on May 17, 2007, it imposed a penalty of $20,000 on Mr. Riffin.

On December 11, 2007, the Hearing Officer issued an amended order increasing Mr. Riffin's fine to $36,000. In this order, the Hearing Officer explained that it was imposing a fine of $1,000 for each day between March 28, 2007, the date he was notified to stop the unpermitted activities, and May 2, 2007, the date of the hearing.

At some point after the amended order, Mr. Riffin filed an appeal with the Board.[6] On February 21, 2008, the Board held a hearing on Mr. Riffin's appeal. Mr. Riffin agreed

[4] Paul Mayhew, an attorney for Baltimore County, informed the Hearing Officer at the hearing that a federal appellate court had considered and rejected Mr. Riffin's argument regarding Baltimore County's jurisdiction.

[5] The Hearing Officer noted that, in a related case before the Baltimore County Circuit Court, after making the same preemption argument he asserted at the May 2, 2007, hearing, "Mr. Riffin was permanently enjoined to comply with all applicable provisions [of] state and local law," including the provisions of the Baltimore County Code at issue at the hearing.

[6] Mr. Riffin has not provided us with the documents related to his appeal, nor are those documents contained in the record.

with the County that the property was in a flood plain and that grading activities occurred, but he argued that there was no evidence "that shows that those grading activities have altered the flow of surface waters on this property as they relate to adjacent properties." He argued that he was not required to get a permit because Baltimore County's regulation was preempted by federal law. The Chairman of the Board advised, however, that the Board would not consider that issue because that was an issue for a court to decide.

On July 1, 2008, the Board issued its decision. After summarizing the evidence presented at the May 2, 2007, hearing and the arguments the parties made before the Board, the Board affirmed the Hearing Officer's amended final order. Although the Chairman had stated that the Board would not consider the preemption argument, it did address, and reject, that argument, stating:

> The [a]ppellant's preemption argument has been heard and rejected by the federal courts and the Circuit Court for Baltimore County on numerous occasions. Most notably, the [a]ppellant learned the answer to his preemption argument back in 2004 when the Fourth Circuit affirmed Judge Bennett's decision. Undeterred, the [a]ppellant continues to assert the same defense [three] years later. As a result, the Board finds that the preemption argument is without merit. Accordingly, the [a]ppellant's construction activities are subject to the enforcement by Baltimore County.

Regarding the "merits of the BCC § 33-5-103 violations," the Board stated that "the evidence is overwhelming that [Mr. Riffin] violated BCC § 33-5-103." The Board explained:

> [T]he photographs taken on April 27, 2007, by Mr. Sharbonda specifically and clearly showed alteration by [Mr. Riffin] of water drainage patterns resulting from his construction activities such that flows of water are being sent from the Site onto the property to the North and East next to the bridge across Beaver Run Lane and near [another property adjacent to the site].

> While the evidence showed that [Mr. Riffin's] construction has *already* changed the direction, volume, distribution and velocity of surface water, the County was within its right to issue citations if the construction "may result" in such change as set forth in BCC § 33-5-103.
>
> As to the violation of BCC § 33-5-108, [Mr. Riffin] is charged with clearing, filling and grading in the Floodplain. Under that Section, [Mr. Riffin] was required to restore the areas as ordered by the citations dated March 28, 2007, and April 10, 2007. . . . [Mr. Riffin] not only failed to restore the Site but increased his construction efforts in direct disregard for the adverse affects [sic] that his activities have had on the Stream [on his property] and adjoining properties.

The Board affirmed the imposition of a $36,000 fine.

On July 31, 2008, Mr. Riffin filed, in the Circuit Court for Baltimore County, a Petition for Judicial Review of the Board's decision. On September 11, 2008, Mr. Riffin filed a Memoranda detailing his numerous arguments as to why the Board's decision should be reversed. He argued that the County "failed to introduce any evidence" showing that his grading activities changed the direction, volume, distribution or velocity of the flow of surface waters onto any adjoining property, and accordingly, the County did not meet its burden in showing that he violated BCC § 33-5-103. He also contended that the Board failed to address whether the waters that his property affected were "surface waters," as opposed to contained waters, flood waters, or waters flowing in a natural watercourse. Further, he argued that, because the County did not demonstrate that he violated BCC § 33-5-103, it did not prove that he violated BCC § 33-5-108, which requires restoration of a site only if the activities conducted at that site violated another provision of the BCC.

Mr. Riffin further argued that the fine imposed by the Hearing Officer was "arbitrary, capricious, unreasonable, or contrary to law" because Mr. Sharbonda never

witnessed any construction occurring at the site or any surface waters during any of his visits.[7] In the alternative, Mr. Riffin argued that he could only be fined for each day Mr. Sharbonda visited the site.

Mr. Riffin devoted the majority of his Memoranda to detailing his preemption argument. He stated that 49 U.S.C. § 10501(b) provides that the Surface Transportation Board ("STB") has exclusive jurisdiction over "transportation by a rail carrier," and because his activities at the site constituted "transportation by a rail carrier," federal law preempted the regulatory actions Baltimore County sought to enforce against him.

On October 6, 2008, Baltimore County filed an opposition to Mr. Riffin's petition. The County argued that Mr. Riffin's preemption argument already had been decided by the United States Court of Appeals for the Fourth Circuit, that his preemption argument was baseless in any event because he is not a rail carrier, and that there was sufficient evidence to support the Board's decision to affirm the amended final order.

On November 18, 2008, Mr. Riffin filed a Motion to Stay Action for Referral to the Surface Transportation Board, arguing that the STB was the appropriate forum to litigate the issue of federal preemption. On November 20, 2008, he filed a supplement to that motion, attempting to refute a recent decision of the STB declaring that he was not a rail carrier, and requesting the Circuit Court for Baltimore County stay proceedings related to his petition while he appealed the STB's decision to the District of Columbia Circuit.

[7] As noted, Mr. Sharbonda testified at the May 2, 2007, hearing that he witnessed active construction, and Mr. Riffin did not rebut that evidence.

On November 25, 2008, the circuit court held a hearing on Mr. Riffin's petition. Mr. Riffin did not appear. After considering the written submissions of the parties, the court denied Mr. Riffin's petition.

On December 1, 2008, Mr. Riffin filed a Motion to Reschedule and Motion to Reconsider. He stated that he had been "very ill," with "an extremely sore throat" which rendered him "unable to speak," and therefore, he "was unable to call the Court to inform the Court he could not be present at the November 25, 2008 hearing." Mr. Riffin requested that the court "[r]econsider, then rescind any decisions made at the November 25, 2008 hearing" and reschedule that hearing for another date.

That same day, Mr. Riffin filed a "Motion to Dismiss as a Party," arguing that Baltimore County had failed to timely respond to his petition, and accordingly, it should be dismissed for having abandoned its right to participate in the proceedings. He argued that he was prejudiced "due to insufficient time between [his] receipt of the late-filed [opposition] and the scheduled date."

On December 12, 2008, the circuit court filed its order, dated November 25, 2008, denying Mr. Riffin's petition and affirming the Board's decision. On January 8, 2009, the court denied Mr. Riffin's Motion to Reschedule and Reconsider. This appeal followed.[8]

[8] Mr. Riffin noted his appeal in 2009, and this Court set the case to be considered on April 19, 2010. On February 4, 2010, however, Mr. Riffin filed a suggestion of bankruptcy, informing this Court that he had entered bankruptcy proceedings. Accordingly, this Court stayed the appeal "pending further order of the United States Bankruptcy Court." On August 21, 2014, after the bankruptcy proceedings concluded, this Court lifted the stay and set the case for submission on brief November 19, 2014.

STANDARD OF REVIEW

This Court has recently reiterated the standards that guide us in reviewing an administrative agency's decision:

> When reviewing the decision of an administrative agency, "this Court reviews the agency's decision, not the circuit court's decision." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264 (2012) (citation omitted). In so doing, "we are limited to determining if there is substantial evidence in the record as a whole to support the agency's finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Balt. Police Dep't v. Ellsworth*, 211 Md. App. 198, 207 (citation omitted), [*aff'd*, 438 Md. 69 (2014)]. Stated differently, "[o]ur primary goal is to determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious." *Long Green Valley*, 206 Md. App. at 274 (citation omitted). "In applying the substantial evidence test, we must decide whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Rideout v. Dep't of Pub. Safety & Corr. Servs.*, 149 Md. App. 649, 656 (2003) (citation omitted). "When deciding issues of law, however, our review is expansive, and we may substitute our judgment for that of the agency if there are erroneous conclusions of law." *Maryland Dep't of the Env't v. Ives*, 136 Md. App. 581, 585 (2001) (citation omitted). As to error of law, this Court's review is *de novo*. *Taylor v. Harford Cnty. Dep't of Soc. Servs.*, 384 Md. 213, 223 (2004) (applying *de novo* review to determine whether an Administrative Law Judge "applied the correct legal standard in reaching his conclusion").

Matthews v. Housing Auth., 216 Md. App. 572, 582, *cert. denied*, 439 Md. 330 (2014).

DISCUSSION

I.

Mr. Wisnom's Authority

Mr. Riffin's first argument is that Mr. Wisnom's "final order is invalid, since he did not have authority to act as the Director's Designee / Hearing Officer." He notes that BCC § 3-6-101 provides as follows:

> (g) *Final order*. "Final order" means:
>
> (1) The citation issued by the Code Official or the Director under §3-6-205 of this title if the violator has not requested a code enforcement hearing in a timely fashion; or
>
> (2) An order issued by the hearing officer:
>
> (i) At the conclusion of a code enforcement hearing;
>
> ***
>
> (h) *Hearing Officer*. "Hearing Officer" means the individual designated by the Code Official or the Director to conduct code enforcement hearings under this title.

Mr. Riffin then refers to a letter from Jonas A. Jacobson, the Director of DEPRM, responding to Mr. Riffin's Public Information Act request. That letter provides, in part, as follows: "There is no written record appointing Raymond S. Wisnom, Jr. . . . as the Director's Designee/Hearing Officer." Mr. Riffin argues that, because there is no "written record" appointing Mr. Wisnom as a Hearing Officer, the Final Order he issued was invalid.

This argument fails for two reasons. First, Mr. Riffin failed to raise this argument below. Indeed, the letter that he cites to support his position is dated March 25, 2009, nearly eight months after he sought review of the Board's decision, and over a month after the circuit court ruled on his petition for review. This claim was not presented at any stage of the proceedings below, and the assertion of this new claim on appeal is procedurally improper. Because this issue was not raised before the Board rendered its final decision, we decline to consider it. *County Council of Prince George's County v. Billings*, 420 Md. 84, 110 (2011) ("[I]n an action for judicial review of an adjudicatory administrative agency

decision, the reviewing courts should decline to consider an issue not raised before the agency.") (citation and quotation omitted).

Even if we were to consider the issue on the merits, we would reject it. Mr. Riffin cites no authority for the proposition that there must be some "written record" appointing Mr. Wisnom as a Hearing Officer in order for him to have been validly appointed as such. We agree with the Board that this argument is frivolous and baseless.

II.

Preemption

Mr. Riffin spends a significant portion of his brief arguing, as he has argued on previous occasions, that "Baltimore County's regulatory authority over the Site has been preempted by federal law." Relying on 49 U.S.C. § 10501(b), he asserts that, because he is a rail carrier engaging in transportation within the meaning of the federal statute, any regulation over his activities at the site is within the sole jurisdiction of the STB. Mr. Riffin then cites a litany of federal cases without any particularized argument as to how they are applicable to the instant case.

The Board contends that it properly denied this claim. It asserts that Mr. Riffin's argument already has been considered and denied by the United States District Court for the District of Maryland, and that decision was affirmed by the Fourth Circuit. It also notes that the STB has now held in two separate orders that Mr. Riffin is not a railroad carrier.

Mr. Riffin has argued, for over a decade, in varying forums, that federal law preempts the environmental regulations that Baltimore County has attempted to enforce

against him. We set forth an abbreviated history of Mr. Riffin's repeated endeavors to avoid being subject to local environmental regulations.

In 2004, Baltimore County attempted to enforce environmental regulations against Mr. Riffin in two separate cases. *See Riffin v. Snyder*, No. 1:04-CB-02964-RDB, 2004 WL 361337, at *1 (D. Md. Sept. 17, 2004). Mr. Riffin removed the two cases to federal court, arguing that federal law preempted the local environmental regulations. *Id.* The United States District Court for the District of Maryland determined that the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10501(b), "does not completely preempt the state and local environmental regulations on which the lawsuits were based," and therefore, the federal court lacked jurisdiction over the cases. *Id.* Accordingly, it remanded the case to state court. *Id.* The Circuit Court for Baltimore County then issued a permanent injunction requiring Mr. Riffin to comply with the environmental regulations. *Id.*

Mr. Riffin then filed a lawsuit in federal court against the county and state attorneys handling the regulatory matters seeking to enjoin them from enforcing the terms of the injunction. *Id.* He again argued that federal law preempted the local regulations. *Id.* The District Court dismissed Mr. Riffin's lawsuit, stating that it would not revisit its earlier preemption determination and that it had no authority to exercise appellate jurisdiction over the state court's order. *Id.* at*1-2. Mr. Riffin appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed the District Court's dismissal. *Riffin v. Snyder*, No. 04-2227, 2005 WL 348350 (4th Cir. Feb. 14, 2005), slip op. at *1.

Mr. Riffin then appealed the circuit court's injunction to this Court, again arguing preemption. *Riffin v. Md. Dep't of the Env't*, Nos. 1593 and 1902, Sept. Term, 2004 (Filed Feb. 3, 2006) ("*Riffin I*"), slip op. at 13-14. On February 3, 2006, we affirmed the injunction. *Id.* at 21. In so doing, we detailed numerous proceedings Mr. Riffin had instituted before the STB seeking authorization to operate a railroad in Baltimore County. *Id.* at 8-13. Although he was granted such authorization, it ultimately was revoked. *Id.* at 12. The STB noted that Mr. Riffin appeared to be "attempting to use the cover of [the STB] . . . to shield seemingly independent operations and construction in Maryland from legitimate processes of state law." *Id.* (quoting *James Riffin D/B/A NCRR*, STB Finance Docket No. 34501, 2005 WL 420419 (Feb. 23, 2005)). This Court stated that the STB's revocation of his authority to operate a railroad eliminated "any claim . . . that [Mr. Riffin] might assert to . . . subject his operations to the STB's exclusive jurisdiction." *Id.* at 14. We held that Mr. Riffin's preemption argument was moot because the STB expressly stated that he was not a rail carrier. *Id.* at 14-15.

It appears that the next court action occurred when Baltimore County attempted in this case to enforce further environmental regulations against Mr. Riffin. *See Riffin v. Wisnom*, No. RDB-07-1623, 2007 WL 5323114 (D. Md. Nov. 6, 2007), slip op at *1. Before the Code Enforcement Hearing, Mr. Riffin removed the suit to federal court. *Id.* He also filed a separate action in federal court seeking a preliminary injunction enjoining the enforcement of any penalty issued by the County. *Id.*

On October 4, 2007, the District Court issued a memorandum opinion. It noted that the substance of the case involved "a long running dispute between the parties concerning

Baltimore County, Maryland's enforcement authority over Riffin's activities as they relate to his 'railroad maintenance-of-way facility' located in Cockeysville, Maryland." *Baltimore County v. Riffin*, Civil Action No. RDB-07-2361 (D. Md. 2007). The court stated that Mr. Riffin's preemption argument did not render the case subject to removal, and it remanded the case to state court.[9] *Id.* The District Court subsequently dismissed Mr. Riffin's complaint seeking an injunction. *Riffin*, No. RDB-07-1623, 2007 WL 5323114, slip op at *2.

Mr. Riffin then filed a petition for a declaratory order with the STB, seeking a declaration that he was a rail carrier. On May 1, 2008, the STB concluded that it was "clear that [Mr. Riffin] cannot operate as a rail carrier," noting that his Baltimore County facility was "disconnected from any line of railroad over which [he] may have authority to operate as a rail carrier." *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 34997, 2008 WL 1924680 (May 1, 2008), slip op. at *1. Accordingly, it concluded that federal law did not preempt state law regarding this property. *Id.* at *5. Moreover, it noted that Mr. Riffin "may not use [the STB's] jurisdiction over transportation by a rail carrier as a shield to avoid the application of . . . state and local regulations that do not unreasonably interfere with interstate commerce." *Id.*[10]

[9] The court stated that Mr. Riffin's "use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive." *Baltimore County v. Riffin*, Civil Action No. RDB-07-2361 (D. Md. 2007).

[10] While the proceedings before the STB were pending, this case was brought before the Circuit Court for Baltimore County. After that court denied Mr. Riffin's petition for judicial review, he appealed to this Court, and in his brief informed us of the STB proceedings. As we have noted, this case was then stayed due to Mr. Riffin's bankruptcy.

Mr. Riffin appealed the STB ruling to the United States Court of Appeals for the District of Columbia Circuit. *Riffin v. Surface Transportation Board*, 592 F.3d 195, 196 (D.C. Cir. 2010) ("*Riffin v. STB I*"). While that appeal was pending, Mr. Riffin filed yet another petition for a declaratory order with the STB, seeking a declaration that he was a rail carrier. *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 35245, 2009 WL 2942969 (Sept. 15, 2009). The STB rejected this claim, again finding that he was not a "rail carrier." *Id.* at *2.[11] The STB, therefore, denied Mr. Riffin's petition for a declaratory order. *Id.* at *5. He appealed that ruling, and the D.C. Circuit affirmed. *Riffin v. Surface Transportation Board*, No. 09-1277, 2010 WL 4924719 (Nov. 30, 2010).

Meanwhile, in the appeal of the STB's decision on his first petition for a declaratory order continued. In that case, the D.C. Circuit ultimately held that the STB did not adequately explain its reasoning in concluding that Mr. Riffin was not a rail carrier, and it remanded to the STB for further proceedings. *Riffin v. STB I*, 592 F.3d at 197-98. On remand, the STB noted that it had fully explained why Mr. Riffin was not a rail carrier in ruling on his second petition for a declaratory order, and it adopted that reasoning and again denied Mr. Riffin's petition for a declaratory order. *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 34997, 2011 WL 2720455, (July 11, 2011), slip op at *3-4.

[11] The STB noted that, historically, the property was connected to the national rail network via a rail line known as the Cockeysville Industrial Track ("CIT"), but it no longer is connected to the CIT, and therefore, the property is not integral to transportation by a rail carrier.

We agree with the reasoning set forth above that federal law does not preempt Baltimore County's regulatory actions in this case. 49 U.S.C. § 10501(b) provides, in pertinent part, as follows:

> The jurisdiction of the [STB] over-- (1) *transportation by rail carriers*, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers . . . is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(Emphasis added). The statute defines "rail carrier" as "a person providing common carrier railroad transportation for compensation." *Id.* at § 10102(5). "Transportation" is defined, in part, as operating:

> (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, *property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property*, or both, by rail, regardless of ownership or an agreement concerning use . . . .

Id. at § 10102(9).

Mr. Riffin presented no evidence or legal argument in this case indicating how, contrary to the decisions set forth above, he was a rail carrier subject to the exclusive jurisdiction of the STB. Accordingly, we reject Mr. Riffin's preemption argument; and the Board properly rejected this claim.

III.

Violations of the Baltimore County Code

Mr. Riffin next challenges the propriety of the Board's decision affirming the Hearing Officer's amended final order. Specifically, he contends that the State did not

demonstrate that he violated BCC § 33-5-103, and because the State did not demonstrate that he violated BCC § 33-5-103, it could not establish that he violated BCC § 33-5-108.

Mr. Riffin argues that there was not substantial evidence to support the Hearing Officer's finding that he violated BCC § 33-5-103. Although he admits that there was evidence in the record indicating that he altered the flow of surface waters across his land, he asserts that the State did not prove that the grading activities he performed altered the flow of surface waters over adjoining properties.

Baltimore County contends that there as "overwhelming evidence" to support the finding that Mr. Riffin violated BCC §§ 33-5-103 and 108. It notes that Mr. Sharbonda visited the site on five separate occasions and observed a number of distinct, improper activities occurring there. Mr. Sharbonda set forth those observations, along with photographic proof, in an affidavit submitted to DEPRM, which MR. Riffin neither challenged nor rebutted. Among the observations Mr. Sharbonda related was that Mr. Riffin had already altered drainage patterns at the site to send surface water onto adjacent properties. The County argues that DEPRM and the Board appropriately relied on that unchallenged representation and found Mr. Riffin in violation of BCC § 33-5-103.

As an initial matter, Mr. Riffin's argument stems from the erroneous premise that the State was <u>required</u> to demonstrate that his grading activities <u>actually</u> changed the flow of surface waters on the parcels adjacent to the site. BCC § 33-5-103 provides, in part, as follows:

> A person may not change the natural ground level of any lot or parcel in any way that results *or may result* in any changing of the direction, volume,

> distribution, or velocity of the flow of surface water on or over any adjoining private or public property without a valid grading permit.

(Emphasis added). Thus, the State may carry its burden by adducing evidence that grading activities could potentially result in altering the flow of surface water's on adjacent properties. It is not required to prove such an alteration actually occurred.

In any event, in making its finding regarding Mr. Riffin's alleged violation of this section, the Board stated, in part, as follows:

> [T]he photographs taken on April 27, 2007, by Mr. Sharbonda specifically and clearly showed alteration by [Mr. Riffin] of water drainage patterns resulting from his construction activities such that flows of water are being sent from the Site onto the property to the North and East next to the bridge across Beaver Run Lane and near the Loch Raven property owned by Baltimore City.
>
> While the evidence showed that [Mr. Riffin's] construction has *already* changed the direction, volume, distribution and velocity of surface water, the County was within its right to issue citations if the construction "may result" in such change as set forth in BCC § 33-5-103.

The evidence at the hearing showed that Mr. Riffin's property ended at Beaver Run Lane, a private road to the north of the site. As the Board noted, the State introduced photographs showing that the grading work Mr. Riffin performed at the site altered drainage patterns "to send flows of the property to the North and East into an area next to the bridge across Beaver Run Lane." Thus, the evidence showed that the grading work altered drainage patterns and forced surface waters to run onto the property situated on the other side of Beaver Run Lane, i.e., onto an adjacent property. Indeed, Mr. Sharbonda explicitly stated in his affidavit that "the existing drainage patterns of the site have been altered to force water onto the adjoining properties without authorization." Mr. Riffin did

not challenge this evidence in any way. In light of these facts, there was substantial evidence in the record to demonstrate that Mr. Riffin actually altered drainage patterns of surface waters onto an adjacent property. There was substantial evidence to support the Board's finding that Mr. Riffin violated BCC §§ 33-5-103 and 108.[12]

IV.

The Fine

Mr. Riffin next argues that the fine assessed against him was "arbitrary, capricious, unreasonable, contrary to law, [and/or unsupported] by substantial evidence." He asserts that, because the March 28, 2007, notice gave him 30 days to comply with its terms, he should be fined only for the period of time between April 27, 2007, i.e. the day the 30 day period expired, and May 2, 2007, i.e. the day the original fine was issued. He further contends that Mr. Sharbonda visited the site on five days and observed no grading occurring on any of those days. Because the fine was "for grading activities without a permit," and because no grading was observed on those days, Mr. Riffin argues that he cannot be fined. In the alternative, he argues that, at most, he can be fined only for the days on which Mr. Sharbonda visited the site.

[12] Mr. Riffin argues that he presented "*prima facie* evidence he need not obtain a grading permit," citing a topographic survey of the Site and adjoining properties. He points to a Verified Statement by Joseph Thompson, a Maryland Registered Land Surveyor, stating that "it was physically impossible for any grading activities on the Site to alter the flow of surface waters on any adjoining property." This Verified Statement, however, was prepared in October 2008, well after the February 21, 2008, hearing before the Board. Because it was not presented to, or considered by, the Board, we will not consider Mr. Riffin's argument in this regard. *See County Council of Prince George's County v. Billings*, 420 Md. 84, 110 (2011).

The County argues that BCC § 33-5-302(a) allows the Hearing Officer to impose a fine of $1,000 "per violation," and "each day on which a violation occurs constitutes a separate offense." It asserts that "Mr. Sharbonda clearly established that Mr. Riffin had failed to restore the property, and continued to destroy the property, from March 28-May 2, 2007 (a total of 36 days). Therefore, Mr. Riffin was subject to a fine of $1,000 per day or $36,000." Accordingly, it contends that the "Hearing Officer was well within his authority to impose this fine, and the [Board] and the Circuit Court decisions to uphold the Hearing Officer's fine were well founded," and "there is no basis for the court to overturn the fine."

We note that Mr. Riffin's argument regarding the fine, which consists of less than one page of his brief, does not set forth the applicable standard of review or contain any authority to support his contention. Under these circumstances, we will not consider this contention. *See* Md. Rule 8-504(a)(5) (brief shall contain a "statement of the applicable standard of review for each issue"); Md. Rule 8-602(a)(8) (court may dismiss an appeal for noncompliance with Md. Rule 8-504); *Benway v. Md. Port Admin.*, 191 Md. App. 22, 32 (2010) ("[I]t 'is not our function to seek out the law in support of a party's appellate contentions.'") (quoting *Diallo v. State*, 186 Md. App. 22, 33 (2009)); *Higginbotham v. Pub. Serv. Comm'n*, 171 Md. App. 254, 268 (2006) (It is not the function of the appellate court to seek out the law in support to the party's contentions.).

V.

Motion to Strike Baltimore County's Summary of Testimony

As indicated, the tape of the hearing before the Hearing Officer was destroyed, and the parties were asked to provide a summary of the evidence. Mr. Riffin argues that the Board of Appeals erred in denying his motion to strike Baltimore County's summary of testimony. He asserts that the summary was not prepared by a person at the hearing, and therefore, it was "arbitrary, capricious, unreasonable, or contrary to law" to deny his motion to strike.

Again, Mr. Riffin's argument does not set forth a standard of review, nor does it contain any authority to support his contention that there was any error. Additionally, Mr. Riffin does not assert that there was anything false in the summary or that he otherwise was prejudiced by the admission of this summary. *See Catler v. Arent Fox, LLP*, 212 Md. App. 685, 725 (to obtain reversal in a civil case, a party must show prejudice), *cert. denied*, 435 Md. 502 (2013). Mr. Riffin states no claim for relief in this regard.

VI.

Baltimore County's Late Answer

Mr. Riffin next argues that "Baltimore County abandoned its right to participate as a party in the circuit court proceeding" because it did not timely file a response to his petition for judicial review. He asserts that that the court should not have accepted the County's late response, and he contends that he was prejudiced because he "was not afforded sufficient time to file a Reply to the County's late-filed Response, prior to the [c]ourt's November 25, 2008 hearing."

Md. Rule 7-204 provides, in part, as follows:

> (a) **Who May File; contents.** Any person, including the agency, who is entitled by law to be a party and who wishes to participate as a party shall file a response to the petition. The response shall state the intent to participate in the action for judicial review. No other allegations are necessary.
>
> ***
>
> (c) **Time for Filing Response; service.** A response shall be filed within 30 days after the date the agency mails notice of the filing of the petition unless the court shortens or extends the time. The response need be served only on the petitioner, and shall be served in the manner prescribed by Rule 1-321.

Here, the agency mailed notification of Mr. Riffin's petition for judicial review on August 11, 2008. Baltimore County did not file its response to the petition until October 6, 2008, after the 30-day time mandated in Rule 7-204(c).

Mr. Riffin did not, however, raise this issue in the circuit court in a timely manner. The Maryland Rules do not provide for a "Motion to Dismiss as a Party," but the substance of Mr. Riffin's motion was akin to a motion to strike.

Initially, we note that Mr. Riffin's response to Baltimore County's late-filed opposition to his petition also was untimely. To the extent that he wanted to strike the opposition, he was required to do so within 15 days after the date on which he was served with the response.[13] He did not move to strike the pleading until well after that date, and

[13] Maryland Rule 2-322(e), which governs motions to strike, provides as follows:

> On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, *on motion made by a party within 15 days after the service of the pleading* or on the court's own initiative at any time, the court may order any insufficient defense or any improper,
>
> (continued . . .)

indeed, until after the circuit court announced its judgment on his petition. It is with ill grace, therefore, that Mr. Riffin seeks reversal based on the County's failure to follow the time deadlines.

In any event, the court had discretion under Rule 7-204 to accept a late-filed opposition. *See Dep't of Corr. v. Neal*, 160 Md. App. 496, 509 (2004), *cert. denied*, 386 Md. 181 (2005). And with respect to Mr. Riffin's argument that he was prejudiced, we note that he had more than a month and a half to respond to the County's opposition, and he filed two extensive (and baseless) motions in that time. We are not persuaded that there was any prejudice here.

VII.

The Circuit Court's Decision

We set forth the entirety of Mr. Riffin's next argument:

> The Circuit Court improperly affirmed the decision of the Board of Appeals rather than the decision of Mr. Wisnom. *Dept. of Corrections v. Neal*, 160 Md. App. 496, 507 (2004).

This contention contains no standard of review or particularized argument in support of Mr. Riffin's position. We therefore decline to consider it. *See Barnes v. State*, 437 Md. 375, 387 (2014) (court may decline to address arguments inadequately argued in brief);

(. . . continued)

> immaterial, impertinent, or scandalous matter stricken from any pleading *or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety*.

(Emphasis added).

Md. Rule 8-504(a) (brief shall contain a "statement of the applicable standard of review for each issue" and "[a]rgument in support of the party's position on each issue"); Md. Rule 8-602(a)(8) (court may dismiss an appeal for noncompliance with Md. Rule 8-504).

VIII.

The Motion to Reschedule and Reconsider

Mr. Riffin's final argument is that "it was an abuse of discretion to deny [his] motion to revise judgment." He argues that he was unable to communicate to the circuit court that he could not attend the November 25, 2008, hearing because he had strept throat. Mr. Riffin emphasizes that he filed his Motion to Reschedule and Reconsider at the earliest possible time after November 25, 2008, and he argues that the denial of the motion under these circumstances was improper.

Although Mr. Riffin again sets forth no standard of review, or any authority to support his contention, we conclude that his contention is without merit. A trial court's ruling on a motion to revise a judgment is reviewed for an abuse of discretion. *Wells v. Wells*, 168 Md. App. 382, 394 (2006). "An abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Webster v. State*, 221 Md. App. 100, 112

(2015) (quoting *Brass Metal Prods. v. E-J Enters*., 189 Md. App. 310, 364 (2009)). We are not persuaded that the circuit court abused its discretion in denying Mr. Riffin's motion to revise judgment.

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