UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0275

September Term, 2015

LAURA LYNN HUGHES

v.

STEPHEN MOYER, SECRETARY, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Arthur,
Reed,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: March 11, 2016

Laura Lynn Hughes, appellant, appeals from an order by the Circuit Court for Baltimore County dismissing her petition for writ of mandamus filed against the Secretary of the Department of Public Safety and Correctional Services ("the Secretary of DPSCS"), appellee. In response to appellant's December 18, 2014 petition for writ of mandamus, the Secretary of DPSCS filed a motion to dismiss on the ground that appellant was not entitled to the relief sought. After a hearing on April 14, 2015, the circuit court dismissed the petition. This timely appeal followed.

ISSUES PRESENTED

Appellant presents the following issues for our consideration:

> I. Whether the lower court erred in failing to consider that the appellant received inadequate notice of her appeal rights as required by Md. Code Ann., State Pers. & Pens. § 11-106(a) (5); and,
>
> II. Whether the lower court erred in failing to consider the minimum level of due process due to the appellant prior to the State's deprivation of a property right.

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The basic facts of this case are not in dispute. Appellant was employed by the Maryland Department of Public Safety and Correctional Services as a senior parole and probation agent. On August 13, 2013, she was observed in the workplace "'disheveled,' slurring her speech, rubbing her eyes, and 'incoherent in thought and delivery.'" She was sent for drug testing based on a reasonable suspicion that she was under the influence of some substance. A subsequent urine test came back positive for illegal drugs and appellant was terminated from her employment.

The notice of termination advised appellant that she had the right to file an appeal with the Secretary of DPSCS in writing "**within fifteen (15) calendar days** after receipt" of the notice. The notice included the appropriate address for filing the appeal. On October 17, 2013, appellant filed an appeal from the decision to terminate her employment. She never received a decision or any other response from the Secretary of DPSCS. On September 16, 2014, counsel for appellant sent a letter to the Secretary, but no response was received.

On December 18, 2014, appellant filed a petition for writ of mandamus in the circuit court seeking, among other things, an order requiring the Secretary of DPSCS to respond to the issues raised in her appeal. The circuit court dismissed appellant's petition relying, in part, on Md. Code (2009 Repl. Vol.), § 11-108(b) (2) of the State Personnel & Pensions Article ("SP"), which provides that a failure by the Secretary of DPSCS to decide an appeal within fifteen days "is considered a denial from which an appeal may be made."[1] Appellant did not file an appeal to the Secretary of the Department of Budget and Management ("DBM") as permitted by SP § 11-110, which provides for such appeals "[w]ithin 10 days after receiving a decision" from the Secretary of DPSCS.
SP § 11-110(a).

DISCUSSION

As this appeal comes to us from an order granting the Secretary of DPSCS's motion to dismiss, our task is to determine whether the circuit court was legally correct.

[1] SP § 11-108(b) (2) provides that "[a] failure to decide an appeal in accordance with this subtitle is considered a denial from which an appeal may be made."

Rounds v. Maryland-Nat. Capital Park and Planning Comm'n, 441 Md. 621, 635 (2015)(and cases cited therein). In reviewing the grant of a motion to dismiss, we must determine whether the complaint, "'on its face, discloses a legally sufficient cause of action.'" *Collins v. Li*, 176 Md. App. 502, 534 (2007)(quoting *Pulte Home Corp. v. Parex Inc.*, 174 Md. App. 681, 710 (2007)). We "'presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.'" *Id.* "'Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven.'" *Id.*

Appellant argues that she received inadequate notice of her appeal rights in violation of (1) SP § 11-106(a) (5)[2] and (2) her right to due process. The Secretary of DPSCS disagrees and, in the alternative, argues that appellant failed to exhaust her administrative remedies. This argument is based on appellant's failure to note a timely appeal.

The writ of mandamus is an ancient writ used to "'compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear legal right.'" *City of Annapolis v. Bowen*, 173 Md. App. 522, 533, *aff'd in part, rev'd in part on other grounds*, 402 Md. 587 (2007)(quoting *Criminal Injuries Comp. Bd. v. Gould*, 273 Md.

[2] SP § 11-106(a) (5) provides that, before imposing sanctions, an employer must give an employee a written notice of the disciplinary action to be taken and the "employee's appeal rights."

486, 514 (1975)). A party seeking a writ of mandamus "must show a clear right to the relief requested and a clear obligation on the part of the respondent to perform the particular duty." *Id.* (and cases cited therein). "Ordinarily, a writ of mandamus should issue only in those cases where another adequate remedy does not exist and where 'clear and undisputable' rights are at stake." *Wilson v. Simms*, 380 Md. 206, 223 (2004)(citing *Walter v. Board of Comm'rs of Montgomery County*, 179 Md. 665, 668 (1941)). A writ of mandamus will not lie if the petitioner's right is unclear or when the decision maker is permitted to exercise discretion. *Id.* at 223-24 (and cases cited therein).

Appellant was not entitled to a response from the Secretary of the DPSCS addressing the issues raised in her appeal. Under the statutory scheme, the Secretary of DPSCS had fifteen days after receiving appellant's appeal to issue a written decision. SP § 11-109(e) (2).[3] However, SP § 11-108(b) (2) specifically provides that the Secretary of DPSCS's "failure to decide an appeal in accordance with this subtitle is considered a denial from which an appeal may be made." SP § 11-110. Having not received a written decision from the Secretary of DPSCS within fifteen days after her appeal was filed, appellant was free to note a timely appeal. *See* SP § 11-110(a) (1).

The gravamen of appellant's argument is disagreement with the decision in *Fisher v. Eastern Correctional Institution*, 425 Md. 699 (2012), in which the Court of Appeals considered the interplay of SP §§ 11-108, 11-109, and 11-110. The Court recognized that

[3] SP § 11-109(e) (2) provides that "[w]ithin 15 days after receiving an appeal, the head of the principal unit shall issue to the employee a written decision that addresses each point raised in the appeal.

the statutory scheme evidenced "an appreciation for the notion that the head of a principal unit could not, or even should not, author in every appeal presented to him or her a written decision that addresses each point raised in the appeal, much less do so within fifteen days of receipt of the appeal." *Fisher*, 425 Md. at 713 (internal quotations omitted). An employee must assume that at the end of the fifteen day period in SP § 11-109, the appeal has been denied and take any further appeal within ten days thereafter. Clearly, the Secretary of DPSCS had no statutory obligation to issue a written decision or respond in any way to appellant's appeal.[4]

Moreover, requiring the Secretary of DPSCS to issue a denial now would not aid appellant because her time for further appeal has long since expired. The only relief that would be of benefit would be a holding that the earlier denial by silence was not legally effective thus causing the appeal time to run from the mandated written notice of denial. That result would contradict the holding in *Fisher* that the deemed denial was effective. As a result, a writ of mandamus was not appropriate in this case.

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

[4] Hughes makes a compelling argument that, as a matter of policy, employees should be given notice of all appeal rights, even when a deemed denial occurs. SP § 11-106 does not require that, however. The notice issue is for the General Assembly to resolve.