

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1319

September Term, 2014

KEITH ROBERTSON

v.

COMPTROLLER OF MARYLAND

Berger,
Reed,
Sharer, Frederick, J.,
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 21, 2016

*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.

This appeal arises from a decision by the Circuit Court for Baltimore County dismissing a petition for judicial review filed by Keith Robertson, appellant.

By order dated March 6, 2014, the Maryland Tax Court affirmed the assessment of taxes, interest, and penalties for tax years 2002 through 2007 entered by the Comptroller of Maryland, appellee, against Robertson. Robertson filed a timely petition for judicial review in the Circuit Court for Baltimore County and, thereafter, a motion to extend the time to pay for the trial transcript.

On August 4, 2014, the Comptroller filed a motion to dismiss the petition for judicial review. Several days later, Robertson filed a response to the Comptroller's motion to dismiss and a motion to extend the time for filing the memorandum required by Maryland Rule 7-207. By two separate orders, both entered on August 27, 2014, the circuit court denied Robertson's motion to extend the time for paying for the transcripts, granted the Comptroller's motion to dismiss, and dismissed Robertson's petition for judicial review. This timely appeal followed.

QUESTION PRESENTED

Robertson, who is proceeding in proper person on appeal, as he did below, presents the following question for our consideration, which we present *verbatim*:

Did the Hon. Judge Vicki Ballou-Watts dismissal of my case after becoming aware on August 8, 2014; that, I did not received an order from the Baltimore County Circuit Court; making me aware of the denial of my motion filed on June 10, 2014. Denied me procedural due process by preventing me for presenting evidence in my case that would have shown the many errors made by the Comptroller of Maryland Compliance Division when it issued an

garnishment against me in May of 2007 not addressed by the Maryland Tax court.

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The issue presented in this appeal is procedural in nature and, as a result, it is not necessary for us to set forth a detailed statement of the underlying facts. On June 11, 2014, the tax court filed the record with the circuit court and notice was sent to the parties. Pursuant to Maryland Rule 7-207(a)¹, Robertson's memorandum was required to be filed with the circuit court by July 14, 2014. Robertson did not file the required memorandum, but on June 10, 2014, he filed a motion requesting an extension of time to pay for the trial transcript. That motion did not request an extension of time for filing the required memorandum. Nor did it include a proper certificate of service indicating that the motion

¹ Maryland Rule 7-207(a) provides:

(a) **Generally.** Within 30 days after the clerk sends notice of the filing of the record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied on. Within 30 days after service of the memorandum, any person who has filed a response, including the agency when entitled by law to be a party to the action, may file an answering memorandum in similar form. The petitioner may file a reply memorandum within 15 days after service of an answering memorandum. Except with the permission of the court, a memorandum shall not exceed 35 pages. In an action involving more than one petitioner or responding party, any petitioner or responding party may adopt by reference any part of the memorandum of another.

had been served on the Comptroller as required by Maryland Rules 1-321(a)² and 1-323.³ Instead, the certificate of service indicated that the motion was mailed only to the Maryland Tax Court.

On August 8, 2014, after the deadline for filing the memorandum had passed, Robertson filed a motion to extend the time for filing the required memorandum, which was denied.

²Maryland Rule 1-321(a) provides:

(a) **Generally.** Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

³ Maryland Rule 1-323, which governs proof of service, provides:

The clerk shall not accept for filing any pleading or other paper requiring service, other than an original pleading, unless it is accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service. A certificate of service is prima facie proof of service.

DISCUSSION

Robertson contends that if the circuit court had ruled in a timely fashion on his motion for an extension of time to pay for the transcripts he would have been able “to address whatever issue the court may have had with [his] motion” and “[t]hat would have allowed [him] to file[] the memorandum of law.” The issues that we must resolve, therefore, are whether the circuit court erred in denying the motion for an extension of time to pay for the transcript and granting the Comptroller’s motion to dismiss.

A. Motion for Extension of Time to Pay for Transcripts

The record before us clearly reveals that the circuit court did not abuse its discretion in denying Robertson’s motion to extend the time to pay for transcripts. Robertson’s motion to extend the time to pay for transcripts was filed on June 10, 2014. The certificate of service, required by Md. Rule 1-321 and attached to the motion, shows that Robertson served the motion on the Maryland Tax Court but failed to serve the motion on the Comptroller. For that reason alone, the court was justified in dismissing Robertson’s motion to extend the time to pay for transcripts. Md. Rule 1-321; *Rethorst v. Rethorst*, 214 Md. 1, 15-16 (1957) (“[n]otice is ordinarily an essential of proper procedure”); *Director of Finance of Baltimore City v. Harris*, 90 Md. App. 506, 513-14 (1992).⁴

⁴ Contrary to the Comptroller’s assertion, the clerk of the circuit court was required to accept Robertson’s motion for filing because it was accompanied by a signed certificate of service showing the date and manner of service as required by Md. Rule 1-323(a).

(continued...)

B. Motion to Dismiss the Petition for Judicial Review

Robertson challenges the circuit court’s dismissal of his petition for judicial review for failure to file the memorandum required by Md. Rule 7-207(a).⁵ He argues that the court’s failure to rule on his motion to extend the time to pay for transcripts somehow prevented him from filing the required memorandum in a timely manner and thus the circuit court should have extended the time within which he could file his memorandum. We disagree and explain.

The purpose of the memorandum required by Md. Rule 7-207 “is to inform the opposing parties and the trial court of the issues involved in the case, and the appellant’s arguments on appeal, in sufficient time for the opposition to respond in kind and for the court to make an informed decision.” *Gaetano v. Calvert County*, 310 Md. 121, 126 (1987). The Rule is intended “to promote the orderly and efficient administration of justice,” and is “meant to be obeyed.” *People’s Counsel v. Public Serv. Comm’n*, 52 Md. App. 715, 720 (1982) (internal quotations omitted).

⁴(...continued)

Harris, 90 Md. App. at 513-14. The problem in the instant case is that the person on whom Robertson made service, according to the certificate, was not the Comptroller, as required by Md. Rule 1-321(a).

⁵ Maryland Rule 7-207 requires, in relevant part, that “[w]ithin 30 days after the clerk sends notice of the filing of the record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied on.”

Pursuant to Md. Rule 7-207(a), Robertson’s memorandum was due on July 14, 2014, but he neither filed it nor requested an extension of time within which to do so. Instead, Robertson waited until after the filing deadline had passed and, on August 8, 2014, more than three weeks after the memorandum was due and less than thirty days before the September 4th hearing, he filed a motion pursuant to Md. Rule 1-204 to extend the time for filing his memorandum.

Maryland Rule 1-204 provides, in relevant part, that “on motion filed after the expiration of the specified period, [the court may] permit the act to be done if the failure to act was the result of excusable neglect.” In both the circuit court and this Court, Robertson failed to offer any reason why he failed to file the memorandum in a timely fashion or request an extension of time prior to the deadline except to point out that the court had not ruled on his prior motion to extend the time to pay for transcripts. There is absolutely nothing in the record before us to support a finding of excusable neglect.

With respect to the memorandum required for judicial review, Md. Rule 7-207(c) permits modifications of the time requirements and provides sanctions for the late filing of memoranda as follows:

(c) **Modification of time requirements.** The time for filing a memorandum may be shortened or extended by (1) stipulation of the parties filed with the clerk so long as the first memorandum and any answering memorandum are filed at least 30 days, and any reply memorandum is filed at least ten days, before the scheduled hearing, or (2) order of the court entered pursuant to Rule 1-204.

(d) **Sanctions for late filing of memoranda.** If a petitioner fails to file a memorandum within the time prescribed by this Rule, the court may dismiss the action if it finds that the failure to file or the late filing caused prejudice to the moving party. A person who has filed a response but who fails to file an answering memorandum within the time prescribed by this Rule may not present argument except with the permission of the court.

In *People's Counsel*, 52 Md. App. at 720, we held that dismissal is “an appropriate, and perhaps even a preferred, sanction for failure to comply” with the memorandum requirement. Nevertheless, a trial judge is not required to dismiss a case when a party fails to file a memorandum. Rather, “a trial judge should examine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.” *Gaetano*, 310 Md. at 127 (internal quotations omitted).

In its written order, the circuit court noted that it considered Robertson’s petition for judicial review filed on April 7, 2014, the Comptroller’s motion to dismiss, and Robertson’s response to the motion to dismiss, which together contained all of the pertinent information about Robertson’s failure to file a timely memorandum. The court also considered Maryland Rules 7-201 *et seq.*, the chapter governing judicial review of administrative agency decisions, and thus was aware of the purpose of the applicable rules. It is not necessary for a judge to state each and every consideration or factor. *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003). From the court’s statements, we draw a rational inference that it took into account all of the necessary factors, including the prejudice to the Comptroller and the

court, in formulating its decision. *Id.* After considering the consequences of Robertson's failure to file his memorandum in light of the totality of the circumstances and the purpose of the rule requiring the memorandum, the court concluded that dismissal was the appropriate sanction. We find no abuse of discretion in that decision.

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