

Circuit Court for Allegany County
Case No.: C-01-CV-23-000432

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 232

September Term, 2024

IN THE MATTER OF
WAYNE RESPER

Wells, C.J.,
Graeff,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 27, 2024

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Wayne Resper, appellant, is incarcerated in the Western Correctional Institution in Cumberland. In December 2023, Resper petitioned the Circuit Court for Allegany County for judicial review of a decision of the Incarcerated Individual Grievance Office dismissing a grievance he had filed. Resper has been declared a frivolous filer under Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 5-1005(a) at least three times prior to the filing of this action. So, contemporaneously with his petition, Resper moved for leave to file the petition. The Department of Public Safety and Correctional Services, appellee, opposed.

On February 1, 2024, the court denied Resper leave to file the petition and dismissed the action. Then, on February 10, Resper moved for reconsideration.¹ The court, having conducted “a full review of the record,” denied Resper’s motion on March 7. This appeal followed.

¹ The circuit court docketed Resper’s motion when it was received on February 14 but noted that it was stamped by the facility on February 10. The motion was filed in connection with Resper’s petition for judicial review of the denial of his incarcerated-individual grievance complaint. It therefore falls within the safe harbor of the prison mailbox rule. Md. Rule 1-322(d). Resper did not include a Certificate of Filing in his motion, but it is still treated as filed on the date the facility stamped the envelope containing the motion: February 10. *See* Md. Rule 1-322(d)(2). This brings the filing date within 10 days of the circuit court’s judgment, thus tolling the time for Resper to appeal. *Pickett v. Noba, Inc.*, 122 Md. App. 566, 570 (1998). For this reason, the Department’s contention that the scope of our review is limited to only the denial of Resper’s revisory motion—rather than the underlying judgment—is wrong. When treated as filed on the correct date, the motion tolled Resper’s time to appeal from the underlying judgment until 30 days from when his motion was denied on March 7. Md. Rule 8-202(c). Thirty days from March 7, 2024, was April 6—a Saturday. Resper’s deadline was thus extended automatically to the next non-holiday weekday—Monday, April 8. Md. Rule 1-203(a)(1). The envelope containing Resper’s notice of appeal was stamped by the facility on April 1, so his appeal is timely from the underlying judgment.

On appeal, Resper does not contend that his petition was not frivolous. He contends, instead, that he should never have been designated a frivolous filer. But CJP § 5-1005(c)(1) states that a “prisoner who has filed three or more civil actions that have been declared to be frivolous by a court of this State . . . may not file any further civil actions without leave of court.” Although Resper disputes the grounds upon which his previous civil actions were declared frivolous, the validity of the court’s order declaring him to be a frivolous filer is not properly before us in this appeal. Because of Resper’s frivolous-filer designation, the court was not required to accept his petition, and so, it did not err in denying leave to file it.

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