Circuit Court for Baltimore City
Case No. 24-C-20-003503

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0354

September Term, 2021

IN THE MATTER OF THE PETITION

OF JENNIFER ROWE

Nazarian,
Friedman,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: April 25, 2022

Asserting a claim for disability discrimination in a place of public accommodation, Jennifer Rowe ("Rowe") filed a complaint with the Maryland Commission on Civil Rights ("the Commission"). Rowe alleged that Krav Maga Maryland, LLC ("Krav Maga") discriminated against her based on her disability. After investigating Rowe's complaint, the Commission found that there was no probable cause to believe that Krav Maga discriminated against Rowe. Rowe timely requested the Commission to reconsider its no probable cause finding. The Commission denied Rowe's request, and Rowe petitioned for judicial review in the Circuit Court for Baltimore City. The circuit court affirmed the Commission's decision, and Rowe noted a timely appeal to this Court.

On appeal, Rowe raises issues concerning the procedure and the substance of the Commission's no probable cause finding. During oral argument before this Court, questions arose about this Court's jurisdiction to consider Rowe's appeal, and we subsequently permitted the parties additional briefing on the issue. For the reasons to follow, we conclude that Rowe's appeal to this Court is not authorized by statute. Nor is it a common law mandamus action giving rise to jurisdiction in this Court. Thus, we shall dismiss this appeal for a lack of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

Rowe suffers from anxiety, depression, and post-traumatic stress disorder ("PTSD"). In December 2016, Rowe became a member of Krav Maga—a gym that offers mixed-martial arts instruction and training. From the time she joined, Krav Maga had been advised of Rowe's mental health disabilities. Jeff Mount ("Mount") and Elisabeth Green ("Green") are employees of Krav Maga. Mount is the chief instructor and director of

operations, and Green is the general manager. In connection with its martial arts programs, Krav Maga maintains a private group on Facebook[1] where its gym members can post a message or comment on a posted message in the group.[2] Per Krav Maga, group members who wish to post or comment in the Facebook group must do so in accordance with the group's posting policies. One policy in particular requires the members' posts or comments to "be kind and positive."[3] Green is the moderator of the group and is responsible for enforcing the group's posting policies.

On February 19, 2019, a member of the Krav Maga Facebook group posted a message, which was described later in the Commission's findings as "questioning the negative attitudes of people with full use of their extremities." Rowe commented responsively to the message: "[b]ecause some of us have mental/emotional disabilities." Green and Mount determined that Rowe's comment violated Krav Maga's Facebook group posting policies. Green then deleted Rowe's comment and posted an announcement in the group stating that any posts or comments not on topic for the group would be deleted.

[1] Facebook is a social networking website and social media platform, where users can virtually interact with other users by creating online profiles to share information about themselves. *Sublet v. State*, 442 Md. 632, 636, n.1–2, 637 n.5 (2015); *Griffin v. State*, 419 Md. 343, 354 n.9 (2011). Within Facebook, a Facebook group is a private group involving limited access to a select group of people. *See id.* at 637 n.5; *Vigna v. State*, 470 Md. 418, 430 (2020) (discussing a Facebook group for the alumni of a school).

[2] A post can be in the form of a written message, photo, video, other forms of media, or combination thereof; and a comment on a post can take the same form as a post. *See Griffin*, 419 Md. at 354 n.9; *Sublet*, 442 Md. at 637 n.5, n.9.

[3] The other policies of the group are not relevant in this appeal.

Later that day, Green sent a private Facebook message[4] and an email to Rowe communicating the reason for the deletion of Rowe's comment. Green explained that while Rowe could discuss her mental health and her disability in the group, her comment violated the group's policy requiring posts to be kind and encourage a positive environment. Green noted that Rowe often comments negatively and aggressively on other member's posts instead of writing about her personal journey. In response to Green's email, Rowe claimed that Green's deletion of her comment discriminated against her for her disability. Green responded that she did not discriminate against Rowe, that she deleted Rowe's post because it violated the rules of the group, and that Mount was willing to meet with her to discuss her concerns. On March 20, Mount met with Rowe and explained to her why her post was deleted. Per Mount, the meeting ended amicably, and Rowe understood why her February 19 Facebook comment was deleted.

During May and June 2019, Rowe, Green, and Mount exchanged a series of emails that prompted another discussion of the deletion of Rowe's Facebook comment. Rowe sent an email to Mount on May 10 and a follow-up email to Mount on June 17, discussing her concerns with Krav Maga instructors.[5] Mount did not initially respond to Rowe's emails. On June 19, Rowe sent an email to Mount to ask if he had received her June 17 email. On June 20, Mount responded to Rowe's prior emails and addressed her concerns. Mount

[4] Facebook users can also send private messages on Facebook that are akin to text messages between two cellphones. *See Sublet*, 442 Md. at 638 n.10.

[5] The content and substance of these emails did not concern the deletion of Rowe's February 19 Facebook comment.

apologized for the delay in his responses and explained that he had been on vacation without access to work e-mail and that he returned from his trip on June 19. Apparently, before reading Mount's responses, Rowe sent an email to Green stating that she thought Mount may have been deliberating ignoring her and that she was dissatisfied with the lack of responsiveness from Krav Maga employees. After reading Mount's replies, Rowe subsequently sent an email to Mount thanking him for his responses and asking him to disregard her recent email to Green because "[her] anxiety was getting intense." Mount responded that he could not simply ignore Rowe's email to Green: "I have done everything I know how to so as to go above and beyond to support you in your training. I'm not really sure what to do with your ongoing disappointment in our efforts."

Rowe then exchanged several emails with Mount and Green concerning the deletion of her February 19 Facebook comment. Rowe revealed that she still felt "hurt and angry" about the deletion of her Facebook comment and felt stigmatized when Green posted the announcement requiring group members to stay on topic.[6] Green maintained that Rowe's post was deleted because it violated the group's posting policies and stated that Rowe was not singled out as she was not named in the subsequent announcement or in any of the group's policies. Rowe responded that she still did not understand why her post violated the group's rules. Mount then sent Rowe a final email on the matter, stating that Rowe's membership was canceled and that she would not be welcome on the premises of the gym's

[6] Rowe also stated that she thought Mount might have been ignoring her because Green never responded to an email Rowe sent to Green in November 2018. In response, Green stated that she did not see Rowe's November 2018 email because it was not sent to Green's personal work email account.

three locations in Maryland. Mount communicated that Rowe's membership was being terminated because she violated her gym membership agreement due to her "disruptive, slanderous, [and] harassing" behavior.

On June 28, 2019, Rowe filed a complaint with the Commission asserting a disability discrimination claim against Krav Maga.[7] Rowe alleged that Krav Maga discriminated against her on the basis of her disability when it deleted her February 19 Facebook comment and when it terminated her gym membership, banning her from the premises. The Commission commenced an investigation into the complaint and accepted evidence from Rowe and Krav Maga. On May 20, 2020, the Commission concluded its investigation and issued a written finding that there was no probable cause to believe that Krav Maga discriminated against Rowe on the basis of her disability. The Commission found that Krav Maga "had a legitimate non-discriminatory business reason, not based on [Rowe's] disability, for terminating her membership because she 'fail[ed] to conform to the usual and regular requirements, standards, and regulations of [Krav Maga's] establishment.'" Rowe filed a timely request for reconsideration of the Commission's no probable cause finding, which the Commission denied. Rowe then petitioned for judicial review in the Circuit Court for Baltimore City. The circuit court affirmed the Commission's decision, and Rowe's timely appeal followed.

[7] Rowe's preliminary questionnaire and complaint also included a retaliation claim against Krav Maga. When the Commission received the complaint, it was suggested to Rowe that the retaliation claim be removed to streamline her complaint. Rowe amended her complaint accordingly, and the Commission noted that "[a]t this time, [Rowe] is satisfied with current charge and does not wish to add any additional protected classes or issues."

On appeal, Rowe argues that the Commission's finding of no probable cause was (1) the result of unlawful procedure and (2) unsupported by substantial evidence. In the initial briefing, the parties noted different bases for this Court's jurisdiction. During oral argument, questions arose as to this Court's authority to consider Rowe's appeal. Following oral argument, this Court ordered supplemental briefing on the jurisdiction of this Court to review the Commission's decision on appeal from the circuit court.

ISSUE PRESENTED FOR REVIEW

While Rowe presents two issues for review,[8] we must first address the question of this Court's jurisdiction: Whether there is a statute authorizing an appeal to this Court from the judgment of the circuit court in a petition for judicial review of the Commission's no probable cause finding.

For the reasons discussed below, we answer this question in the negative and hold that this Court does not have jurisdiction to review Rowe's appeal. Because this Court does not have jurisdiction, we do not reach the claimed errors with the Commission's decision.

DISCUSSION

The Maryland Human Relations statute prohibits discrimination in employment, housing, commercial leasing, state contracts, and places of public accommodation. Md.

[8] Rowe presented two questions:

I. Was the Commission's final decision the result of unlawful procedure because there were substantial, prejudicial errors in the administrative process afforded to Ms. Rowe, requiring remand?

II. Was the Commission's conclusion that [Krav Maga] had a legitimate non-discriminatory business reason for terminating Ms. Rowe's membership arbitrary or capricious and unsupported by substantial evidence?

Code, State Government Article ("SG") § 20-101(d) (2021 Repl. Vol.).[9] The Commission receives and investigates complaints arising under the statute. SG §§ 20-1004, 20-1005. After the Commission concludes its investigation, the Commission shall "issue the results of the investigation as written findings," SG § 20-1005(a)(3), which include a determination of whether probable cause exists "to believe that a discriminatory act has been or is being committed," COMAR 14.03.01.08(B); SG § 20-1005(b). If the Commission renders a finding of no probable cause, "the complainant may file a request for reconsideration of the finding[.]"[10] SG § 20-1005(d)(1). If the Commission denies the request for reconsideration, the denial is "a final order appealable to the circuit court as provided in § 10-222 of this article."[11] SG § 20-1005(d)(2). *See A.C. v. Maryland Comm'n on Civ. Rts.*, 232 Md. App. 558, 573–74 (2017).

Rowe argues in her supplemental brief that this Court has jurisdiction to consider her appeal because SG § 20-1005(d)(2) authorizes a right of appeal to this Court from the circuit court. In the alternative, Rowe argues that a common law mandamus action serves as the appropriate basis for this Court's jurisdiction. The Commission responds that neither

[9] The Human Relations statute was formerly contained in Article 49B of the Maryland Code and was recodified in Title 20 of State Government Article. Acts 2009, c. 120. Prior to October 2011, the Commission was known as the Maryland Commission on Human Relations. Acts 2011, c.580.

[10] The complainant must file the request for reconsideration within fifteen days from the date that the findings were mailed to the complainant. COMAR 14.03.01.08(C). Here, Rowe's request for reconsideration was timely.

[11] The statute further provides that the final order is appealable to the circuit court provided that the United States Equal Employment Opportunity Commission does not have jurisdiction over the subject matter of the complaint. This limitation is not applicable here.

SG § 20-1005(d)(2) nor a common law mandamus action grants this Court jurisdiction to review Rowe's appeal. We take each argument in turn and conclude that Rowe's appeal must be dismissed.

I. THIS COURT LACKS JURISDICTION TO CONSIDER ROWE'S APPEAL.

The issue of subject matter jurisdiction may be raised at any time by any party or by the court, *Miseveth v. Aelion*, 235 Md. App. 250, 256 (2017), and "[u]pon a finding that this Court does not have jurisdiction, we must dismiss the case *sua sponte*[,]" *Madison Park N. Apartments, L.P. v. Comm'r of Hous. & Cmty. Dev.*, 211 Md. App. 676, 690 (2013). We begin the analysis discussing the applicable statutes providing for judicial review in the Commission's no probable cause finding. We then explain the reason those statutes do not provide an avenue for appeal here.

A. Statutory Authorization of Appeal.

"It is an often stated principle of Maryland Law that appellate jurisdiction, except as constitutionally authorized, is determined entirely by statute, and that, therefore, a right of appeal must be legislatively granted." *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 485 (1997). The right to appeal to this Court from the judgment of a circuit court generally arises under Maryland Code, Courts & Judicial Proceedings Article ("CJP") § 12-301 (2020 Repl. Vol.). CJP § 12-301 provides that "the right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction[.]"

Section 12-302 imposes a limitation on that general right of appeal to this Court. CJP § 12-302 states the following:

> *Unless a right to appeal is expressly granted by law*, § 12-301 of this subtitle does not permit an appeal from a final judgment of a court entered or made in the exercise of *appellate jurisdiction* in reviewing the decision of the District Court, *an administrative agency*, or a local legislative body.

CJP § 12-302(a) (emphasis added). *See Ross Contracting, Inc. v. Frederick Cnty.*, 221 Md. App. 564, 576 (2015) (stating that a circuit court "exercises 'appellate jurisdiction' when it reviews an administrative agency's decision pursuant to statutory authorization."); *see generally Gisriel*, 345 Md. at 491–93, 496 (explaining that while a circuit court technically exercises original jurisdiction and not "appellate jurisdiction" when it reviews an agency's decision, CJP § 12-302(a) is nonetheless applicable).

CJP § 12-302(a) dictates that there is no general right of appeal to this Court from the final judgment of a circuit court in an action for judicial review of an agency's decision. CJP § 12-302(a); *Dep't of Gen. Servs. v. Harmans Assocs. Ltd. P'ship*, 98 Md. App. 535, 542 (1993). "[W]hen a circuit court reviews a decision of an administrative agency pursuant to CJP § 12-302(a), any right of appeal to this Court must arise under a statute other than CJP § 12-301." *Ross Contracting, Inc.*, 221 Md. App. at 576. *See generally Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 671–85 (2021) (discussing the applicability of CJP § 12-302). "If no statutory authorization exists, this Court does not have jurisdiction[.]" *Ross Contracting, Inc.*, 221 Md. App. at 576 (internal quotation marks omitted) (quoting *Madison Park*, 211 Md. App. at 690).

Where CJP § 12-302 applies, the right of appeal to this Court is generally authorized by the contested case subtitle of the Administrative Procedure Act ("APA").[12] *Murrell v. Mayor & City Council of Baltimore*, 376 Md. 170, 190 (2003); *Harmans*, 98 Md. App. at 542. Pursuant to the APA, "any party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision [in the circuit court]," through SG § 10-222, and a party "who is aggrieved by a final judgment of a circuit court under this subtitle may appeal to [this Court] in the manner that law provides for appeal of civil cases" through SG § 10-223(b). Of note, "[o]nly a decision in a *contested case* can be challenged through judicial review under the APA." *Reese v. Dep't of Health & Mental Hygiene*, 177 Md. App. 102, 145 (2007) (emphasis in original).

Here, the circuit court reviewed and affirmed the Commission's finding of no probable cause pursuant to SG § 20-1005(d)(2), a statutory right to judicial review. Thus, CJP § 12-302(a) applies and there is no general right of appeal to this Court from the circuit court. SG § 20-1005(d)(2) authorizes judicial review in the circuit court, but the statute is silent on a right of appeal to this Court. Furthermore, the contested case subtitle of the APA does not authorize judical review of the Commission's no probable cause finding. *Parlato v. State Comm'n on Hum. Rels.*, 76 Md. App. 695, 701–03 (1988), *cert. denied*, 314 Md. 497 (1989). In *Parlato*, this Court held that "the investigation of [a] complaint of

[12] A contested case is "a proceeding before an agency to determine: (i) a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be *determined only after an opportunity for an agency hearing*; or (ii) the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing." SG § 10-202 (emphasis added).

discrimination which resulted in [the Commission's] no probable cause finding was not [] a contested case." *Id.* at 701. We turn to address whether SG § 20-1005(d)(2) provides a right of appeal to this Court in conjunction with SG § 10-223—the issue addressed in supplemental briefing.

B. SG § 20-1005(d)(2) Does Not Authorize an Appeal to this Court.

Rowe contends that because the Commission's no probable cause finding is subject to judicial review in "the *circuit court* as provided in [SG] § 10-222," she may further appeal to this Court under SG § 10-223 as "a party aggrieved by a final judgment of a circuit court under [the contested case] subtitle." Rowe reasons that the General Assembly intended for the Commission's no probable cause finding to be treated as if it were a contested case. Rowe further asserts that the General Assembly could have authorized judicial review in the circuit court without referencing the APA. The Commission responds that the General Assembly, had it intended do to so, would have referenced the entire contested case subtitle or specifically described a right of appeal to this Court. Returning to the language of CJP § 12-302, the Commission posits that, in any event, the right of appeal to this Court cannot be implied and must be expressly granted.

"The cardinal rule of statutory construction is to ascertain and effectuate the real and actual intent of the Legislature." *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). The analysis begins with "the plain language [of the statute] to ascertain the General Assembly's purpose and intent." *Andrews & Lawrence Pro. Servs., LLC v. Mills*, 467 Md. 126, 161 (2020); *see Stracke v. Estate of Butler*, 465 Md. 407, 428 (2019). The Court of

Appeals recently summarized the contextual considerations in interpretating the plain language of a statute:

> When the statute to be interpreted is part of a statutory scheme, it must be interpreted in that context. That means that, when interpreting any statute, the statute as a whole must be construed, interpreting each provision of the statute in the context of the entire statutory scheme. Thus, statutes on the same subject are to be read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory.

Mills, 467 Md. at 149. With the tools of statutory interpretation in mind, the General Assembly's creation of SG § 20-1005(d)(2), the statutory scheme of SG § 20-1005(d)(2) and of the APA, and the applicable case law elucidate the plain meaning of SG § 20-1005(d)(2).

The General Assembly's creation of SG § 20-1005(d)(2) did not indicate an intent to create a right of appeal to this Court. Prior to 1982, the Commission's no probable cause finding was not subject to judicial review under any circumstances. *See* 1982 Md. Laws, Ch. 129 (S.B. 419). In 1982, the General Assembly recognized the lack of judicial review of the Commission's no probable cause finding. *Id.* In enacting SG § 20-1005(d)(2), the Legislature provided specifically for review in the circuit courts and did not refer to an appeal to this Court. *Id.* The Legislature further did not express an intent that the Commission's no probable cause finding be treated as a contested case.

Turning to the statutory context, our interpretation of SG § 20-1005(d) is guided by several observations about the judicial review provisions in other statutes. First, providing for this Court's review of decisions of state agencies, the General Assembly has explicitly referred to SG § 10-223—the APA provision authorizing an appeal to this Court. By way

of example, the statute governing the State Board of Public Accountancy provides the following:

> Any person aggrieved by a final decision of the Board in a contested case, as defined in § 10-202 of the State Government Article, may take an appeal as allowed in §§ 10-222 *and 10-223* of the State Government Article.

Md. Code, Business Occupations & Professions § 2-210 (2018 Repl. Vol.) (emphasis added). Such express references are found throughout the Maryland code. *E.g.*, Business Regulation § 4-312 (2015 Repl. Vol.); Criminal Procedure § 11-815(c) (2018 Repl. Vol.); Environment § 4-412(b) (2014 Repl. Vol.); Health—General ("HG") § 7-407 (2019 Repl. Vol.); Health Occupations § 21-314 (2021 Repl. Vol.); Labor & Employment ("LE") § 3-906(j) (2016 Repl. Vol.); Natural Resources § 5-608(c)(3) (2018 Repl. Vol.); Public Safety ("PS") § 3-212(c) (2018 Repl. Vol.); Tax—General § 13-532(a) (2016 Repl. Vol.); Tax Property § 8-215(e) (2019 Repl. Vol.). In other instances, the General Assembly has specifically referred to an appeal to this Court with express language. Correctional Services ("CS") § 10-910 (2017 Repl. Vol.) is demonstrative:

> (a) An appeal from a decision made under § 10-910 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202.
> (b) A party aggrieved by a decision of a court under this subtitle *may appeal to the Court of Special Appeals.*

CS § 10-910 (emphasis added). *E.g.*, PS § 3-109; LE § 4-602.

Our second observation is that the General Assembly has provided for this Court's review of agency decisions by reference to the entire contested case subtitle, which includes SG § 10-223. Within the Human Relations statute, the enforcement subpart

governing a complaint alleging discriminatory housing practices authorizes judicial review with the following language:

> Any party aggrieved by a final order for relief under § 20-1029 of this subtitle may obtain judicial review of the order in accordance with the provisions for judicial review under Title 10, Subtitle 2 of this article.

SG § 20-1030; *see State Comm'n on Hum. Rels. v. Anne Arundel Cnty.*, 106 Md. App. 221, 226 (1995) (reviewing a final order pursuant to SG § 20-1030). The general reference to the contested case subtitle occurs in a number of statutes concerning judicial review. *E.g.*, Criminal Law ("CL") § 4-107(i) (2021 Repl. Vol.); State Finance & Procurement ("SFP") § 15-223 (2021 Repl. Vol.); HG § 19-330(a).

Our third observation is that the General Assembly has specified, where so intended, that a judicial review action is to be treated as if it were a contested case. To illustrate, HG § 19-345.1 provides:

> "[a] decision by an administrative law judge on a proposed discharge or transfer of a resident . . . [m]ay be appealed in accordance with § 10-222 of the State Government Article as if it were a contested case[.]"

HG § 19-345.1. *See also* CL § 13-2434 ("[T]he determination of the administrative law judge is a final decision for purposes of judicial review in the same manner as a final decision in a contested case under § 10-222 of the State Government Article.").

By contrast, we observe that where a statute specifically refers to judicial review in the circuit under SG § 10-222 and is silent on a right of appeal to this Court, *Department of General Services v. Harmans* is instructive. In *Harmans*, a contractor and the Department of General Services ("DGS") were involved in a contract dispute before the Board of Contract Appeals ("the Board"). 98 Md. App. at 540–41. After a lengthy dispute,

the Board entered a final decision in favor of the contractor. *Id.* at 541. DGS then sought judicial review of the Board's decision pursuant to SFP § 15-223. *Id.* at 541, 544. The circuit court entered a judgment in favor of the contractor, and DGS appealed to this Court. *Id.* at 541. Before this Court, the contractor filed a motion to dismiss the appeal due to a lack of jurisdiction. *Id.* The motion posited that SPF § 15-223 made reference to APA judicial review in only the circuit court. *Id.* at 544.

We denied that motion and held that this Court had jurisdiction for two reasons. *Id.* at 545–46. First the administrative proceeding at issue was, by definition, a contested case as contemplated under the APA. *Id.* at 542, 545–46. Second, the legislative history supported that SFP § 15-223 indicated an intent to provide judicial review in the circuit court and a right of appeal to this Court. *Id.* at 545–46. An examination of the legislative history of section 15-223 revealed that when the statute was recodified, its general reference to the contested case subtitle was narrowed to a specific reference to only the circuit court provision. *Id.* We reasoned that because the statute was recodified without substantive change, the legislature's apparent drafting error did not abrogate the right of appeal to this Court. *Id.* The exclusive reference to the circuit court was the result of an "evident Code Revision error."[13] *Id.* at 542–43.

The specific statutory reference to the circuit court without a reference to a right of appeal to this Court was similarly addressed in *Washington Suburban Sanitary Commission v. Lafarge North America, Inc.*, 443 Md. 265 (2015). In *Lafarge North*

[13] Following this Court's opinion, the General Assembly amended SFP § 15-223 in 1994 to reflect a general reference to the APA's contested case subtitle. Acts 1994, c.3, § 1.

America, Inc., a concrete plant—Lafarge—petitioned for judicial review of the Sanitary Commission's decision. *Id.* at 271. The circuit court entered a judgment in favor of Lafarge, and the Sanitary Commission appealed to this Court. *Id.* at 272. Notably, the statute providing for judicial review in the circuit court was silent on an appeal to this Court. *Id.* at 275. The case ultimately came before the Court of Appeals. Addressing the issue of jurisdiction, the Court of Appeals held that the Sanitary Commission's decision was a contested case, thus giving rise to a right of appeal to this Court under SG § 10-223 of the APA. *Id.* at 278. The Court of Appeals did not decide that the text of the statute implicitly granted a right of appeal to this Court. *Id.* at 276. The Court did acknowledge that the legislative history indicated the Legislature's intent to authorize an appeal to this Court. *Id.* at 275–76.

Turning to the plain and ordinary language of SG § 20-1005(d)(2), the statute contemplates a right to judicial review in the circuit court and does not contain express language concerning a right of appeal to this Court. When viewing this absence of express language in contrast to judicial review statutes with an express reference, SG § 20-1005(d)(2) does not explicitly refer to this Court or to SG § 10-223. SG § 20-1005(d)(2) also does not generally refer to the entire contested case subtitle of the APA. Of significance, the discriminatory housing practices enforcement subpart of the Human Relations statute refers to the entire contested case subtitle:

> Any party aggrieved by a final order for relief under § 20-1029 of this subtitle may obtain judicial review of the order in accordance with the provisions for judicial review under Title 10, Subtitle 2 of this article.

SG § 20-1030. Whereas here, the narrower reference to SG § 10-222 in SG § 20-1005(d)(2) suggests an intentional limit. This distinction is further present in comparison with the judicial review statutes of other state agencies referring to the entire contested case subtitle. Moreover, SG § 20-1005(d)(2) does not include language that the Commission's no probable cause finding be treated as a contested case. Contrary to Rowe's position, the legislative history creating SG § 20-1005(d)(2) does not reveal that the General Assembly intended for Commission's no probable cause finding be treated as a contested case.

SG § 20-1005(d)(2)'s specific cross-reference to circuit court is distinguishable from the circumstances in *Harman*. Unlike in *Harman*, here, there is no legislative history to support that SG § 20-1005(d)(2)'s exclusive reference to SG § 10-222 necessarily included a reference to SG § 10-223. There is no recodification error such as the one in *Harman*. In contrast with *Harman*, SG § 20-1005(d)(2) (originally codified as Art. 49B, § 10(d)) was drafted with the exclusive reference to the circuit court, as then provided in Art. 41, § 255. 1982 Md. Laws, Ch. 129 (S.B. 419).

SG § 20-1005(d)(2)'s exclusive reference to the circuit court is further dissimilar from the contested case proceedings in both *Harman* and *Lafarge*. To be clear, *Parlato* instructs that the Commission's investigation and determination of probable cause is not a contested case as defined under the APA. 76 Md. App. at 701–03. Contrary to Rowe's characterization of *Lafarge*, the Court of Appeals did not hold that the text of the judicial review statute implicitly granted a right of appeal to this Court from the circuit court. *Lafarge*, 443 Md. at 276. The Court held that we had jurisdiction under the APA because

the administrative proceeding was a contested case. *Id.* at 278. Here, the administrative proceeding before the Commission was not a contested case. *Parlato*, 76 Md. App. at 701.

Applying the observations from our review of the state administrative agency judicial review statutes and the applicable case law to SG § 20-1005(d)(2), the statute does not authorize and appeal to this Court. SG § 20-1005(d)(2)'s plain language, legislative purpose, context within the Human Relations statute, and comparison with the judicial review statutes of other state administrative agencies all support our conclusion.

Therefore, in contrast to Rowe's assertion, we hold the circuit court's final judgment in a petition for judicial review taken under SG § 20-1005(d)(2) is not a judgment under the contested case subtitle. In the absence of a specific reference to SG § 10-223 or an express reference to an appeal to this Court, the absence of a general reference to the entire contested case subtitle, the absence of legislative history to support an intended appeal under SG § 10-223, and the absence of a contested case, SG § 20-1005(d)(2) does not authorize an appeal to this Court. As a result, the judicial review of the Commission's no probable cause finding is limited to the circuit court.[14] *See*, *e.g.*, *Prince George's Cnty. v. Beretta U.S.A. Corp.*, 358 Md. 166, 169, 174 (2000); *Dvorak v. Anne Arundel Cnty. Ethics Comm'n*, 400 Md. 446, 458–59 (2007) (holding judicial review did not extend to this Court where the statute authorized judicial review only in the circuit court).

[14] This Court reviewed the denial of a no probable cause for substantial evidence in *Vavasori v. Comm'n on Human Relations*, 65 Md. App. 237, 251–52 (1985). However, the opinion in *Vavasori* did not address this Court's jurisdiction.

II. A MANDAMUS ACTION DOES NOT GRANT THIS COURT JURISDICTION TO REVIEW ROWE'S APPEAL.

In the absence of statutory authorization, Rowe argues that this Court has jurisdiction because her action in the circuit court was equivalent to a writ of common law mandamus.[15] We disagree.

A common law mandamus action "seeks the judicial enforcement of ministerial non-discretionary acts." *ProVen Mgmt., Inc.*, 472 Md. at 669 n.9. Ministerial acts "are duties in respect to which nothing is left to discretion and are distinguished from those allowing freedom and authority to make decisions and choices." *Id.* at 670 (quoting *Talbot County v. Miles Point Prop., LLC*, 415 Md. 372, 397 (2010)). Notwithstanding the limitation in CJP § 12-302(a), a common law mandamus action is appealable to this Court under the general appeals statute, CJP § 12-301. *See Murrell*, 376 Md. at 193.

The distinction between common law mandamus and a statutory judicial review action is that "common law mandamus relief arises from an official's failure to perform the duty at all, whereas in a statutory judicial review action, relief may include a remand for further proceedings before the administrative agency arising from the agency's failure to perform the duty well." *Id.* at 671. Thus, in a common law mandamus action, there must be a failure to perform a required duty. *Id.* A statutory petition for judicial review is not

[15] Rowe concedes that because the Human Relations statute authorizes a right to judicial review in the circuit court, administrative mandamus is not an avenue of appeal to this Court. *See Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 669 n.9 (2021) (("Administrative mandamus is a remedy that authorizes judicial review of administrative decisions "where there is both *a lack of an available procedure for obtaining review* and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.") (emphasis added) (quoting *Wilson v. Simms*, 380 Md. 206, 228 (2004)).

converted into "a common law mandamus action simply because the petitioner has included due process assertions or allegations of procedural deficiencies." *Id.* at 685.

We conclude that a common law mandamus action is not applicable here. Rowe seeks relief from discretionary acts involved in the Commission's no probable cause determination, of which SG § 20-1005(d)(2) provides statutory judicial review. Rowe asserts that the Commission (1) failed to investigate her retaliation claim; (2) held an unlawful fact-finding conference; and (3) withheld evidence that Krav Maga submitted to the Commission. Of the procedural violations that Rowe alleges, none concern a ministerial act or duty that the Commission was required to perform in its investigation of her complaint. *See Parlato*, 76 Md. App. at 702–03 ("In view of this statutory scheme, it is clear that the [L]egislature intended to vest within the *sound discretion of the Commission* the decision of whether to prosecute a discrimination claim.") (emphasis added). The alleged violations center around Rowe's claim that the Commission did not perform a duty well as opposed to the utter failure to perform a required duty. Therefore, Rowe cannot rely on a common law mandamus action as a right to appeal the circuit court's judgment to this Court.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY DISMISSED. COSTS TO BE PAID BY APPELLANT.