

Circuit Court for Prince George's County
Case No.: CAL 20-14937

UNREPORTED

IN THE APPELLATE COURT OF
OF MARYLAND*

No. 826

September Term, 2022

THOMAS WILLIAM HART

v.

PRINCE GEORGE'S COUNTY POLICE
DEPARTMENT

Kehoe,
Zic,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: May 31, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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.

Thomas William Hart is a former member of the Prince George’s County Police Department who believes that he is owed salary and benefits that accrued while he was suspended without pay. The Department thinks otherwise. Hart filed a civil action seeking to vindicate his claim. The Circuit Court for Prince George’s County agreed with the Department. In this appeal, Hart raises one issue, which we have reworded:

Did the circuit court err when it dismissed Hart’s declaratory judgment action?

We will reverse the judgment of the circuit court and remand this case to it for entry of a declaratory judgment consistent with this opinion.

Background

Our rendition of the facts is based on the allegations in Hart’s complaint as supplemented by factual proffers and exhibits admitted into evidence without objection at the second hearing on the County’s motion to dismiss.

Hart’s Suspension

In March of 2018, Hart, who was at the time a captain in the Department, was charged in Queen Anne’s County with forgery of private documents, possession of a forged private document, and theft between \$1,000 and \$10,000. The forgery and theft charges were felonies. On April 5, 2018, and after it received notice of the pending charges, the Department suspended Hart without pay pursuant to chapter 23, section V,

subsection 21 of the General Order Manual of the Department.¹ The Department’s decision to suspend Hart without pay after it learned that he had been charged with felonies was consistent with Maryland law at the time.² On April 7, 2018, the matter was referred to the Department’s Internal Affairs Unit (the “IAU”) to conduct an investigation. However, as the Department acknowledges in its brief to this Court, the IAU did not actually begin its investigation until June 21, 2019.

On July 20, 2018, Hart was charged with another felony, first-degree assault, as well as second-degree assault. These charges were also filed in Queen Anne’s County.

¹ The relevant portion of subsection 21 the General Order is titled “Mandatory Suspensions” and states that the chief of police or their designee “may suspend an officer without pay . . . on an emergency basis if the officer is charged with . . . [a] disqualifying crime, as defined by 5-101 of Maryland Code, Public Safety Article.”¹ Offenses classified as felonies by Maryland law are disqualifying offenses. Pub. Safety § 5-101(g).

Although the text of the order is not in the record, it is available at www.princegeorgescountymd.gov/DocumentCenter/View/42952/General-Orders---Volume-I-Webposting-04-21-2023?bidId= (last visited May 14, 2023).

² At the time that the events in this case occurred, the disciplinary proceedings against Hart were governed by the Law Enforcement Officers’ Bill of Rights, Md. Code, Pub. Safety §§ 1-101–113. Pub. Safety § 3-112 stated in pertinent part:

(c)(1) If a law enforcement officer is charged with a felony, the chief may impose an emergency suspension of police powers without pay.

(2) A law enforcement officer who is suspended under paragraph (1) of this subsection is entitled to a prompt hearing.

The General Assembly repealed the LEOBR effective July 1, 2022. *See* 2021 Maryland Laws, ch. 59 § 2. The parties agree that the LEOBR applies to this case.

All of the felony charges were nol prossed on or before August 17, 2018. On that day, the Department changed Hart’s status from suspended without pay to suspended with pay “pending the outcome of an investigation presently being conducted with regard to alleged criminal misconduct on July 19, 2018.”

Hart Is Demoted

On or around November 28, 2018, that is, after the forgery and felony theft charges were nol prossed, Hart was charged with violating the Department’s social media policy. Hart waived his right to an administrative board hearing and, on September 13, 2019, accepted a demotion in rank from captain to lieutenant and a consequent salary reduction.

The IAU’s Investigation and Subsequent Charges

As we have related, the Department’s IAU began its investigation into the events that gave rise to the filing of criminal charges against Hart on June 21, 2019. On July 23, 2019, Hart was served with a Disciplinary Action Recommendation charging him with violating Prince George’s County Code (“PGCC”) § 18-160³ by making a false statement to a police officer. On December 6, 2019, Hart was served with another Disciplinary Action Recommendation containing two charges of committing conduct unbecoming by an officer in violation of Volume 1, Ch. 32, Section V subsection 3 of the Prince George’s

³ PGCC § 18-160(b) states: “No member of the Police Department, under any circumstances, shall make any false official statement or intentional misrepresentation of facts.”

County Police Department General Orders. As to each charge, the Chief of the Department informed Hart that he was seeking termination of the latter's employment by the Department. The Department's notices to Hart stated that he had the right to challenge the proposed termination by means of the procedures set out in the Law Enforcement Officers' Bill of Rights. It is unclear from the record whether the Department initiated an LEOBR proceeding against Hart.

Hart's Claim for Back Pay and Benefits

At some point after his status was changed to suspended with pay,⁴ Hart asked for the back pay and benefits that would have otherwise accrued to him for the period that he was suspended without pay. As authority for his request, Hart invoked PGCC § 16-193(c)(4)(A)(iii). The Department refused.

In August 2020, Hart filed the current action. The relevant relief sought by Hart was a judgment declaring that PGCC § 16-193 required the Department to pay him the back pay and benefits that accrued while he was suspended without pay. The Department responded with a motion to dismiss for failure to state a claim upon which relief may be

⁴ Subtitle 16 of the Prince George's County Code is the County's personnel law. PGCC § 16-193(c)(4)(A)(iii) states that in cases in which an employee is suspended because they are charged with committing a crime and the employee is subsequently acquitted, the employer shall "revoke the suspension and return the employee to a duty and pay status, including restoration of back salary and leave benefits[.]" We will discuss the relevant parts of § 16-193 in more detail later in this opinion.

granted because he failed to exhaust his administrative remedies under the LEOBR. In September 2020, Hart resigned from the Department.

After holding a hearing, the circuit court dismissed the case on the ground that Hart had failed to exhaust his administrative remedies afforded to him by the LEOBR.⁵

Hart I

Hart appealed. A panel of this Court reversed the judgment of the circuit court.

Thomas William Hart v. Prince George's County Police Department, No. 91, September Term, 2021, 2022 WL 767202 (filed March 14, 2022) (“*Hart I*”). We concluded that the County’s exhaustion of administrative remedies argument was unpersuasive because:

[A]ny attempt by Hart to raise his back pay claim in the context of an LEOBR proceeding would have been an exercise in futility because there is nothing in the LEOBR that authorizes an administrative hearing board to grant an officer back pay or any other form of economic relief. Nor is there anything in the statute that authorizes a court to grant such relief. . . .

Additionally, Hart’s claim for back pay and benefits is not based on an assertion that the Department violated a provision of the LEOBR. Rather, he asserts that the Department’s refusal to pay him accrued pay and benefits violated PGCC § 16-193. There is nothing in the LEOBR that either authorizes or prohibits a local government from allowing a law enforcement officer who is suspended as a result of pending criminal charges to recover lost wages and benefits if the charges are resolved in the officer’s favor.

2022 WL 767202, at *3–4.

⁵ In this action, Hart also sought a declaratory judgment pertaining to his reduction in salary resulting from his demotion. On appeal, he does not challenge the circuit court’s decision to dismiss that claim.

We added the following “for the guidance of the parties on remand”:

PGCC § 16-198 appears to recognize a distinction between suspensions that are based on pre-existing departmental policies and those that are based on evaluations of the possible culpability of the officer facing suspension. Maryland courts have declined to adopt a bright-line rule for distinguishing acts that are investigatory or disciplinary from mere managerial decisions in favor of a fact-intensive, case-by-case approach. *See Breck v. Maryland State Police*, 452 Md. 229, 251 (2017) (“[N]o bright-line rule exists that distinguishes actions that are punitive from those that are reasonable management decisions.”)

In *Breck*, the Court of Appeals conducted a thorough review of the relevant cases and concluded that “what constitutes a punitive action turns on the agency’s motivation for that action.” 452 Md. at 253. The Court further explained that a “punitive action” was one “based on an investigation and hearing process addressing an alleged wrongful act, [and] potentially leading to punishment for that act[.]” *Id.*

2022 WL 767202, at *5.

The Proceedings on Remand

The focus of the parties’ contentions on remand was whether the Department’s decision to suspend Hart was managerial or punitive in nature. Hart argued that the decision was managerial and thus PGCC § 16-193(4)(iii), which allows for reimbursement of back pay, applies to his case. Hart asserted that his suspension was managerial in nature because from April to August of 2018, the Department did not investigate Hart’s alleged criminal misconduct prior to putting him back to suspended with pay status. According to Hart’s interpretation of the relevant case law, in order for an action to be deemed punitive, an investigation must be conducted before the imposition of punishment, in this case, his suspension without pay. Because the Department’s

decision to suspend Hart without pay was managerial in nature, PGCC § 16-193 mandated an award of back pay and benefits to him when his status was changed to suspended with pay.

For its part, the Department contended that Hart’s suspension was punitive in nature because it was triggered by the filing of the forgery, theft, and assault charges against him in Queen Anne’s County. Moreover, the Department initiated its own investigation of Hart’s conduct “three or four days” after the Department learned of the forgery and theft charges.⁶ It was the Department’s position the LEOBR controls and does not provide back pay when the agency’s motivation for suspension was punitive.

After hearing both sides, the circuit court issued the following ruling:

[The] LEOBR does not apply because there was no investigation and hearing process as to the initial suspension based on those criminal cases. So now, the court looks to make a determination whether this was a punitive or managerial action. The punitive action is based on an investigation and hearing process that addresses the wrongful conduct. That was not done in this case, and the court agrees that this was a managerial action as [Mr. Hart] states, that it was taken in the best interest of the internal management to achieve maximum efficiency and effectiveness.

* * *

And reading of this County Code, that is a managerial action, which the agency could make the determination whether to restore back pay, back salary, and leave benefits. And in this case, they elected not to. And the court finds that those actions that they took were reasonable based on the

⁶ While a member of the Department’s IAU may have filed paperwork regarding an investigation of Hart in 2018, the County acknowledges that the IAU investigation began in earnest in June of 2019.

facts that the County had before it, and . . . took this managerial action in declining to restore back pay to Mr. Hart for the period of April through August of 2018.

As a result, the court dismissed Hart’s action against the Department with prejudice.⁷

This appeal followed.

Analysis

“When reviewing the grant of a motion to dismiss, the appropriate standard of review ‘is whether the trial court was legally correct.’” *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (quoting *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018)). Therefore, an appellate court reviews the grant of a motion to dismiss *de novo*. *Id.*

We agree with the circuit court that there are two issues in this case:

The first is whether the Department’s decision to suspend Hart without pay when it learned that he was facing felony charges was managerial or punitive. The circuit court

⁷ Although neither party raises the issue, we point out that the circuit court should have issued a declaratory judgment in lieu of dismissing the case. *See, e.g., Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 17 (2017) (“[M]any cases have noted that dismissal is rarely appropriate in a declaratory judgment action.” (cleaned up)); *GPL Enter., LLC v. Certain Underwriters at Lloyd’s*, 254 Md. App. 638, 649–50 (2022), *cert. denied*, 482 Md. 538 (2023), (“A court cannot dismiss a claim for a declaratory judgment unless the plaintiffs are not entitled to a declaration of their rights, as, for example, when the case is not justiciable, when the case is unripe or moot, or when the plaintiff lacks standing. A court may not dismiss a claim for a declaratory judgment simply because the court disagrees with the declaration that the plaintiffs have requested.” (cleaned up)).

was correct when it concluded that Hart’s suspension without pay on April 5, 2018, was managerial and not punitive.

The second issue pertains to the degree of discretion that the County had to withhold pay and benefits to Hart. The circuit court concluded that the County had the discretion to decline to pay Hart his accrued back pay and benefits. In our view, the answer to this question is controlled by § 16-193. We read this statute differently than did the circuit court.

A

As we stated in *Hart I*, whether a decision to suspend an employee is a punitive or managerial action is based on “the agency’s motivation for that action.” 2022 WL 767202, at *5. In *Breck*, the Court explained that if the agency’s motivation for that action “is based on an investigation and hearing process addressing an alleged wrongful act, potentially leading to punishment for the act, the action is punitive. But if based in the pursuit of sensible agency administration in the best interests of the internal management, the action is managerial.” 452 Md. at 253.

Based on the allegations in the complaint and the undisputed facts presented to the circuit court at the hearing on remand, it is very clear that the Department’s initial decision to suspend Hart fell on the managerial side of the managerial/punitive dichotomy. This is so because his suspension was mandatory. PGCC § 16-193(c)(4)

authorizes the County’s “appointing authorities”⁸ to suspend an employee if the employee “has been charged with the commission of a serious crime such that a subsequent conviction thereof or a finding of wrongful conduct by the employee’s appointing authority in connection therewith, would constitute grounds for the dismissal of the employee,”⁹ provided that the appointing authority finds that there exists “reasonably clear evidence of wrongful conduct by the employee in connection with such crime[.]” PGCC § 16-193(c)(4)(A)(i).

The statute further provides that

Where the finding of clear evidence of wrongful conduct as required under subparagraph (c)(4)(A)(i), above, is predicated on an investigation or inquiry of the alleged crime by the employee’s appointing authority, *the employee shall be placed on administrative leave . . . during the period of such investigation or inquiry* and prior to the effective date of any subsequent suspension resultant therefrom[.]

PGCC § 16-193(c)(4)(A)(ii) (emphasis added).

The effect of § 16-193(c)(4)(A)(ii) is that an appointing authority is required to place an employee on administrative leave *before* the appointing authority

⁸ The Chief of the County Police Department is an “appointing authority” for the purposes of § 16-193. See PGCC § 16-102(a)(5) (defining “appointing authority”).

⁹ Commission of a felony by a law enforcement officer falls into this category because it would “call into serious question the employee’s trustworthiness and/or integrity in the continued performance of the employee’s assigned duties and responsibilities,” which is one of the statutory grounds for dismissal of an employee. PGCC 16-193((c)(1)(D).

conducts the requisite investigation as to whether there was “clear evidence” that the employee had committed any of the crimes with which he was charged.

Because Hart was initially suspended before the Department conducted any investigation as to his culpability, this suspension was not the result of an investigation. Additionally, although the IAU opened a file on Hart soon after the Department learned of the felony charges, the Department concedes that the IAU did not begin its investigation until June 21, 2019, which was more than fourteen months after Hart was initially suspended and ten months after Hart’s status was changed to suspended with pay. We hold that Hart’s suspension was managerial.

B

The circuit court also concluded that, because Hart’s suspension was a managerial action, the Department had the authority to decide “whether to restore back pay . . . and leave benefits” to Hart. Here, we part company with the circuit court.

The Department’s authority to decide whether Hart was entitled to back pay and accrued benefits was circumscribed by PGCC § 16-193(c)(4)(A)(iii), which states that the initial suspension:

shall remain in effect until the employee’s guilt or innocence with respect to such alleged crime has been determined by a trial court and, on the basis of such court determination, the employee’s appointing authority shall *either revoke the suspension and return the employee to a duty and pay status, including restoration of back salary and leave benefits, or proceed to dismiss the employee, whichever is warranted.*

In the present case, there was no judicial determination of Hart’s guilt or innocence of the criminal charges pending against him because those charges were nol prossed by the Queen Anne’s County prosecutors. As we read § 16-193, the Department has two options in the absence of a judicial determination of guilt or innocence: (1) the Department could revoke the suspension and reimburse Hart for back pay and benefits accrued while he was suspended without pay, or (2) the Department could “proceed to dismiss” Hart if he had committed any of the felonies that were the basis of the criminal charges. Under the latter scenario, if Hart exercised his rights under the LEOBR, then the Department would have to convince an administrative hearing board that Hart had committed one or more of the felonies that were the basis of his suspension.

The Department chose neither option. Instead, it changed his status to suspended with pay. Although the Department eventually filed administrative charges against Hart to terminate his employment, none of the administrative charges were based on the premise that Hart had actually committed any of the felonies that he had been charged with in 2018.¹⁰

¹⁰ Specifically, Hart was charged with: (1) engaging in unbecoming conduct by “intentionally using [his] motor vehicle . . . to place Jeffrey Pickett in fear of his safety” by driving his motor vehicle at Pickett; (2) engaging in unbecoming conduct harassing Pickett after Pickett had obtained a peace order against him; and (3) violating PGCC § 18-60(b) which states that “[n]o member of the Police Department, under any circumstances, shall make any false official statement or intentional misrepresentation of facts,” by

Because the Department opted not to seek Hart's termination until long after the felony charges against him were nol prossed and even then sought to dismiss him for different reasons, we hold that the Department was, and is, obligated to reimburse Hart for his lost pay and benefits from April 5, 2018 (the date of his suspension) to August 17, 2018 (when his status was changed to suspended with pay). Any other result is inconsistent with an important protection afforded to suspended County employees by PGCC § 16-193(c)(4)(A)(iii).

Proceedings On Remand

We remand the case to the circuit court with instructions for it to enter a judgment declaring that PGCC § 16-193 requires the Department to compensate Hart for unpaid wages and benefits that accrued to him from April 5, 2018 through August 17, 2018.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND THIS CASE IS REMANDED TO IT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

making a false statement to a Maryland State trooper who was investigating the Hart/Pickett imbroglio.