Circuit Court for Prince George's County
Case No. CAL21-04631

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1774

September Term, 2021

MARIA GARCIA DIAZ

v.

PRINCE GEORGE'S COUNTY
DEPARTMENT OF SOCIAL SERVICES

Graeff,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: August 14, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

** 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.

Maria Garcia Diaz, appellant, appeals from an order, entered by the Circuit Court for Prince George's County, affirming the administrative decision of the Office of Administrative Hearings ("OAH") in which the Administrative Law Judge ("ALJ") upheld a finding of indicated child neglect by the Prince George's County Department of Social Services (the "Department").

On appeal, appellant's primary issue is whether the administrative hearing was barred by the three-year statute of limitations under § 5-101 of the Courts and Judicial Proceedings Article ("CJP") ("A civil action at law shall be filed within three years from the date it accrues . . ."). For the reasons set forth below, we answer in the negative, and we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Under the Family Law Article, child "neglect" means "the leaving of a child unattended or other failure to give proper care and attention to a child by any parent *or other person* who has permanent or *temporary care or custody or responsibility for supervision of the child* under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury." Md. Code Ann., Fam. Law ("FL") § 5-701(s) (emphasis added).

Once the suspected neglect is reported, the local department investigates the report subject to the timing requirements in FL § 5-706. At the completion of the investigation, the local department selects one of three dispositions: (1) indicated, where there is credible

evidence of neglect; (2) ruled out, where the investigation reveals that neglect did not occur; or (3) unsubstantiated, where there is insufficient evidence to support a finding of "indicated" or "ruled out." *See* FL § 5-701(m), (w) and (aa); Code of Maryland Administrative Regulations ("COMAR") 07.02.07.12. Where the selected disposition is indicated child neglect, the alleged maltreator may then request a hearing before an ALJ, who has the authority to affirm or modify the department's disposition. FL § 5-706.1; COMAR 07.02.07.24.

Department's Investigation and Disposition

On April 13, 2020, the Department received a report that A.G. (then 15 years old) had been sexually abused, years earlier, by appellant's son while another son served as a lookout. The Department's investigation uncovered the following:

When A.G. was about eight to ten years old, appellant babysat for A.G. One day, appellant ran errands and left A.G. alone with appellant's two sons (about 10 and 12 years old, respectively). Appellant's oldest son called A.G. into the bedroom and told her to take off her clothes. He then forced vaginal intercourse on her while the younger son kept watch at the window for appellant to return. When appellant returned, she saw all three children in the bedroom, her older son on top of A.G., and A.G.'s pants down. She told her sons to go to their room, then pulled up A.G.'s pants, and told A.G. that "it was her fault." Appellant then instructed A.G. to wait in the living room for appellant's husband to come home. When appellant's husband came home, he warned A.G. not to tell anyone about the incident or else her parents would be deported. A.G. also reported to the investigator other

incidents when the sons "would touch her playing hide [and] seek" and "touch her chest (on clothing) and thighs when she had on a skirt."

Around 2018, A.G. expressed suicidal ideation and began seeing a therapist. During therapy, A.G. revealed that she had been abused, which the therapist then disclosed to A.G.'s mother. Initially, A.G. did not want to discuss the matter, but she eventually reported the incident in 2020. After conducting its investigation, the Department found appellant responsible for the indicated child neglect. It determined, *inter alia*, that appellant failed to provide A.G. with adequate supervision, failed to report the incident to the proper authorities, and placed A.G. at substantial risk of harm. Appellant appealed the finding and requested a hearing before the OAH.

Administrative Hearing and Decision

On March 8, 2021, the parties appeared before the ALJ for a contested hearing. At the outset, appellant made an oral motion to dismiss, arguing, in pertinent part, that this "civil, administrative proceeding" was barred by the statute of limitations under CJP § 5-101. She claimed that the "alleged neglect in this case transpired approximately seven or eight years ago," well past the limitations period.

The ALJ reserved ruling on the oral motion to give the Department an opportunity to respond in writing. The ALJ then proceeded with the hearing on the merits. The evidence adduced at the hearing, summarized *supra*, was derived from the Department's investigative reports, corresponding documentation, and the investigator's testimony. Appellant neither cross-examined the investigator nor offered any evidence.

After the hearing, the Department filed a written response to appellant's oral motion to dismiss. The Department countered that the statute of limitations under CJP § 5-101 applies to "civil actions," not child neglect cases. In addition, COMAR, which applies to child neglect cases, "does not place a time limit or statute of limitations on when a child victim should report alleged neglect."

In a written opinion, the ALJ denied appellant's motion to dismiss, explaining that CJP § 5-101 does not apply to administrative hearings:

> Administrative hearings before the OAH are not civil actions at law. The OAH is not a "court" as that term is defined in [CJP] Section 1-101. The OAH was established to hear contested cases delegated to it by a board, commission, or agency head in the conduct of their administrative role pursuant to the State Government Article of the Maryland Annotated Code sections 10-205 through 220. State Government section 10-206 specifically provides that the OAH "shall" adopt regulations to govern procedures and practice in contested cases and unless a federal or State law "requires" that a specific procedure must be observed, the OAH regulation takes precedence in the event of a conflict. Md. Code Ann., State Gov't § 10-206(a) (2014). In addition, each agency that has delegated their authority to the OAH to conduct contested case hearings may adopt regulations to govern how those contested case hearings are conducted. *Id*. at 10-206(b).
>
> Nowhere in the relevant sections of the Family Law Article or COMAR 07.02.07 do the statute or regulations confine the investigation of cases of alleged child neglect or abuse to a specific time frame. The purpose of the statute is to protect children and provide a framework for mandatory reporting, investigation, and the provision of services for the child victim. [FL] § 5-702; *see also* COMAR 07.02.07. It is a requirement that the local department accept every report of child abuse and neglect and every victim is entitled to a CPS response, regardless of when the alleged abuse or neglect occurred. COMAR 07.02.07.03A and .05.
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> * * *
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> I further find that the statute of limitations found in [CJP] section 5-101 is inapplicable to this administrative contested case hearing as this is not a

> "civil action at law." Further, the law and regulations governing child abuse and neglect contain no time limitation regarding the reporting, investigation, or findings by the local department.

On the merits, the ALJ found that appellant failed to provide proper care and attention to A.G. by leaving her alone with appellant's sons, which provided an opportunity for the eldest son to sexually assault A.G.; appellant failed to render care to A.G. or report the assault to A.G.'s parents; and A.G. "suffered a sexual assault as a result of the [a]ppellant's inattentiveness that has traumatized [A.G.] for many years since the assault." Accordingly, the ALJ affirmed the finding of indicated child neglect.

Judicial Review in the Circuit Court

Appellant petitioned for judicial review in the circuit court, arguing again that the three-year statute of limitations under CJP § 5-101 barred the underlying administrative hearing. After arguments, the court agreed with the ALJ's conclusions and affirmed the decision. Appellant timely noticed her appeal.

ISSUES PRESENTED

In her brief, appellant presents the following questions, which we quote:

1. Whether [CJP] 5-101 and 5-106-7[1] contain the Maryland statutes of limitations applicable to [Department of Human Services] and [Department] action in contested proceedings?

[1] Appellant appears to refer to CJP § 5-106 (subject to certain exceptions not applicable here, "a *prosecution* for a misdemeanor shall be instituted within 1 year after the offense was committed") and § 5-107 (a "*prosecution* or suit for a fine, penalty, or forfeiture shall be instituted within one year after the offense was committed") (emphasis added).

2. *And if so*, whether a violation of the above statutes of limitations violates the Maryland Constitution Art. 22-25, such that it would deprive the Office of Administrative Hearings ("OAH") of jurisdiction?

3. *And if so*, whether the Circuit Court had substantial evidence to affirm the OAH's rulings based on [Department of Human Services] and [Department] findings under the [Administrative Procedure Act] in the proceedings below?

(Emphasis added). We answer the first question in the negative.[2] Because the remaining questions hinge on an affirmative response to the first, we need not address them.[3]

STANDARD OF REVIEW

"In reviewing an administrative appeal, we review the ALJ's decision, not the decision of the circuit court, to affirm, modify, or reverse the ALJ." *Prince George's Cnty. Dep't of Soc. Servs. v. Taharaka*, 254 Md. App. 155, 168 (2022). We may reverse an administrative decision when a "finding, conclusion, or decision" "(i) is unconstitutional; (ii) exceeds the statutory authority or jurisdiction of the final decision maker; (iii) results from an unlawful procedure; (iv) is affected by any other error of law; (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted;

[2] Appellant did not raise arguments based on CJP § 5-106 and § 5-107 at the administrative hearing, and any suggestion that either applies to bar the underlying administrative hearing is not preserved for our review. *See* Md. Rule 8-131(a); *Pridgeon v. Bd. of License Comm'rs,* 406 Md. 229, 239 n.2 (2008). Even if preserved, neither statute applies to the underlying administrative hearing because such hearing is not a "prosecution." *See Nelson v. Real Est. Comm'n*, 35 Md. App. 334, 341 (1977), discussed *infra*.

[3] Indeed, appellant frames her argument as follows: "The Circuit Court Lacked Substantial Evidence to Affirm Because the Appellant was Deprived of Her Right to Due Process of Law by the ALJ *when the ALJ Conducted a Hearing Past all of Maryland's Statutes of Limitations*." (Emphasis added).

. . . (vii) is arbitrary or capricious." Md. Code Ann., State Gov't ("SG") § 10-222(h)(3). "[W]hen the question before the agency involves one of statutory interpretation or an issue of law," "we are not bound by the agency's statutory or legal conclusions." *Maryland Sec. Comm'r v. U.S. Sec. Corp.*, 122 Md. App. 574, 587 (1998).

DISCUSSION

Appellant's main argument is that the ALJ should have applied the three-year statute of limitations under CJP § 5-101 to the underlying administrative hearing. "We start with the statute's plain language and apply the natural and commonly understood meaning of its words." *Park Plus, Inc. v. Palisades of Towson, LLC*, 478 Md. 35, 55 (2022). "If the words are clear and unambiguous, we aim to 'apply the statute as it reads.'" *Id*. (citation omitted).

CJP § 5-101 states that:

> A *civil action at law* shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.

(Emphasis added). "Under [CJP § 5-101]'s plain language, the object of the limitations period—that is, the 'thing' that must be filed within the proscribed three-year period—is a 'civil action at law.'" *Park Plus, Inc.*, 478 Md. at 56. Historically, a "civil action at law" "was filed in a court of law, and the remedy was monetary damages." *Id*. "On its plain language, the definition of 'action' includes only those activities that take place *in court*[.]" *Id*. at 57, n.13 (emphasis added) (citing to *Gannett Fleming, Inc. v. Corman Constr., Inc*., 243 Md. App. 376, 397 (2019) (arbitration proceedings are not "civil actions at law"

because they are not proceedings in court)). The requirement of an in-court action comports with Maryland Rule 2-101(a) which states that a "*civil action* is commenced by filing a complaint with *a court.*" (Emphasis added); *see also* Md. Rule 1-202(a) ("Action" "means collectively all the steps by which a party seeks to enforce any right *in a court* or all the steps of a criminal prosecution.") (emphasis added).

"Court" is defined as the "Court of Appeals [now the Supreme Court], Court of Special Appeals [now the Appellate Court[4]], circuit court, and District Court of Maryland, or any of them, unless the context clearly requires a contrary meaning. It does not include an orphans' court, or the Maryland Tax Court." CJP § 1-101(c); *see also* Md. Rule 1-202(i) ("Court" "means a court of this State[.]").

An administrative agency is not a "court." Administrative agencies were created to "perform activities which the Legislature deems desirable and necessary to forward the health, safety, welfare and morals of the citizens of this State." *Dep't of Nat. Res. v. Linchester Sand & Gravel Corp*., 274 Md. 211, 222 (1975). They take on "a judicial coloring" in that "they are called upon to make factual determinations and thus adjudicate[.]" *Id*. "However, this authority is not the same and, therefore, is distinguishable from the exercising of the 'judicial powers' of this State, which power by Section 1, Article IV of the Maryland Constitution is reserved exclusively to designated courts[.]" *Id.*

[4] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the names of the Court of Appeals and the Court of Special Appeals of Maryland to the Supreme Court and the Appellate Court of Maryland, respectively. The name changes took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a).

"Administrative boards and officials are arms and instrumentalities of the Legislature, and are not judicial at all[.]" *Dal Maso v. Bd. of Cnty. Comm'rs*, 182 Md. 200, 205 (1943).

In *Nelson v. Real Estate Commission*, 35 Md. App. 334 (1977), we examined whether the statute of limitations under CJP § 5-107 applies to an administrative hearing. There, the respondent, a real estate broker, argued that the hearing before the Real Estate Commission was barred by the statute of limitations under CJP § 5-107 ("A prosecution or suit for a fine, penalty, or forfeiture shall be instituted within one year after the offense was committed."). *Id*. at 339. We held that CJP § 5-107 was not applicable and could not be pleaded as a bar to a proceeding before the Commission that determined whether a license will be suspended or revoked. *Id*. at 342. We explained that a hearing before such an administrative body is neither a "prosecution" nor a "suit" because those words, as used in CJP § 5-107, denote a proceeding in "court." *Id*. at 341 ("prosecution" "means a criminal action brought by the State, in a *court* of competent jurisdiction"; "suit" "means an action at law or equity brought in a *court*") (emphasis added). The "key word" in both definitions is "court" and because an administrative agency is not a "court," "the proscription contained in s 5-107 is not applicable thereto." *Id*.

Likewise, an administrative hearing is not a "civil action." In *Motor Vehicle Administration v. Weller*, 390 Md. 115 (2005), the Supreme Court of Maryland evaluated whether an administrative hearing is a "court action" or a "civil action." *Weller* arose out of a decision by an ALJ, made on behalf of the Motor Vehicle Administration, resulting in a one-year suspension of the respondent's driving privileges following a driving incident

where he refused to submit to a chemical breath test. *Id*. at 119. At the administrative hearing, evidence of the respondent's preliminary breath test ("PBT") result was admitted without objection. *Id*. at 125. In imposing the one-year suspension, the ALJ considered the respondent's PBT result, which was double the legal limit. *Id*. at 122.

At issue was § 16-205.2(c) of the Transportation Article which provides that the taking of a PBT "is not admissible in evidence in any *court action*. Any evidence pertaining to a preliminary breath test may not be used in a *civil action*." *Id*. at 133 (emphasis added). The respondent maintained that his PBT result was not admissible at the administrative hearing because the hearing is a "court action" or "civil action." *Id*. at 135. Thus, the question before the Court was "whether a PBT is admissible in an administrative hearing in light of the restriction contained in § 16-205.2(c)." *Id*. at 133.

The Court began with the canons of statutory construction, concluding that the term "court action" is clear and unambiguous:

> A court is defined as "[a] governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice." BLACK'S LAW DICTIONARY 378 (8th ed. 2004). The General Assembly specifically defines Maryland courts in § 1-101(c) of the Courts & Judicial Proceedings Article, as stated above. An action is defined as "[a] civil or criminal judicial proceeding." BLACK'S LAW DICTIONARY 31 (8th ed. 2004). Thus, a "court action" is a proceeding in the Court of Appeals, the Court of Special Appeals, Circuit Court for a county or Baltimore City, District Court of Maryland or an Orphans' Court. An administrative hearing before an ALJ, pursuant to § 16-205.1, *or any hearing before an administrative agency does not fall within this field*. Such a hearing, pursuant to § 16-205.1, does not take place in one of Maryland's enumerated "courts." *It is an administrative proceeding and not a "court action."*

Id. at 135 (footnote omitted and emphasis added).

The Court also concluded that an administrative hearing is not a "civil action":

> *Black's Law Dictionary* defines a "civil action" the same as it does an "action," "See ACTION (4)." BLACK'S LAW DICTIONARY 262 (8th ed. 2004). Therefore, a "civil action" is defined as "[a] civil or criminal judicial proceeding." BLACK'S LAW DICTIONARY 31 (8th ed. 2004). This conforms with Maryland Rule 2-101(a) which states that "[a] civil action is commenced by filing a complaint with a *court.*" (Emphasis added). As discussed *supra,* a § 16-205.1 administrative hearing clearly falls outside the scope of a court action. In fact, pursuant to § 12-206 of the Transportation Article "a hearing held under the Maryland Vehicle Law shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article (Administrative Procedure Act—Contested Cases)." Section 10-203(a)(2) of the State Government Article, titled "Scope of subtitle," explicitly states that Subtitle 2 does not apply to "the Judicial Branch of the State government or an agency of the Judicial Branch." Additionally, § 10-202(d) of the State Government Article defines adversarial proceedings before an agency as "contested cases," not civil actions.

Id. at 138–39. Accordingly, the Court concluded that PBT results are not prohibited as evidence in administrative hearings because such hearings are not court actions or civil actions. *Id*. at 139.

Although *Nelson* and *Weller* do not squarely address the issue before us, we see no reason why their analyses should not also support the conclusion that an administrative hearing is not a "civil action at law" under CJP § 5-101. In addition to the definitional examination of key words, *supra*, FL § 5-706.1(b)(1) likewise refers to the State Government Article, which provides: "In the case of a finding of indicated abuse or neglect, an individual may request a *contested case* hearing to appeal the finding *in accordance with Title 10, Subtitle 2 of the State Government Article*" (emphasis added). *See* SG § 10-203(a)(2) (subtitle 2 of the State Government Article does not apply to "the Judicial Branch

of the State government or an agency of the Judicial Branch"); SG § 10-202(d) (defining adversarial proceedings before an agency as "contested cases," not civil actions).

Acknowledging that the Family Law Article and COMAR do not provide a limitations period, appellant proposes that we nevertheless impose a three-year limitations period to bar administrative hearings involving child neglect. We decline to do so for the obvious reason that we do not possess the authority to, nor will we, legislate from the bench. *See Dr. K. v. State Bd. of Physician Quality Assurance*, 98 Md. App. 103, 118 (1993) ("our role is not to legislate but to interpret laws").

Appellant's proposal contravenes the statutory requirement that a local department act on *all* reports of suspected child neglect (and abuse) it receives. *See David N. v. St. Mary's Cnty. Dept. of Soc. Servs.*, 198 Md. App. 173, 198 (2011) ("the policy section of [FL § 5-702] plainly requires that action be taken on *all* reports of suspected child abuse or neglect received by local departments") (emphasis in original); COMAR 07.02.07.05 (requiring a local department to "accept reports of suspected child abuse or neglect from any source" without regard to when the event occurred).

The proposal to essentially confine the reporting of alleged child neglect to three years from the date of occurrence is also contrary to the reporting duties under FL § 5-704 (by certain professionals) and FL § 5-705 (by the population at large). FL § 5-704 specifies the timing of the report by certain professionals (*i.e.*, "immediately" and/or "as soon as possible") whereas FL § 5-705 "does not impose a time frame on the duty to report" by the population at large. *See David N.*, 198 Md. App. at 182–83; FL §§ 5-704, 5-705.

Finally, appellant's proposal ignores the reality that victims of abuse, particularly sexual abuse, do not typically report the abuse "until years later when the child is older, if they ever decide to report the abuse at all." *See Taharaka*, 254 Md. App. at 176. The stated policy under FL § 5-702 is to protect children who have been the subject of abuse or neglect; "[n]othing in the subtitle indicates that its purpose is to protect persons charged with neglect or abuse." *Owens v. Prince George's Cnty. Dep't of Soc. Servs.*, 182 Md. App. 31, 45-46 (2008). For the reasons stated, the administrative hearing was not barred by the three-year statute of limitations under CJP § 5-101.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.