

Circuit Court for Montgomery County
Case No. 466396V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2371

September Term, 2019

CHONG SU YI

v.

LARRY HOGAN

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 5, 2021

*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.

Chong Su Yi, appellant, filed a complaint against Governor Lawrence J. Hogan, Jr., appellee, in the Circuit Court for Montgomery County alleging that Maryland’s use of houses of worship as polling places in the 2018 general election violated Section 10-101 of the Election Law Article of the Maryland Code. Mr. Yi further claimed that Maryland’s identification of candidates’ political parties on the ballots used in the 2018 general election violated Section 9-206 of the Election Law Article. As relief, Mr. Yi requested an injunction “barring” all the ballots that had been cast in that election.

After Governor Hogan failed to file an answer or responsive pleading, Mr. Yi filed a request for an order of default. The court denied the request, noting that Mr. Yi had attempted to serve Governor Hogan by mail at his address in Annapolis rather than serving him in the manner required by Maryland Rule 2-124(k). Mr. Yi filed a motion to vacate the denial of his request for default, which was also denied. Mr. Yi eventually effected service on Governor Hogan. Thereafter, Governor Hogan filed a motion to dismiss, claiming that Mr. Yi’s complaint was barred by the statute of limitations and failed to state a claim upon which relief could be granted. The court granted the motion to dismiss without a hearing. On appeal, Mr. Yi raises three issues, which reduce to one: whether the court abused its discretion in denying his request for an order of default.¹ For the reasons that follow, we shall affirm.

Maryland Rule 2-613(b) provides that the court shall enter an order of default if “the time for pleading has expired and a defendant has failed to plead as provided by [the

¹ We note that Mr. Yi does not challenge the court’s decision to grant the motion to dismiss.

Maryland Rules].” However, a defendant is not required to file an answer until they have been served with the summons and complaint. *See* Maryland Rule 2-321(a). To sue the Governor of Maryland in his or her official capacity service of process must be effected on “(1) the resident agent designated by the [Governor], if any,” or “(2) the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Court of Appeals.” Maryland Rule 2-124(k). Because Governor Hogan has not designated a resident agent, any complaint naming him as a defendant was required to be served on the Maryland Attorney General. At the time Mr. Yi filed his request for default, he had not served the Attorney General with a copy of the summons and complaint. Rather, he had only attempted to serve Governor Hogan at his address in Annapolis. Thus, Governor Hogan’s time to file an answer or responsive pleading had not expired and the court did not abuse its discretion in denying the request for an order of default.

In claiming otherwise, Mr. Yi first asserts that Judge Robert A. Greenberg, the judge who denied his request for default, lacked the authority to do so because he was an administrative judge who was “mak[ing] a ruling on a civil, not [an] administrative case.” However, Mr. Yi appears to be confused by the difference between a Circuit Administrative Judge and an administrative law judge. The former is an incumbent circuit court judge who is designated by the Chief Judge of the Court of Appeals to be “responsible for the overall administration of the circuit courts within [a] judicial district[.]” *See* Maryland Rule 16-104. The latter presides over contested cases within the jurisdiction of the Office of Administrative Hearings. Because Judge Greenberg is a Circuit Administrative Judge, not an administrative law judge, he had the plenary authority under

Article IV of the Maryland Constitution to preside over civil and criminal proceedings in the circuit court. Thus, he had jurisdiction to rule on Mr. Yi’s request for an order of default.

Mr. Yi also contends that the court should have entered the order of default because (1) the court had mailed a notice to the parties indicating that neither an answer nor a request for default had been filed, which he claims relieved him of the requirement that he effect service on Governor Hogan, and (2) the requirement that he serve the Attorney General “violates due process of law.” However, Mr. Yi never raised these contentions in the circuit court. Consequently, they are not preserved for appellate review. *See* Maryland Rule 8-131(a) (providing that other than issues of jurisdiction of the trial court over the subject matter, an appellate court will ordinarily “not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court”).²

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

² In any event, we note that the notice sent by the court to the parties did not cure Mr. Yi’s failure to properly serve Governor Hogan. *See Sheehy v. Sheehy*, 250 Md. 181, 185 (1968) (“[T]he fact that the defendant may have had actual knowledge of the suit against him would not cure a defective service.”). Moreover, other than his conclusory statement, Mr. Yi does not identify how Rule 2-124(k) violated his due process rights.