

STATE OF MICHIGAN
COURT OF APPEALS

SAVITRI BHAMA, M.D.,

Petitioner-Appellant,

v

CIVIL SERVICE COMMISSION,

Respondent-Appellee.

UNPUBLISHED

November 29, 2007

Nos. 270672; 270673

Ingham Circuit Court

LC Nos. 00-092451-AA

00-092266-AA

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

These consolidated appeals are before us on remand from our Supreme Court for consideration as on leave granted. Petitioner originally sought delayed leave to appeal to this Court two circuit court orders dismissing, pursuant to MCR 7.105(K)(2), administrative appeals arising from her challenges of two separate adverse employment actions that were affirmed by respondent. Following this Court's denial of petitioner's delayed application, she sought leave to appeal in our Supreme Court. In lieu of granting the application, the Supreme Court remanded the matters to this Court for consideration as on leave granted. Because we conclude that MCR 7.105(K)(2) may not be applied to dismiss an administrative appeal for failure to abide by a supplemental briefing schedule, we reverse.

I. Basic Facts and Procedural History

Following an alleged demotion and subsequent termination that were challenged and affirmed by respondent, petitioner filed separate appeals of those matters in the circuit court. Appellate briefs requesting oral argument in both matters were subsequently filed by the parties and the matters set for hearing.

After oral arguments at the demotion appeal hearing, the circuit court remanded that matter to respondent for consideration of a particular factual issue but retained jurisdiction over the appeal. Oral argument in the termination appeal was subsequently held in abeyance pending a decision on the demotion appeal. Shortly thereafter, the circuit court administratively closed both appeals.

Several months after the decision on remand was made by respondent and forwarded to the circuit court, the circuit court placed the termination appeal on its no-progress docket and set the matter for hearing. At the no-progress hearing, petitioner indicated that the parties had

agreed that petitioner would file supplemental briefs in both the termination and demotion appeals within 60 days, that respondent would file responsive briefs within 28 days after petitioner filed her briefs, and that oral argument would be held afterward. The circuit court agreed to this schedule and entered handwritten notes memorializing the parties' agreement.

Petitioner failed to file a supplemental brief for either appeal and, several months later, the termination appeal was again placed on the circuit court's no-progress docket. Respondent failed to appear at the subsequent no-progress hearing, and counsel for petitioner, without mentioning the prior agreement regarding supplemental briefing, requested entry of a default. The circuit court granted the request and asked counsel to prepare an order for submission to the court. However, at a subsequent hearing on respondent's objections to the order submitted by petitioner, the circuit court, citing petitioner's failure to file the agreed upon supplemental briefs, dismissed both appeals for failure to comply with MCR 7.105(K)(2).

II. Analysis

Petitioner argues that the circuit court erred in applying MCR 7.105(K)(2) to dismiss the appeals because the rule applies only to the initial appellate briefs required after filing her appeals in these matters. Petitioner contends that while the parties stipulated to the filing of supplemental briefs following remand, no supplemental briefs were necessary to comply with the court rule and the circuit court therefore abused its discretion in relying on the rule to dismiss the appeals. We agree.

We review the trial court's decision to dismiss the appeals for an abuse of discretion. See *Zantop Int'l Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 359; 503 NW2d 915 (1993). However, to the extent resolution of the question presented involves interpretation of a court rule, our review is de novo. *Cranbrook Professional Bldg, LLC v Pourcho*, 256 Mich App 140, 142; 662 NW2d 94 (2003). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "The principles governing statutory interpretation apply equally to the interpretation of the court rules." *Richards v Tibaldi*, 272 Mich App 522, 532; 726 NW2d 770 (2006). Judicial construction is not permitted if the plain and ordinary meaning of the language is clear and, unless otherwise defined, every word or phrase should be accorded its plain and ordinary meaning, considering the context in which the words are used. *Yudashkin v Linzmeyer*, 247 Mich App 642, 649-650; 637 NW2d 257 (2001).

MCR 7.105 governs appeals to the circuit court from administrative agencies in contested cases. Subrule (K) of this rule provides the following with respect to the filing of briefs in those matters:

(1) Within 28 days after the record is filed with the court . . . , the petitioner shall file with the court its brief, in the form provided in MCR 7.212(C), serve a copy on all respondents, and promptly file proof of that service with the court. Within 28 days after petitioner's brief is served, each respondent shall file with the court its brief, in the form provided in MCR 7.212(D), serve a copy on all other parties, and promptly file proof of that service with the court. The petitioner may file and serve a reply brief within 14 days after service of the respondent's brief. A 28-day extension of the time for filing a brief may be obtained on written stipulation

of the parties or by order of the court. Further extension of time for filing of a brief can be obtained only on order of the court on motion for cause shown.

(2) *If a party does not timely serve its brief, the court may, after notice and opportunity to respond, enter an appropriate order, including dismissal of a petition for review, or affirmance or reversal of the decision appealed from.* [Emphasis added.]

Reviewing the language employed in the subrule, it is plain that the phrase “its brief,” as used in subsection (2), refers to the appeal and response briefs required of a petitioner and respondent under subsection (1). It is equally plain that subsection (1), which sets a definitive and truncated time period for the filing of briefs “after the record is filed with the court,” governs only the initial briefing schedule following the filing of a petition for review. MCR 7.105(K)(1). The briefing schedule at issue here, however, concerned supplemental briefing stipulated to by the parties following remand to respondent and not required under MCR 7.105(K). Thus, while we acknowledge that supplemental briefs would likely have been helpful in deciding the appeals following remand, we agree with petitioner that the circuit court abused its discretion in dismissing the appeals under MCR 7.105(K)(2) because the stipulated briefs were not required under MCR 7.105(K)(1). Accordingly, the orders dismissing petitioner’s appeals must be reversed.¹

Reversed and remanded to the circuit court for substantive consideration of petitioner’s appeals. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

¹ In light of our resolution of this matter, we need not address the remainder of the issues raised on appeal. We note, however, that respondent’s argument that the circuit court lacked subject-matter jurisdiction over the demotion appeal following remand is without merit because the court retained jurisdiction in that matter. As a result, a subsequent petition for review was unnecessary to invoke the circuit court’s jurisdiction.