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2012 IL App (4th) 110204-U

Order filed March 8, 2012

NO. 4-11-0204

Modified upon denial of
rehearing April 11, 2012

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DERRICK PEOPLES,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	McLean County
COMMUNITY UNIT SCHOOL DISTRICT NO. 5,)	No. 10AR251
McLEAN AND WOODFORD COUNTIES, ILLINOIS;)	
and LABORER'S INTERNATIONAL UNION OF)	Honorable
NORTH AMERICA, LOCAL NO. 362,)	Lee Ann S. Hill,
Defendants-Appellees.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court improperly conducted quasi-administrative review of agency finding by granting defendant school district's motion to dismiss plaintiff's complaint as untimely based on its conclusion the agency erred in finding plaintiff's seemingly untimely filing with the agency was timely filed.

¶ 2 Plaintiff filed a charge of discrimination with the Illinois Department of Human Rights (Department) alleging his employer demoted him because of his race in violation of section 2-102(A) of the Illinois Human Rights Act (Act) (775 ILCS 5/2-102(A) (West 2008)). The Department dismissed his charges for lack of substantial evidence. Plaintiff filed a request for review with the Human Rights Commission (Commission). The Commission vacated the dismissal of plaintiff's charge and remanded to the Department for further investigation. After the Department again dismissed plaintiff's charge for lack of substantial evidence, plaintiff attempted to file another request for review with the Commission but served the request upon the

Department. By the time it was forwarded to the Commission by the Department, it was not timely received by the Commission. The Commission deemed the filing timely and entered an order vacating the Department's dismissal of the charge, reinstated the charge, and remanded the charge to the Department for entry of an order finding substantial evidence of discrimination.

¶ 3 After receiving notification of the finding of substantial evidence, plaintiff filed a complaint against defendants in the circuit court. Defendant school district filed a motion to dismiss the complaint contending, *inter alia*, plaintiff's second request for review was filed late and the Commission lacked jurisdiction to consider it. Defendant school district contended plaintiff's complaint was not timely filed in the circuit court as the Act required complaints in court be filed within a certain time after receiving a finding of substantial evidence of discrimination. The circuit court granted defendant school district's motion to dismiss. Plaintiff appeals, contending the circuit court did not have jurisdiction to review the Commission's decision of timeliness. We reverse and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff, Derrick Peoples, is an African-American who was employed as a head day custodian at Chiddix Junior High School for defendant, Community Unit School District 5, McLean and Woodford Counties (Unit 5), and a member in good standing of defendant, Laborer's International Union of North America, Local 362 (union). In 2007, Unit 5 experienced a budget shortfall and, in conjunction with the union, embarked upon layoffs within the ranks of its custodial employees. On July 25, 2007, representatives of Unit 5 and the union informed plaintiff he was to be demoted from head day custodian to a night custodian position at Chiddix with a consequent reduction in pay. Unit 5 and the union contended the change in position for

plaintiff was done in accordance with the relevant provisions of the collective-bargaining agreement between the union and Unit 5.

¶ 6 At the time of plaintiff's demotion, he was the only African-American head custodian employed by Unit 5. He was replaced in his position by a non-African-American. Plaintiff disagreed with the interpretation of the collective-bargaining agreement used by the union and Unit 5, contending the person who replaced him did not have sufficient seniority.

¶ 7 On January 22, 2008, plaintiff filed a charge of employment discrimination with the Department and the Equal Employment Opportunity Commission alleging his race was the motivating factor in his demotion. On March 27, 2009, the Department issued a notice of dismissal for lack of substantial evidence. The notice provided, if plaintiff disagreed with the decision of the Department, he could file a request for review with the Commission within 30 days or file a civil action in the appropriate circuit court within 90 days after receiving the notice.

¶ 8 After receiving an extension of time to file his request for review, on May 26, 2009, plaintiff filed his request with the Commission. On June 24, 2009, the Commission entered an order vacating the dismissal of his charge and remanded the charge back to the Department for further investigation. On October 16, 2009, the Department issued an investigation report, which included a summary of all of the evidence it gathered from plaintiff and Unit 5 regarding plaintiff's charge of discrimination. On October 22, 2009, the Department issued its second notice of dismissal for lack of substantial evidence, which included the same notification regarding plaintiff's choice of filing a request for review with the Commission within 30 days or filing a civil action in the appropriate circuit court within 90 days after receiving the notice.

¶ 9 On November 23, 2009, plaintiff filed a second request for review by the

Commission of the Department's decision. The form was served on the Department instead of the Commission. The Department forwarded the request form to the Commission, where it was received on December 1, 2009.

¶ 10 On December 7, 2009, the Commission filed a notice of filing and served a copy on all parties, including Unit 5. The notice of filing stated "You are hereby notified that [plaintiff] did on this day 11/23/2009 file with the Illinois Human Right Commission his/her/their Request for Review of the Dismissal *** in the above entitled matter."

¶ 11 On January 5, 2010, the Director of the Department filed a response to plaintiff's request to review with the Commission. In it, a staff attorney on behalf of the Director states plaintiff filed an untimely request, noting in a footnote plaintiff's request filing deadline date was November 25, 2009, and on December 1, 2009, plaintiff filed his request with the Commission which the Commission deemed timely filed. *In the Matter of the Request for Review by Derrick Peoples*, Charge No. 2008 SF 1835 (Jan. 5, 2010), Response at 2 n.3 (Human Rights Comm'n). The Director reviewed the evidence regarding plaintiff's charge and recommended the Commission enter an order finding substantial evidence supporting plaintiff's charge.

¶ 12 On January 11, 2010, the Commission entered an order vacating the dismissal of plaintiff's charge, reinstated the charge and remanded it back to the Department for a finding of substantial evidence. *In the Matter of the Request for Review by Derrick Peoples*, Charge No. 2008 SF 1835 (Jan. 11, 2010) (Human Rights Comm'n). This order was served on all parties. Unit 5 sought administrative review, docketed in this court as No. 4-10-0117, which was dismissed on motion of appellees, Commission and Department arguing the appeal was from a nonfinal order. *Community Unit School District No. 5, McLean and Woodford Counties v.*

Illinois Human Rights Comm'n, No. 4-10-0117 (May 13, 2010) (dismissed on motion of appellees). On January 15, 2010, plaintiff and Unit 5 were served with a notice of substantial evidence. The notice stated plaintiff had the choice of notifying the Department in writing within 14 days if he wished the Department to file a complaint with the Commission on his behalf pertaining to his discrimination charge or commencing a civil action in the appropriate circuit court within 90 days after receipt of the notice. Defendants took no appeal.

¶ 13 On April 15, 2010, plaintiff filed a two-count civil complaint against Unit 5 and the union setting forth the charge of discrimination he alleged before the Department and Commission. On May 28, 2010, Unit 5 filed a motion to dismiss pursuant sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2010)). A memorandum of law was attached to the motion. Unit 5 alleged plaintiff's complaint was not timely filed because he filed his second request for review after the 30-day deadline required by section 7A-102(D)(3) of the Act (775 ILCS 5/7A-102(D)(3) (West 2008) ("If the complainant chooses to have the [Commission] review the dismissal order, he or she shall file a request for review with the Commission within 30 days after receipt of the Director's notice.")). Unit 5 contends because his second request for review was not timely filed, plaintiff's civil complaint in the circuit court could not be timely filed. Unit 5 also contended the complaint failed to allege any intentional discrimination and was barred by *res judicata*. Further, Unit 5 contended plaintiff failed to attach the collective-bargaining agreement at issue.

¶ 14 On September 15, 2010, plaintiff filed his response to Unit 5's motion to dismiss to which he attached his own memorandum of law. After an October 8, 2010, argument on Unit 5's motion, the circuit court issued a written ruling on November 18, 2010. The court granted the

motion to dismiss on the grounds plaintiff's second request for review was untimely filed and, therefore, any filings thereafter, including the complaint in question, were also untimely. The court declined to address Unit 5's other grounds for dismissal of the complaint, stating they were moot after it ruled the complaint was not timely filed.

¶ 15 On December 8, 2010, plaintiff filed a motion to reconsider with the circuit court. On January 14, 2011, after a hearing, the court denied plaintiff's motion. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 We note first, the union entered its appearance in the circuit court but let Unit 5 take the lead after it filed its motion to dismiss. On appeal, the union has adopted the appellee brief filed by Unit 5.

¶ 18 The parties disagree on the issue to be determined on review. Plaintiff contends we are to consider whether the circuit court had the authority to reverse a decision of the Commission by reaching back into proceedings before the Commission to determine whether it acted appropriately on a procedural matter. Unit 5 contends because plaintiff failed to comply with jurisdictional deadlines and requirements set forth in the Act, the circuit court lacked subject-matter jurisdiction over plaintiff's civil rights complaint and, therefore, correctly dismissed it.

¶ 19 Rulings on motions to dismiss pursuant to both section 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2010)) are reviewed *de novo*. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 418-19, 775 N.E.2d 951, 961 (2002) (section 2-615 motion); *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17, 619 N.E.2d 732, 735 (1993) (section 2-619 motion).

¶ 20 The Act created a new remedy unknown at common law and sets a time within which a charge of a civil rights violation may be filed with the Department in order for the Commission to have subject-matter jurisdiction over a charge. *Weatherly v. Human Rights Comm'n*, 338 Ill. App. 3d 433, 437, 788 N.E.2d 1175, 1178-79 (2003). Unit 5 does not contend plaintiff did not timely file his charge with the Department but contends, while his charge was being handled internally by the Department and Commission, a request for review by the Commission of a Department finding was not timely filed.

¶ 21 Unit 5 does not contest the substance of the finding made by the Commission of the existence of substantial evidence supporting plaintiff's charge of a civil rights violation but, instead, contests the Commission's finding plaintiff's filing of his request with the Department instead of the Commission within the time limits required by section 7A-102(D)(3) of the Act (775 ILCS 5/7A-102(D)(3) (West 2008)) would be deemed a timely filed request for review. Unit 5's contention is the Commission is bound by the time requirements of the Act and has no power to deem plaintiff's filing of a second request for review timely because section 7A-102(D)(3) requires a request for review be filed with the Commission and not the Department.

¶ 22 Unit 5 contends an otherwise timely filing of a request for review wrongly filed with the Department cannot be considered timely filed when it does not reach the Commission until after the 30-day deadline imposed by section 7A-102(D)(3) as the Commission is bound by the statute creating it, the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2010)) and has no powers besides those enumerated in the Act. (As an aside, we note the legislature amended section 7A-102(D)(3), extending the 30-day period to 90 days for charges filed on or after February 2, 2010. Pub. Act 96-876, §5, eff. Feb. 2, 2010 (2009 Ill. Laws 8867, 8871); as

amended; see 775 ILCS 5/7A-102(D)(3) (West 2010).) Unit 5 contends the Commission lacked authority to make a finding plaintiff's second request for review was timely filed, and the untimely filing of plaintiff's second request for review make the complaint filed in circuit court untimely and subject to dismissal on that ground.

¶ 23 Unit 5 makes an interesting argument. Perhaps it would have been better made before the Commission. Unit 5 asked the circuit court in its motion to dismiss to conduct what was essentially an administrative review. It asked the circuit court to review an internal finding made by the Commission prior to its final decision to order a finding of substantial evidence in support of plaintiff's discrimination charge. Administrative review of decisions of the Commission are directly reviewable by this court, not the circuit court. 775 ILCS 5/8-111(B)(1) (West 2010). The Illinois appellate court has exclusive jurisdiction to review decisions of the Commission and the circuit court lacks jurisdiction to take any action with respect to decisions of the Commission. *In re Charles F. Schaefer v. Human Rights Comm'n*, 173 Ill. App. 3d 862, 865, 527 N.E.2d 961, 963 (1988). The question of subject matter jurisdiction remains, but we believe that issue should be first addressed in the trial court. We conclude the circuit court had no authority to consider questions involving an administrative review of a decision by the Commission and overstepped its authority when granting Unit 5's motion to dismiss on the grounds stated.

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, we reverse the circuit court's judgment. As the court specifically did not rule on the other grounds for dismissal raised by Unit 5, we remand for further proceedings.

¶ 26

Reversed and remanded.