

NOTICE  
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2012 IL App (4th) 110278-U

Filed 2/2/12

NO. 4-11-0278

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CHAD WAHL,	)	Appeal from
Plaintiff-Appellant,,	)	Circuit Court of
v.	)	Sangamon County
ILLINOIS DEPARTMENT OF CHILDREN AND	)	No. 09MR771
FAMILY SERVICES,	)	
Defendant-Appellee.	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.  
Justices McCullough concurred in the judgment.  
Justice Cook dissented in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed, concluding that the circuit court did not err by dismissing the plaintiff's action for administrative review, given that the plaintiff failed to comply with the service of summons requirement of section 3-103 of the Administrative Review Law.
- ¶ 2 In September 2009, plaintiff, Chad Wahl, *pro se* filed an action for administrative review, challenging the administrative dismissal of his objection to the finding of the Department of Children and Family Services (DCFS) that he was "indicated" for abuse or neglect. In May 2010, Wahl *pro se* filed a motion for default judgment, asserting that DCFS had failed to answer his complaint. In June 2010, the State filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)), alleging that Wahl had failed to obtain the issuance of summons within 35 days under section 3-103 of the Administrative Review Law

(735 ILCS 5/3-103 (West 2010)). Following a February 2011 hearing, the circuit court granted DCFS's motion.

¶ 3 Wahl appeals, arguing that the circuit court erred by dismissing his action for administrative review. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 Nearly 20 years ago, a jury convicted Wahl of several sex offenses that he perpetrated against victims who were under the age of 13. Following an investigation conducted around the time of his conviction, DCFS listed Wahl on its central register of individuals "indicated" for child abuse or neglect. In December 1996, the Second District of this court affirmed Wahl's conviction and sentence. *People v. Wahl*, 285 Ill. App. 3d 288, 289-90, 674 N.E.2d 454, 455 (1996).

¶ 6 In 2009, Wahl wrote a letter to DCFS, inquiring about the status of his "indication" and inclusion on DCFS's central register. DCFS sent a written response to Wahl, explaining that due to the "serious nature of the report on file," his name would remain on the central register for at least 50 years from the date he was indicated. In response, Wahl sent DCFS a second letter, which DCFS treated as an administrative challenge to its "indicated" finding. In August 2009, DCFS's Chief Administrative Law Judge (ALJ) dismissed Wahl's challenge as untimely, given that it had been filed almost 20 years after DCFS added him to its central register.

¶ 7 In September 2009, Wahl *pro se* filed an action for administrative review. In May 2010, Wahl *pro se* filed a motion for default judgment, asserting that DCFS had failed to answer his complaint. In June 2010, the State filed a motion to dismiss pursuant to section 2-619 of the

Code (735 ILCS 5/2-619 (West 2010)) on the ground that Wahl had failed to obtain the issuance of summons within 35 days after the ALJ's decision under section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2010)). Following a February 2011 hearing, the circuit court granted DCFS's motion to dismiss.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Wahl argues that the circuit court erred by dismissing his action for administrative review. We disagree.

¶ 11 We review *de novo* a circuit court's decision to grant or deny a defendant's section 2-619 motion to dismiss for failure to issue a summons within the 35-day statutory period when seeking administrative review. *Blumhorst v. Illinois Department of Employment Security*, 335 Ill. App. 3d 1075, 1077, 783 N.E.2d 654, 656 (2002).

¶ 12 The Administrative Review Law provides that parties to a proceeding before an administrative review agency will be barred from obtaining judicial review of an agency's administrative decision unless review is sought (1) within the time *and* (2) in the manner set forth in the statute. 735 ILCS 5/3-102 (West 2010).

¶ 13 Section 3-103 of the Administrative Review Law provides as follows:

"Every action to review a final administrative decision shall be commenced by the filing of a complaint *and the issuance of summons* within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision \*\*\*.

The method of service of the decision shall be as provided in the Act governing the procedure before the administrative agency, but if no method is provided, a decision shall be deemed to have been served either when a copy of the decision is personally delivered or when a copy of the decision is deposited in the United States Mail \*\*\*." (Emphasis added.) 735 ILCS 5/3-103(West 2010).

¶ 14 A plaintiff must submit with his complaint (1) a request for summons (735 ILCS 5/2-201(a) (West 2010)) and (2) an affidavit containing the last known address of the defendant (735 ILCS 5/3-105 (West 2010)) to satisfy the summons requirement.

¶ 15 The record shows that Wahl's September 2009 *pro se* complaint for administrative review was acknowledged by the circuit court on November 5, 2009, when the court issued an order, (1) granting Wahl's request to proceed *in forma pauperis* and (2) directing the clerk of the court to file his pleadings and issue summons. Absent from the record, however, is any evidence that Wahl attached a request for summons or an affidavit containing DCFS's last known address. Accordingly, we conclude that Wahl failed to issue service of summons as required by section 3-103 of the Administrative Review Law. Therefore, we reject his claim that the court erred by dismissing his action for administrative review on that basis.

¶ 16 In closing, we note that in his *pro se* filing, Wahl makes several other assertions related to, among other things, "good faith," the time for filing, and general "fairness." Having reviewed each of those additional claims, we deem them utterly meritless. The bottom line is that Wahl failed to comply with the manner of filing a complaint for administrative review under

the Administrative Review Law and the circuit court did not commit reversible error by granting the State's motion to dismiss on that basis. See *Nudell v. Forest Preserve District of Cook County*, 207 Ill. 2d 409, 413-14, 799 N.E.2d 260, 262 (2003) (review "shall be barred" unless the plaintiff complies with time *and* manner requirement set forth in section 3-103 of the Administrative Review Law).

¶ 17

### III. CONCLUSION

¶ 18

For the reasons stated, we affirm the circuit court's judgment.

¶ 19

Affirmed.

¶ 20 JUSTICE COOK, dissenting:

¶ 21 Section 3-103 of the Administrative Review Law provides that "every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." Section 1-103 goes on to provide that "a decision shall be deemed served either when \*\*\* personally delivered or when a copy of the decision is deposited in the \*\*\* mail." 735 ILCS 5/3-103 (West 2010). Three events are involved here: the agency serves a copy of its decision, the plaintiff files a complaint, and the circuit clerk issues a summons.

¶ 22 The administrative decision in this case was dated August 11, 2009. Plaintiff's complaint was file-stamped by the clerk on September 14, 2009. Plaintiff asserts that he then filed a "Precipe for Summons," notarized September 24, 2009. The Department concedes that plaintiff's complaint was filed within the 35-day period, which expired September 15, 2009. The Department argues, however, that the circuit court lacked subject-matter jurisdiction because plaintiff did not file with his complaint a request for the clerk to issue summons and an affidavit containing the Department's last known address, as required by the Civil Practice Act (735 ILCS 5/2-201(a), 735 ILCS 5/3-105 (West 2010)).

¶ 23 The Illinois Supreme Court's decision in *Nudell* did not address the issuance of *summons*, the issue in our case, but rather addressed the date the agency's *decision* was served. *Nudell* held that the requirement that a complaint for administrative review be filed within 35 days from the date that a copy of the *decision* was served upon the party affected is jurisdictional. *Nudell*, 207 Ill. 2d at 422, 799 N.E.2d at 267-68. A previous opinion had held that where the

clerk did not issue *summons* until after the 35-day period, but the plaintiff had acted with diligence, the complaint for administrative review was timely commenced. *Cox v. Board of Fire & Police Commissioners*, 96 Ill. 2d 399, 451 N.E.2d 842 (1983). *Nudell* stood by its statement in *Cox*, that "[a]n established rule of statutory construction in this jurisdiction is that courts will 'liberally construe a right to appeal so as to permit a case to be considered on its merits.'" *Nudell*, 207 Ill. 2d at 422, 799 N.E.2d at 267 (quoting *Cox*, 96 Ill. 2d at 403, 451 N.E.2d at 844) "This statement, however, concerned the issuance of *summons*, which is mandatory and not jurisdictional." (Emphasis added.) *Nudell*, 207 Ill.2d at 422, 799 N.E.2d at 267; *see also In re M.I.*, 2011 IL App (1<sup>st</sup>) 100865 (discussing whether statutory directives are mandatory or directory).

¶ 24           Whether the expiration of a limitation period bars a given claim is determined by reference to the date on which the case was filed. As a general rule, service of process may be accomplished after the expiration of an applicable limitations period, unless there is a failure to exercise reasonable diligence to obtain service. Ill. Sup. Ct. Rule 103(b) (eff. July 1, 2007). There is no indication in section 1-103 of the Administrative Review Law that a different rule was intended. Section 1-103 does not state that a plaintiff must file with his complaint a request that the clerk issue summons or an affidavit containing the Department's last known address. Not every statutory requirement is jurisdictional and nonwaivable. "Labeling the requirements contained in statutory causes of action 'jurisdictional' would permit an unwarranted and dangerous expansion of the situations where a final judgment may be set aside on a collateral attack." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 341, 770 N.E.2d 177, 188 (2002).

¶ 25 We should reverse the decision of the circuit court and remand for further proceedings.