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2013 IL App (4th) 120857-U

NO. 4-12-0857

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 2, 2013
Carla Bender
4th District Appellate
Court, IL

ANNA LYNN ROBINSON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
THE DEPARTMENT OF)	No. 12MR446
EMPLOYMENT SECURITY BOARD OF)	
REVIEW and URBANA SCHOOL)	Honorable
DISTRICT NO. 116,)	Thomas J. Difanis,
Defendants-Appellees.)	Judge Presiding

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's dismissal of an administrative-review action where plaintiff failed to (1) name a necessary party or (2) issue summonses within the 35-day limitation period.

¶ 2 On June 8, 2012, plaintiff filed a *pro se* complaint for review of a May 7, 2012, administrative decision denying her unemployment benefits. On June 25, 2012, she amended her complaint. In July 2012, the Board of Review of the Illinois Department of Employment Security filed a motion to dismiss, asserting Robinson failed to timely issue summonses as required by the administrative review law. Following a hearing, the circuit court granted the motion to dismiss.

¶ 3 Robinson appealed. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On June 8, 2012, plaintiff, Anna Lynn Robinson, filed a *pro se* complaint for administrative review of a May 7, 2012, decision of the Board of Review (Board) of the Illinois Department of Employment Security (Department) denying her unemployment benefits. The Department was named as the sole defendant. No summons was issued at that time.

¶ 6 On June 25, 2012, Robinson filed an amended complaint for administrative review naming the Board and Urbana School District No. 116 (her former employer) as defendants. On that date, summonses were issued and defendants were subsequently served.

¶ 7 In July 2012, the Board filed a motion to dismiss Robinson's complaint under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)) for failure to comply with the mandatory requirements of the administrative review law (Review Law). Specifically, the Board noted section 3-103 of the Review Law (735 ILCS 5/3-103 (West 2010)) requires administrative review actions to be commenced by the filing of a complaint and the issuance of a summons within 35 days from the date a copy of the Board's decision was served on the aggrieved party. While her initial complaint was timely filed, the Board pointed out Robinson did not cause summonses to be issued on the Board or the School District, both necessary parties, until June 25, 2012—49 days after the Board's decision was mailed. The Board asserted Robinson's failure to obtain issuance of summonses within the required time period, without evidence she made a good-faith effort to do so, was a fatal defect requiring dismissal of her complaint. Robinson did not file a response to the Board's motion.

¶ 8 At the August 2012 hearing on the Board's motion to dismiss, Robinson failed to address the issue of whether her summonses were timely issued or whether she had made a good-faith effort to do so. Following arguments, the circuit court granted the Board's motion to

dismiss, finding it was without jurisdiction to hear the case because summons had not been issued within the appropriate period of time.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Robinson asserts the following issues are before this court: (1) whether the Board misinterpreted if her employment was voluntary or involuntary (presumably whether the loss of her employment was voluntary or involuntary); and (2) whether the immediate dismissal of her case prevented evidence and argument from being presented. However, the merits of her case are not before this court. Rather, the sole issue before this court is whether the circuit court erred in granting the Board's motion to dismiss.

¶ 12 A. Standard of Review

¶ 13 A circuit court's ruling on a motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (2010)) is reviewed *de novo*. *Lynch v. Department of Transportation*, 2012 IL App (4th) 111040, ¶ 19, 979 N.E.2d 113.

¶ 14 B. Dismissal of Robinson's Claim

¶ 15 Section 3-102 of the Review Law provides, "[u]nless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision." 735 ILCS 5/3-102 (West 2010). Pursuant to section 3-103 of the Review Law, "[e]very 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."

(Emphases added.) 735 ILCS 5/3-103 (West 2010). "[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, *** addressed to the party affected by the decision." *Id.*

¶ 16 Although the 35-day period for the issuance of a summons is not jurisdictional, it is a mandatory requirement of the Review Law, and a plaintiff must show a good-faith effort to file the complaint and secure issuance of the summons within the 35 days to avoid dismissal of the administrative-review action. *Carver v. Nall*, 186 Ill. 2d 554, 559, 714 N.E.2d 486, 489 (1999), *overruled on other grounds* by *Nudell v. Forest Preserve District of Cook County*, 207 Ill. 2d 409, 424, 799 N.E.2d 260, 268 (2003). The good-faith effort exception, however, is narrow and has been explained by our supreme court as follows:

"In cases where the 35-day requirement has been relaxed, the plaintiffs had made a good-faith effort to issue summons within the statutory period. Nevertheless, due to some circumstance beyond their control, summons was not issued within the statutory period." *Lockett v. Chicago Police Board*, 133 Ill. 2d 349, 355, 549 N.E.2d 1266, 1268 (1990), *overruled on other grounds* by *Nudell*, 207 Ill. 2d at 424, 799 N.E.2d at 268.

Those cases cited by the *Lockett* court pertained to instances where the plaintiffs filed their complaints and summons with the circuit court within the time period, but due to issues at the clerk's office, the summonses were not issued until after the 35-day time period had expired. *Id.*

¶ 17 We also note, despite any party bringing it to our attention, section 3-107(a) of the Review Law provides "in any action to review any final decision of an administrative agency, the

administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants." 735 ILCS 5/3-107 (West 2010); see also *McGaw Medical Center of Northwestern University v. Department of Employment Security*, 369 Ill. App. 3d 37, 40, 860 N.E.2d 471, 474 (2006) (affirming circuit court's dismissal of complaint because the plaintiff failed to name the Board—a necessary party—as a defendant within the 35-day limitation period). "Although not jurisdictional, the joinder requirements of the Review Law are mandatory, and the failure to comply with those requirements mandates a dismissal of the review proceeding." *Three Angels Broadcasting Network, Inc. v. Department of Revenue*, 381 Ill. App. 3d 679, 691, 885 N.E.2d 554, 565 (2008). Thus, assuming the School District was a necessary party, in addition to serving summons within the specified 35-day period, Robinson was required to timely name it as a defendant.

¶ 18 In this case, it appears Robinson was served with notice of the Board's administrative decision on May 7, 2012. This information is gleaned from the School District's "motion to supplement record" contained in the common-law record. Attached to its motion is a copy of the Board's decision, addressed to Anna Robinson and the School District's agent and showing a mailing date of May 7, 2012. Thus, Robinson had until June 11, 2012—35 days from the date the decision was served—to (1) file a complaint naming the necessary parties as defendants and (2) issue summons. She failed to do either.

¶ 19 Robinson filed her initial complaint on June 8, 2012—within the 35-day limitation period. However, the Department was the only party named as a defendant. Further, Robinson failed to issue summons at that time, despite the following language included with the Board's decision: "If you *** want to appeal, you must file a complaint for administrative review

and have summons issued in circuit court within 35 days from the mailing date, 05/07/2012." (Emphasis added.) On June 25, 2012—49 days after the Board's decision was served and 14 days after the limitations period expired—Robinson filed an amended complaint and summonses. In this amended complaint, she named the Board and the School District as defendants. Because the School District was a party of record before the administrative proceedings, it was a necessary party under section 3-107(a) of the Review Law. Thus, Robinson's failure to name the School District as a defendant on or by June 11, 2012, mandated the circuit court's dismissal of the administrative-review action.

¶ 20 Further, at the hearing on the Board's motion to dismiss, Robinson neither argued she made a good-faith effort to secure timely issuance of summonses nor introduced any evidence regarding the same; instead she attempted to argue the merits of her case. See *Blumhorst v. The Department of Employment Security*, 335 Ill. App. 3d 1075, 1078-79, 783 N.E.2d 654, 657 (2002). In her initial brief before this court, Robinson concedes summonses were not issued within the 35-day period and does not argue she made a good-faith effort to issue summonses. Indeed, by failing to adduce evidence and argue a good-faith effort in the trial court, she has forfeited that issue for review. In her reply brief, she states, "[t]he term good faith effort is an abstract and comprehensive term that is left to interpretation," but she does not expand further. She continues, as a *pro se* plaintiff she made every effort to comply, and "[p]roper clarification [by the Board] *** for completing appeals would reduce the number of improperly filed appeals." However, as mentioned earlier, the appeal notice provided to Robinson by the Board informed her she "must file a complaint for administrative review *and* have summons issued in circuit court within 35 days from the mailing date, 05/07/2012." (Emphasis added.)

Because Robinson did not (1) issue summonses within the 35-day period or (2) demonstrate a good-faith effort to timely issue summonses, the circuit court properly dismissed the administrative-review action.

¶ 21 In sum, based on our *de novo* review, we conclude the circuit court's dismissal of Robinson's administrative review action was proper for two independent reasons: Robinson failed to (1) timely join a necessary party and (2) issue summonses within the 35-day period required by the Review Law.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm.

¶ 24 Affirmed.