



(eff. 1989). The plaintiff was issued a notice alleging that he was in violation of this ordinance. On October 24, 2011, the plaintiff contested the alleged violation at an administrative hearing. A hearing officer with the ordinance enforcement department, Scott Griffith, presided over the administrative hearing. The record on appeal does not include a transcript from the administrative hearing, but apparently the plaintiff argued that federal statutory and constitutional law permitted him, a Native American, to maintain the chickens at his residence, notwithstanding the city ordinance. The hearing officer found the plaintiff in violation of the ordinance, imposed a fine of \$100, and served the plaintiff with a copy of his written decision.

¶ 5 On November 21, 2011, the plaintiff filed in the circuit court of Madison County a complaint for administrative review, seeking judicial review of the hearing officer's administrative decision. In his complaint, the plaintiff named "City of Granite City" and "County of Madison" as the defendants in the action. (Granite City is in Madison County.) He did not name any other defendant. The plaintiff attached to his complaint a copy of the "finding, decision and order" entered by the hearing officer on October 24, 2011. The order indicated that the plaintiff was "liable" for possessing "farm animals" on his property and was fined \$100.

¶ 6 On November 30, 2011, the clerk of the circuit court issued a summons to "City of Granite City Illinois." Apparently, it was the only summons issued in the case. On December 1, 2011, the clerk mailed the summons to city hall.

¶ 7 On January 3, 2012, Granite City, by the city attorney, filed a motion to dismiss the plaintiff's complaint on the grounds that (1) the plaintiff did not timely file his complaint, (2) summons did not issue within the requisite time period, and (3) the plaintiff failed to name as the defendants the hearing officer and the ordinance enforcement department. According to the city, each basis independently required the dismissal of the plaintiff's

complaint for administrative review.

¶ 8 On February 10, 2012, the circuit court held a hearing on the city's motion to dismiss. The record on appeal includes neither a transcript of that hearing nor a bystander's report. The court entered a written order: "Motion to dismiss argued and allowed. Plaintiff hand served with this order this date, in Court. Court finds the complaint timely filed, but summons did not timely issue, and necessary parties not named."

¶ 9 From the order dismissing his complaint for administrative review, the plaintiff now appeals.

¶ 10 ANALYSIS

¶ 11 This appeal is from an order granting a motion for involuntary dismissal pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)). Appellate review of a section 2-619 dismissal is *de novo*. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 368 (2003).

¶ 12 As previously noted, the record on appeal does not include a transcript or a bystander's report of the hearing on the city's motion to dismiss the complaint. The defendants-appellees have not suggested that this absence renders the record inadequate. The record does contain the complaint, the motion to dismiss, and the written order of dismissal, the last of which indicates that the motion was argued. Nothing indicates that the court heard evidence at the hearing. "Where the judgment appealed from relates only to a question of law involving an order which was a part of the common law record, the record on appeal is adequate without a transcript of proceedings." *Maynard v. Parker*, 54 Ill. App. 3d 141, 142-43 (1977). We address the straightforward legal issue that this appeal presents.

¶ 13 In the brief that he filed *pro se* in this court, the plaintiff devotes most of his efforts to arguing that federal statutory and constitutional law permits him, a Native American, to maintain chickens at his residence as part of his *Midewiwin* religious practice,

notwithstanding any city ordinance. The plaintiff also argues that the circuit court erred in insisting that he, a nonlawyer, had to meet all the technical requirements for commencing an action for administrative review. The city argues that the circuit court was correct in its ruling and reasoning.

¶ 14 In Granite City, allegations of municipal code violations are adjudicated at hearings presided over by a hearing officer who is part of the ordinance enforcement department. Granite City Municipal Code § 2.86.030 (eff. 1989). Under section 1-2.1-7 of the Illinois Municipal Code, a hearing officer's decision that a code violation does or does not exist is subject to judicial review under the Administrative Review Law. 65 ILCS 5/1-2.1-7 (West 2010). The Granite City municipal code specifies the same concerning judicial review. Granite City Municipal Code § 2.86.090 (eff. 1989).

¶ 15 The Administrative Review Law (the Law) consists of sections 3-101 to 3-113 of the Code of Civil Procedure (735 ILCS 5/3-101 to 3-113 (West 2010)). Judicial review of a decision must be sought "within the time and in the manner" provided in the Law, or else "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). See also *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees of St. Clair County*, 218 Ill. 2d 175, 182 (2006), wherein our supreme court explained that the Law grants courts "special statutory jurisdiction," and is a departure from common law, and therefore a party seeking to invoke that jurisdiction "must strictly comply" with the procedures prescribed in the Law.

¶ 16 An action under the Law "shall be commenced by the filing of a complaint and the issuance of a 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." 735 ILCS 5/3-103 (West 2010). The timely filing of a complaint is necessary to confer jurisdiction on the circuit

court. Without a timely-filed complaint, judicial review of the administrative order is barred. *Collinsville Community Unit School District*, 218 Ill. 2d at 182. The requirement of a timely-issued summons is not jurisdictional, and therefore a failure to comply with the timely-summons requirement will not deprive the court of jurisdiction. *Carver v. Nall*, 186 Ill. 2d 554, 559 (1999), *overruled on other grounds*, *Nudell v. Forest Preserve District of Cook County*, 207 Ill. 2d 409 (2003). Though not jurisdictional, the requirement of a timely-issued summons is "mandatory" and will be relaxed only when the plaintiff has shown a good-faith effort to secure the issuance of summons within the 35-day period. *Id.* See also *City National Bank & Trust Co. v. Property Tax Appeal Board*, 97 Ill. 2d 378, 381-82 (1983) (timely-summons requirement relaxed where record showed that the plaintiff did all that he could do to comply, and failure to comply was due entirely to error by circuit clerk); *Cox v. Board of Fire & Police Commissioners of the City of Danville*, 96 Ill. 2d 399, 403-04 (1983) (timely-summons requirement relaxed where record showed that the plaintiff "acted with diligence" to secure timely issuance). Where the plaintiff fails to show a good-faith effort, his failure to comply with the timely-summons requirement will result in dismissal of his complaint for judicial review. *Carver*, 186 Ill. 2d at 559.

¶ 17 In this case, the file stamp of the clerk of the circuit court shows that the plaintiff's complaint for administrative review was filed on November 21, 2011, which is within 35 days from October 24, 2011, the date a copy of the hearing officer's decision was served upon the plaintiff. Therefore, the circuit court had jurisdiction over the review proceeding.

¶ 18 As for the timely-summons requirement, the clerk of the circuit court issued summons to "City of Granite City Illinois" on November 30, 2011, which was 2 days beyond the 35-day period fixed by section 3-103. Nothing in the record on appeal shows that Woody made a good-faith effort to secure the issuance of that summons within the 35-day period. However, under the facts of this case, the delay in issuing the summons and the lack of a

good-faith effort did not provide a reason to dismiss the plaintiff's complaint for administrative review. As explained below, the city was not a necessary or proper defendant in this cause; the city's ordinance enforcement department and the hearing officer were the necessary defendants. The plaintiff's failure to name the ordinance enforcement department and the hearing officer as defendants should have caused the circuit court to grant the plaintiff additional time in which to name them as defendants and to secure service of summons upon them. Whether the plaintiff diligently sought to secure service of summons upon a party who should not have been named as a party cannot be relevant.

¶ 19 Significantly for this case, the Law has joinder requirements. "[I]n 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*." (Emphasis added.) 735 ILCS 5/3-107(a) (West 2010). These joinder requirements are not jurisdictional but they are mandatory, and a failure to comply with them mandates dismissal of the administrative review complaint. *Collinsville Community Unit School District*, 218 Ill. 2d at 183. Naming the administrative agency as a defendant, and serving it with summons, is particularly important, for it is the agency that must file an answer consisting of a record of the proceedings had before it, or a written motion or appearance. 735 ILCS 5/3-106 (West 2010). See also *Jones v. Cahokia Unit School District No. 187*, 363 Ill. App. 3d 939, 941-42 (2006) (administrative agency must file an answer, but other defendants are not required to appear). The term "administrative agency" is defined in section 3-101 of the Law:

" 'Administrative agency' means a person, body of persons, group, officer, board, bureau, commission or department (other than a court or judge) of the State, or of any political subdivision of the State or municipal corporation in the State, having power under law to make administrative decisions." 735 ILCS 5/3-101 (West

2010).

¶ 20 Here, the plaintiff named Granite City as a defendant, but he did not name the ordinance enforcement department, or its hearing officer, as a defendant. Although the ordinance enforcement department, including its hearing officer, surely is an arm of the city, the administrative agency that rendered the decision at issue was the ordinance enforcement department and its hearing officer, not the city. See *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 189 (2007) (although the IMRF board of trustees is "an arm" of the IMRF, the agency that rendered the decision at issue was the board of trustees, not the IMRF). Therefore, the plaintiff failed to name the necessary defendants in his review action, and thus failed to meet the joinder requirements of the Law.

¶ 21 The plaintiff's failure to name the necessary defendants, though, should not have resulted in the dismissal of the plaintiff's complaint. Another pertinent portion of section 3-107 (a) of the Law states:

"If, during the course of a review action, the court determines that an *agency* or party of record to the administrative proceedings was not made a defendant as required by the preceding paragraph, then the court shall grant the plaintiff 35 days from the date of the determination in which to name and serve the unnamed agency or party as a defendant. The court shall permit the newly served defendant to participate in the proceedings to the extent the interests of justice may require."  
(Emphasis added.) 735 ILCS 5/3-107(a) (West 2010).

Under the plain terms of this portion of section 3-107(a), the circuit court, upon determining that the ordinance enforcement department and its hearing officer had not been made defendants, should have granted Woody 35 days in which to name them as defendants and to serve them with summons. The court erred in immediately dismissing the plaintiff's complaint.

¶22 Not long ago, dismissal of the complaint for failing to name the administrative agency as a defendant would have been appropriate. Prior to August 14, 2008, the pertinent paragraph of section 3-107(a), concerning the addition of necessary defendants, read as follows:

"If, during the course of a review action, the court determines that a party of record to the administrative proceedings was not made a defendant as required by the preceding paragraph, and only if that party was not named by the administrative agency in its final order as a party of record, then the court shall grant the plaintiff 21 days from the date of the determination in which to name and serve the unnamed party as a defendant. The court shall permit the newly served defendant to participate in the proceedings to the extent the interests of justice may require." 735 ILCS 5/3-107(a) (West 2006).

In this previous version of this paragraph of section 3-107(a), there was no mention of an "agency," only a "party of record." Under this previous version of the paragraph, the court needed to grant a plaintiff 21 days in which to add a party of record as a defendant, and to serve that party of record with a summons. This previous version did not allow for an amendment of the complaint so as to add the administrative agency as a defendant.

¶23 This paragraph concerning the addition of necessary defendants, along with several other portions of the Law, was amended by Public Act 95-831 (eff. Aug. 14, 2008). As a result of that amendment, the paragraph now reads as quoted in paragraph 21 of this order, and allows for the addition of an agency as a defendant. The obvious intent of the legislative amendment is to reduce the risk of error in naming defendants and serving them with summons.

¶24 The circuit court erred in dismissing the plaintiff's complaint for administrative review. Under the current version of section 3-107(a) of the Law, the circuit court should

have granted the plaintiff 35 days in which to name as defendants, and serve with summons, the ordinance enforcement department and the hearing officer. Accordingly, we reverse the judgment dismissing the complaint for administrative review and remand this cause for further proceedings in which the circuit court will grant the plaintiff 35 days in which to name the necessary defendants and secure the service of summons upon them.

¶ 25

#### CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Madison County is reversed, and the cause is remanded with directions.

¶ 27 Reversed and remanded with directions.