

NOTICE

Decision filed 07/11/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120313-U
NO. 5-12-0313
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

LANCE MURPHY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 11-MR-225
)	
THE CITY OF EAST ST. LOUIS, ILLINOIS; THE)	
BOARD OF FIRE AND POLICE)	
COMMISSIONERS OF EAST ST. LOUIS; VERGE)	
RILEY, JESSE DAVIS, LEVOY PERRY, JOHNNY)	
SCOTT, and LARRY HAMPTON, SR., Members)	
of the Board of Fire and Police Commissioners;)	
LENZIE STEWART, Former Chief of Police of)	
East St. Louis; AUBREY KELLER, Assistant Chief)	
of Police of East St. Louis; and RANADORE)	
FOGGS, Current Chief of Police of East St. Louis,)	Honorable
)	Stephen P. McGlynn,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE SPOMER delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where there was a judgment on the merits at an administrative hearing, the circuit court's order granting the City of East St. Louis's motion to dismiss the plaintiff's complaint for administrative review based on the fact that the plaintiff abandoned the proceedings is reversed and remanded to the circuit court for further proceedings.
- ¶ 2 The plaintiff, Lance Murphy, appeals the circuit court's dismissal of his complaint for administrative review of the decision of the defendant, the Board of Fire and Police Commissioners of East St. Louis (the Board), to terminate his employment as a police officer with the City of East St. Louis (the City). He requests that this court reverse and remand the

matter for further proceedings on the grounds that an appealable judgment was made on the merits at the conclusion of the administrative hearing. The City contends that because the plaintiff had an opportunity to present evidence at the administrative hearing and abandoned the proceedings without using that opportunity, dismissal of the plaintiff's complaint for administrative review is appropriate. For the following reasons, we reverse the circuit court's order granting the City's motion to dismiss the plaintiff's complaint for administrative review, and remand the cause for further proceedings.

¶ 3

BACKGROUND

¶ 4 On July 6, 2011, an administrative hearing was held regarding the plaintiff's potential termination as a police officer for the City. Right before the hearing was about to commence, the plaintiff and his counsel accused the Board of being biased and prejudiced and decided to leave the hearing without presenting any evidence. The hearing proceeded without the plaintiff and his counsel. The City presented evidence in favor of terminating the plaintiff from his position, and the Board ruled that, based on the evidence, termination was appropriate. On August 30, 2011, the plaintiff filed a complaint for administrative review in the circuit court of St. Clair County. On October 3, 2011, the City filed a motion to dismiss the plaintiff's complaint for administrative review. The City's motion to dismiss was based on the fact that the plaintiff left the administrative hearing proceedings and therefore, the City argued, waived his right to appeal because he chose not to present any evidence when he had the opportunity. On June 18, 2012, the circuit court granted the City's motion to dismiss without giving any reason as to why, but presumably accepting the City's argument that the plaintiff waived his right to an appeal when he left the administrative proceeding. The plaintiff's appeal was filed in a timely manner on July 17, 2012. The sole issue on appeal is whether the dismissal of the plaintiff's complaint for administrative review was appropriate under the circumstances.

¶ 5

ANALYSIS

¶ 6 The standard of review for a dismissal of a complaint, whether pursuant to section 2-615 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2010)) or section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)) is *de novo*. The motion to dismiss in this case was a 2-619 motion, arguing "[t]hat the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010).

¶ 7 There is nothing in the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)) or the case law that suggests a party must present evidence at an adjudicatory hearing in order to seek administrative review of the decision rendered as a result of that hearing. The only requirements are that there must be a final administrative decision (735 ILCS 5/3-104 (West 2010)) and the party must file a timely complaint within 35 days. 735 ILCS 5/3-103 (West 2010). Here, an administrative hearing decision was made on the merits of the evidence presented, the plaintiff filed a timely complaint for administrative review, and the plaintiff otherwise abided by all requirements of the law. There is no legal reason the plaintiff is not entitled to administrative review of the ruling. However, "[n]o new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2010). So, the circuit court will only be able to review the evidence presented at the administrative hearing; the plaintiff will not be allowed to present any new evidence which is not on the record.

¶ 8

CONCLUSION

¶ 9 For the foregoing reasons, the circuit court's order granting the City's motion to dismiss is reversed and remanded for further proceedings.

¶ 10 Reversed and remanded for further proceedings.