2015 IL App (1st) 142048-U

SIXTH DIVISION
August 21, 2015

No. 1-14-2048

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THERESA RAY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 M1 302474
	)	
CITY OF CHICAGO,	)	Honorable
	)	Mark J. Ballard,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirmed the dismissal of plaintiff's *pro se* complaint contesting an administrative decision by the City of Chicago's Department of Administrative Hearings which assessed fines against plaintiff for certain building code violations.

¶ 2 *Pro se* plaintiff, Theresa Ray, appeals from the circuit court's dismissal of her complaint against defendant, the City of Chicago (City) seeking administrative review of the decision of the Department of Administrative Hearings which assessed fines against plaintiff for certain building code violations. We affirm the dismissal of plaintiff's complaint as it was untimely filed.

¶ 3 On June 27, 2012, the City's Department of Buildings notified plaintiff of alleged violations of the City's building code which allegedly existed at a building located at 2908 South Wells Street in Chicago.

¶ 4 On July 29, 2013, a final hearing was held by the City's Department of Administrative Hearings (DOAH) as to the violations. On that date, the Administrative Law Judge entered an order which found plaintiff in violation of the building code and assessed $1,275 in fines. The order advised plaintiff that she could appeal the order by filing a civil law suit in the circuit court within 35 days.

¶ 5 On September 19, 2013, plaintiff filed a *pro se* complaint in the circuit court against the City asserting that she could not pay the large fine and seeking to have the fine lowered or vacated. The clerk's stamp on the caption of the complaint erroneously designated her cause as a products liability case, and plaintiff had designated the amount claimed as $1,275. Given these designations, the matter was subject to mandatory arbitration. See Cook Co. Cir. Ct. R. 18.3 (eff. Aug. 1, 2001); Ill. S. Ct. R. 86 (eff. Jan 1, 1984). Accordingly, on November 20, 2013, the circuit court entered an order closing discovery and set the matter for mandatory arbitration.

¶ 6 However, on December 17, 2013, the circuit court entered an order transferring the cause to courtroom 1303, which the City has identified on appeal as "housing court."

¶ 7 On February 3, 2014, the circuit court, on a preprinted order entitled "Order Resetting Arbitration Hearing," granted the City's motion to vacate the mandatory arbitration hearing which had been scheduled by the Mandatory Arbitration Center for February 7, 2014.

¶ 8 Subsequently, plaintiff's case was properly placed on an administrative review call as plaintiff was appealing from the decision of the DOAH. See Chicago Municipal Code § 2-14-

102 (added Apr. 29, 1998). The City then filed a combined motion to dismiss under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)), asserting that the circuit court lacked jurisdiction because plaintiff filed her complaint more than 35 days after the entry of the DOAH's final order, and because the complaint failed to state a cause of action.

¶ 9 On June 25, 2014, the circuit court entered an order granting the City's motion to dismiss plaintiff's complaint without explanation. Plaintiff then filed a timely *pro se* appeal on July 3, 2014.

¶ 10 On appeal, plaintiff contends that she is not obligated to pay the $1,275 fine because the circuit court vacated the arbitration hearing date, but failed to reschedule the arbitration hearing. Plaintiff apparently relies on the title of the preprinted form order stating: "Order Resetting Arbitration Hearing," which vacated the arbitration hearing after the matter was transferred to Housing Court. Plaintiff maintains that she should have received a new arbitration date.

¶ 11 In response, the City initially asserts that this appeal should be dismissed because plaintiff's *pro se* amended brief does not comply with the requirements for an appellant's brief. See Ill. S. Ct. R. 341(h) (eff. Feb. 6, 2013). Although we acknowledge that plaintiff's briefs, both opening and reply, are deficient and non-compliant with Rule 341(h), we choose not to dismiss this appeal on that basis because we can decide the appeal from the record and the City's response brief.

¶ 12 Notably, since the record does not include any reports or transcripts of the underlying proceedings, it may also be considered insufficient to review this appeal. See, *e.g.*, *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 92 (1994) (an appeal may be dismissed absent a

proper record, even in a small-claims case). Nevertheless, we find the record is sufficient to determine this appeal.

¶ 13 A party affected by an administrative decision has 35 days from the date the decision has been served upon the party to commence an action by the filing of a complaint and summons. 735 ILCS 5/3-103 (West 2012). The 35-day time period is a jurisdictional requirement, and "judicial review of the administrative decision is barred if the complaint is not filed within the time specified." *Fredman Bros. Furniture Co., Inc. v. Department of Revenue*, 109 Ill. 2d 202, 211 (1985).

¶ 14 Here, plaintiff was present at the administrative hearing on July 29, 2013, when the final order was entered and, therefore, had 35 days from then to file the appropriate complaint in the circuit court. Plaintiff, however, on September 19, 2013, filed an untimely complaint challenging the DOAH's July 29, 2013, order. Absent a timely filing, the circuit court did not have jurisdiction to consider plaintiff's complaint and, therefore, properly dismissed it.

¶ 15 Further, plaintiff's argument regarding the circuit court's failure to reschedule arbitration proceedings has no merit here. The arbitration hearing was vacated and not rescheduled because plaintiff's cause of action was premised on the circuit court's review of an administrative decision. Accordingly, arbitration was not mandated for plaintiff's cause of action. Further, this argument does not address the fact that plaintiff did not file her complaint within 35 days of the DOAH's final decision.

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.