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FIRST DIVISION  
September 28, 2015

No. 1-14-2921  
2015 IL App (1st) 142921-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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AGUSTINA SANCHEZ,	)	
	)	Appeal from the Order of the Illinois
	)	Human Rights Commission.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	Charge No. 2010 CF 1747
	)	
STATE OF ILLINOIS HUMAN RIGHTS	)	
COMMISSION, ILLINOIS DEPARTMENT OF	)	
HUMAN RIGHTS, WAL-MART STORES, INC.,	)	
and SHAWN JOHNSON,	)	
	)	
	)	
Respondents-Appellees.	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Liu and Justice Harris concurred in the judgment.

**ORDER**

*Held:* The Commission's decision to deny petitioner's motion to reinstate her request for review was not against the manifest weight of the evidence when the Commission determined that all necessary procedures for voluntary dismissal were followed and that petitioner's voluntary dismissal was entered knowingly, voluntarily and without pressure since she was represented by counsel and willingly sent a written notice of withdrawal to the other parties to the matter.

¶ 1 Petitioner, Agustina Sanchez ("Sanchez") filed this action for direct administrative review of the order of the Illinois Human Rights Commission ("the Commission") which denied her motion to reinstate her request for review. On appeal, Sanchez argues that this court should reverse the decision of the Commission because: (1) both the Commission and petitioner failed to follow the Commission's rules and requirements to effect a voluntary dismissal and (2) petitioner did not knowingly and voluntarily relinquish her rights or dismiss her retaliatory discharge claim with prejudice pursuant to the Administrative Code and prior administrative ruling. For the following reasons, we affirm the order of the Commission.

## ¶ 2 BACKGROUND

¶ 3 On December 9, 2009, Sanchez<sup>1</sup> filed charge number 2010 CF 1747 with the Illinois Department of Human Rights ("the Department"), alleging that Wal-Mart Stores, Inc. ("Wal-Mart") discharged her in retaliation for opposing unlawful discrimination, specifically, for reporting sexual harassment. On March 25, 2011, the Department issued a notice of dismissal for lack of substantial evidence, which stated that Sanchez could either seek review of the dismissal before the Commission by April 29, 2011, or commence a civil action in the appropriate state circuit court within 90 days. On April 27, 2011, Sanchez filed a motion for extension of time to file her request for review, and the following day, the Commission granted her request and allowed her until May 30, 2011 to file her request. On May 27, 2011, Sanchez filed her request for review of the Department's dismissal for lack of substantial evidence. On July 8, 2011, Sanchez re-filed her request for review to comply with the Commission's page limitations requirements. The Department, through the office of chief legal counsel, filed its response to Sanchez's request for review on August 10, 2011. The Department's response

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<sup>1</sup> Sanchez is, and has been, represented by counsel throughout all of the proceedings discussed in her appeal and including her appeal. Thus, whenever this court refers to an action taken by "Sanchez," it is implied that each action was done through counsel.

suggested that the Commission sustain the dismissal for lack of substantial evidence because "the Department's investigation does not reveal, and [Sanchez] failed to provide, evidence that [Wal-Mart] discharged [Sanchez] in retaliation for opposing sexual harassment." Thereafter, on August 29, 2011, Sanchez filed her reply in support of her request for review.

¶ 4 On October 11, 2011, while her request for review was still pending with the Commission, Sanchez filed a lawsuit in the Circuit Court of Cook County that included a claim of retaliation based on the same allegations that made up charge number 2010 CF 1747. This court must note that the record on appeal is devoid of any documents from the circuit court case, including Sanchez's complaint. However, this dearth of documentation does not hinder our review since the sole order at issue on appeal is the order of the Commission which denied Sanchez's motion to vacate her voluntary dismissal. Further, in its brief, Wal-Mart has asked this court to take judicial notice " \* \* \* that Sanchez separately filed a [c]ircuit [c]ourt [c]omplaint on October 11, 2011 against Wal-Mart and Shawn Johnson that contained a [c]ount alleging retaliatory discharge based upon [charge number] 2010 CF 1747, the same charge that was subject of her then-pending [r]equest for [r]eview at the Commission." In Sanchez's reply brief in support of her instant appeal, she does not dispute that the retaliation claim brought in circuit court was the same as the retaliation charge which was pending in her request for review. In fact, Sanchez repeatedly asserts that she sought to join the retaliation claim with her sexual harassment claim "to pursue all of her charges there in the interest of judicial convenience and economy." Additionally, in paragraph two of her motion to reinstate her request for review, filed on July 15, 2013, Sanchez stated that she filed a multiple count lawsuit in circuit court, "\*\*\* including a count regarding the retaliatory discharge claims contained in [her] timely filed

'[r]equest for [r]eview,' then pending before [the Commission]." Thus, we will take judicial notice of this fact as requested by Wal-Mart.

¶ 5 On January 10, 2012, Sanchez sent her request for withdrawal to Donyelle Gray, deputy general counsel for the Commission, which stated in its entirety:

"We are hereby notifying you of our withdrawal of our client's, Complainant Agustina Sanchez's, Request for Review in the above-captioned matter.

Complainant filed a timely Request for Review of Charge No. 2010 CF 1747 (concerning retaliation against Respondent Wal-Mart) pending before the Commission. However, Complainant hereafter instituted a timely civil action against Respondents Wal-Mart and Shawn Johnson regarding Charges No. 2009 CF 4712 and No. 2009 CF 4713 (concerning sexual harassment against Respondents) and the case is now before the Circuit Court. Complainant wishes to pursue all of her charges together there in the interest of judicial convenience and economy.

Accordingly, we request that you kindly provide us with written confirmation of this withdrawal and that this matter is no longer pending at the Commission.

Thank you for your prompt attention to this matter. If you have any question whatever [*sic*], please do not hesitate to contact the undersigned attorney of record."

¶ 6 Further, on January 12, 2012, Sanchez filed with the Commission a "notice of withdrawal of request for review," which was served upon Wal-Mart's attorneys via regular mail according to the proof of service. In its entirety, the notice stated: "HERE COMES, Complainant Agustina Sanchez, through her attorneys, Susman & Associates, p.c., [*sic*], withdrawing her Request for Review before this Honorable Commission in the above-captioned matter." (Emphasis in original.)

¶ 7 On March 20, 2012, the Commission entered an order which stated:

"This matter coming before the Commission on the Petitioner's Motion to Withdraw Request for Review; the Petitioner having advised the Commission of her desire to voluntarily dismiss her Request for Review which is currently pending before the Commission; there being no objection to the Motion; and the Commission being fully advised upon the premises;

**IT IS HEREBY ORDERED THAT:**

1. The Petitioner's Motion is **GRANTED**.
2. The Petitioner's Request for Review is **DISMISSED** with **PREJUDICE**." (Emphasis in original.)

¶ 8 Subsequent thereto, Sanchez claims that the circuit court "disallowed the basis to [her] request to [the Commission], to wit: permission to pursue both sexual harassment and retaliation claims together in the same action[.]" therefore on February 20, 2013 Sanchez wrote another letter to Donyelle Gray, the Commission's deputy counsel. In this letter, Sanchez stated that she was writing to "convey [Sanchez's] request for leave to reinstate her case, as her original request to join the timely 'request for review' pending before you was based on the premise that [charge number] 2010 CF 1747 would proceed along with the other sexual harassment claims at the [c]ircuit [c]ourt. \*\*\* Regrettably, it was mutual mistake and misunderstanding that it could proceed in the [c]ircuit [c]ourt along with the other timely filed sexual harassment claims." The next paragraph of the letter reads: "We had requested permission to proceed in [c]ircuit [c]ourt and [the] Commission expressly had no objection and granted our request to do so. Because the [c]ircuit [c]ourt disagrees, we withdraw our prior request and respectfully request [the] Commission proceed in adjudication of our client's original [r]equest for [r]eview of IDHR's [s]ubstantial [e]vidence [o]rder, which she timely filed with [the] Commission on May 27, 2011. \* \* \*" Attached to Sanchez's February 19, 2013 letter was a copy of her January 10, 2012 request for withdrawal. The notice of withdrawal, which was served upon Wal-Mart, was not attached to her letter, nor was it attached to Sanchez's motion to reinstate her request for review, which was filed with the Commission on July 15, 2013. Further, although the motion to reinstate referenced the proceedings in the circuit court, no orders from the circuit court were attached to the motion.

¶ 9 On September 25, 2013, a three-member panel of the Commission voted 3-0 to deny Sanchez's motion to reinstate. On August 11, 2014,<sup>2</sup> the Commission entered an order denying

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<sup>2</sup> The near one year gap in time between the decision of the panel to deny Sanchez's motion and the issuance of the order by the Commission, which actually denied her motion, is not explained in the record on appeal.

Sanchez's motion to reinstate. The order was served upon counsel for Sanchez on August 11, 2014, but the address was invalid and it was returned to sender. The order was subsequently served upon Sanchez's counsel at a proper address on August 22, 2014. The order, which was four pages in length, set forth the bases upon which the Commission made its decision. At the outset of its order, the Commission included a paragraph regarding its position as a "\*\*\*\*neutral quasi-judicial administrative forum \*\*\* that does not provide legal advice or counsel to litigants." Regarding the substance of Sanchez's motion to reinstate request for review, the order acknowledged that Sanchez identified her January 10, 2012 as an "informal request" to withdraw her request for review, however the Commission found that "[Sanchez's] current characterization of the January 10, 2012 correspondence in her [motion] runs counter to the express language used by [Sanchez's] attorney in the January 10<sup>th</sup> correspondence, wherein [Sanchez's] counsel specifically states that she was notifying the Commission and that she sought from the Commission '*written confirmation of the withdrawal and that the matter is no longer pending at the Commission.*' " (Emphasis in original.) The order then noted that Sanchez's attorney received the written confirmation she had requested in the form of the Commission's March 20, 2012 order which dismissed the request with prejudice. Further, the order discussed the case of *Castellanos*, Ill. Hum. Rts. Comm'n Charge No. 1987 CF 1448, 1991 WL 698798 (November 27, 1991) as support for its decision. The Commission stated that it was "\*\*\*\* confronted with an almost identical situation as that presented in [*Castellanos*]. [Sanchez] was represented by counsel at the time she chose to withdraw her [r]equest from the Commission's jurisdiction, and thus knowledge of the law is imputed to [Sanchez]." The Commission noted that there had been no evidence presented to it that Sanchez did not enter a voluntary dismissal of her request for review in a manner that was knowing, voluntary and without pressure. Finally, the Commission

pointed out that "because [it] no longer has jurisdiction over [Sanchez's] [r]equest, and [Sanchez] has cited no legal authority which would indicate that the Commission may reinstate her voluntarily dismissed [r]equest more than one year after the Commission dismissed the [r]equest with prejudice, [Sanchez's] [m]otion shall be **DENIED**." (Emphasis in original.)

¶ 10 Sanchez filed the instant appeal seeking direct administrative review on September 26, 2014.

¶ 11 ANALYSIS

¶ 12 The Illinois Human Rights Act ("the IHRA"), 775 ILCS 5/1-101 *et seq.* (West 2010), provides for a direct appeal to the Illinois Appellate Court of a final order of the Commission. 775 ILCS 5/8-111(B) (West 2010). Specifically, Section 5/8-111 (B)(1) of the IHRA, in relevant part, states: "Any complainant or respondent may apply for and obtain judicial review of a final order of the Commission entered under this Act by filing a petition for review in the Appellate Court 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. \* \* \* " 775 ILCS 5/8-111 (B)(1) (West 2010). Prior to addressing the merits of Sanchez's appeal, we must determine the appropriate standard of review. The proper standard of review concerning administrative decisions is determined by whether the question being reviewed is one of fact, one of law, or a mixed question of fact and law. *City of Belvedere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). "In any proceeding brought for judicial review, the Commission's findings of fact shall be sustained unless the court determines that such findings are contrary to the manifest weight of the evidence." 775 ILCS 5/8-111 (B)(2) (West 2010). "An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007) (quoting *Abrahamson v. Illinois*

*Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)). If the question is one of law, the standard of review is *de novo*. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995). For mixed questions, the court applies a "clearly erroneous" standard of review. *City of Belvedere*, 181 Ill. 2d at 205.

¶ 13 In this case, Sanchez and Wal-Mart<sup>3</sup>, although opponents, both assert that the proper standard of review is the manifest weight of the evidence standard as the issues to be decided are factual. The Commission and the Department (collectively, "the State Respondents") on the other hand, have proposed that the standard should be *de novo*, because the Commission denied Sanchez's motion to vacate based on its finding that it did not have authority to vacate its prior order dismissing the request for review more than a year after it was dismissed. The State Respondents assert that the issue on appeal is whether the Commission had such authority under the IHRA, which is a question of law that requires a *de novo* standard. Sanchez presents two issues on appeal: (1) whether both the Commission and Sanchez failed to follow the Commission's rules and requirements to effect a voluntary dismissal and (2) whether Sanchez did not knowingly and voluntarily relinquish her rights or dismiss her retaliatory discharge claim with prejudice pursuant to the Administrative Code and prior administrative ruling.

¶ 14 We agree with Sanchez and Wal-Mart that the proper standard of review in this case should be the manifest weight of the evidence standard. It is clear from the August 11, 2014 order, that the Commission based their decision to deny Sanchez's motion on factual findings, primarily, whether Sanchez's voluntary dismissal was entered knowingly and voluntarily and whether there was a "mutual mistake" between Sanchez and the Commission when the voluntary dismissal was entered. As the Commission pointed out in its order, Sanchez "\*\*\*cited no legal

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<sup>3</sup> Counsel for Wal-Mart also represents Shawn Johnson ("Johnson") in this appeal, and Wal-Mart and Johnson filed a singular response brief. Therefore, for purposes of conciseness and clarity, when this court refers to "Wal-Mart," it is also referring to Johnson, since their arguments and positions in this appeal are one in the same.



authority which would indicate that the Commission may reinstate her voluntarily dismissed [r]equest more than one year after the Commission dismissed the [r]equest with prejudice,[therefore] [Sanchez's] [m]otion shall be **DENIED**." (Emphasis in original.) Based on the foregoing, we do not find that the Commission ever even interpreted any questions of law because none were raised by Sanchez in her motion to reinstate. The Commission's findings were premised on questions of fact, thus we will review this matter under the manifest weight of the evidence standard.

¶ 15 Further, this court finds it pertinent to make clear at the outset that the only order before this court on appeal is the Commission's August 11, 2014 order. Sanchez attempts to contest the validity of the March 20, 2012 order, which granted her motion to dismiss her request for review with prejudice, by arguing that neither she nor the Commission followed the proper procedures to effectuate her withdrawal of the request for review. Wal-Mart contends that Sanchez should not be allowed to attack the validity of the March 20, 2012 order since such a challenge is now untimely. In order to contest a final order under the IHRA, a petition for review must be filed within 35 days from the date a copy of the order sought to be reviewed was served upon the party affected by the decision. 775 ILCS 5/8-111 (B)(1) (West 2010). It is clear that Sanchez filed a timely petition for review of the Commission's August 11, 2014 order, *not* its March 20, 2012 order. (Emphasis added.) However, in its August 11, 2014 order, the Commission considered the circumstances of the entry of the March 20, 2012 order in making its ruling. Therefore, we will review the entry of the March 20, 2012 order only to the extent that the Commission did in rendering its August 11, 2014 order and will ultimately determine whether the latter's entry was against the manifest weight of the evidence. Specifically, the first issue we will address is not whether, in fact, the proper procedures were followed by Sanchez and the

Commission, but rather is whether the Commission's determination that the proper procedures were followed was against the manifest weight of the evidence.

¶ 16 First, Sanchez argues that the Commission failed to follow its own rules when the March 20, 2012 order was entered. To the extent we review the Commission's decision that the proper procedures were followed, we find that the Commission's determination was not against the manifest weight of the evidence. Subpart D of the Illinois Administrative Code ("the Code") is titled "Request for Review." 56 Ill. Adm. Code 5300.400-495 (2015). Within that subpart, there are no provisions which set forth the requirements to enter a voluntary dismissal. However, Subpart G, which is titled "Discovery and Practice" 56 Ill. Adm. Code 5300.710-787 (2015), contains a section regarding voluntary dismissal, which states, "[t]he complainant may obtain dismissal of the complaint, with prejudice, by filing a written motion with the Administrative Law Judge and serving all parties and the Department. If knowingly and voluntarily made, such motion shall be granted and the proceedings dismissed by the Administrative Law Judge by written order served on all parties and the Department." 56 Ill. Adm. Code 5300.780 (2015). Sanchez argues that this requirement was not fulfilled, because she did not file a written motion with an administrative law judge, but instead wrote a letter to the Commission's deputy general counsel. Further, Sanchez asserts that she did not serve her letter on the Department and all the parties as required under the Code. In response, Wal-Mart and the State Respondents assert that this section of the Code is inapplicable here, because it governs the voluntary dismissal of a complaint filed with the Commission, not a request for review.

¶ 17 On its face, section 5300.780 of the Code does not seem to have been written to apply to a voluntary dismissal of a request for review. First, that section references dismissal of a "complaint," but in a request for review, a formal complaint is not at issue. Second, section

5300.780 requires the filing of a motion with the administrative law judge, however it is the Commission, not an administrative law judge, that typically makes a determination in a request for review. That being said, there must be some way for a petitioner to voluntarily dismiss or withdraw his or her request for review. For our court not to recognize the inherent ability of any litigant to cease the pursuit of his or her claim would be absurd. The fundamental objective of statutory construction is to ascertain and give effect to the legislature's intent, presuming it did not intend to cause absurd, inconvenient, or unjust results. *People v. Christopherson*, 231 Ill. 2d 449, 454 (2008). Therefore, we recognize that Sanchez must have had the ability to voluntarily dismiss her request for review. We also find that although the Code lacks specific instruction as to how to voluntarily dismiss a request for review, its drafters certainly intended that a petitioner be able to withdraw or voluntarily dismiss his or her claim so as to avoid the absurdity that a petitioner would not have control over his or her case, we must look to section 5300.780 as being the instructive framework in our analysis.

¶ 18 This court finds that the Commission's decision that Sanchez effectuated a voluntary dismissal was not against the manifest weight of the evidence. There was ample evidence before the Commission to support its finding. The record reflects that Sanchez put into writing her desire to dismiss her request for review and served it upon the Commission by sending what was effectively a written motion to the Commission on January 10, 2012. She also filed a notice of her withdrawal of request for review and a notice of filing on January 12, 2012, and served those documents on Wal-Mart's attorneys and the Commission. Although the documents she filed and served upon the Commission were not titled a "motion," the contents thereof sought to voluntarily dismiss her request for review. Subsequently, in response to Sanchez's written request for withdrawal of her request for review, the Commission prepared a written order which

plainly stated that it was coming to be heard on Sanchez's "motion to withdraw request for review," that Sanchez had "advised the Commission of her desire to voluntarily dismiss her [r]equest for [r]eview which is currently pending before the Commission," and that Sanchez's "[r]equest for [r]eview is **DISMISSED** with **PREJUDICE**." (Emphasis in original.) This order was then served on all parties and the Department. If the contents of this order were contrary to the Sanchez's intentions, then she could have filed an appeal within 35 days after its entry. However, she did not. Thus, we find that Sanchez's written intent to withdraw her request for review, coupled with service of her written withdrawal upon all parties including the Commission, effectuated a voluntary dismissal consistent with the framework set forth in section 5300.780. Based on the foregoing, we find that the Commission's determination was not against the manifest weight of the evidence since the evidence weighed heavily in favor of its decision.

¶ 19 Second, Sanchez asserts that she did not knowingly and voluntarily enter the voluntary dismissal of her request for review. We disagree. Illinois courts have recognized that "individuals generally may waive substantive rules of law, statutory rights, and even constitutional rights enacted for their benefit if the waiver is knowing and voluntary." *In re Estate of Ferguson*, 313 Ill. App. 3d 931, 937 (2000). In its ruling on Sanchez's motion to reinstate, the Commission cited one of its prior decisions, *Castellanos*, 1991 WL 698798 at \*1, as support for its decision. In *Castellanos*, the complainant executed a voluntary withdraw form after consulting with her attorney, and the Commission denied the complainant's motion to reinstate a charge of discrimination by stating that "[w]here a voluntary dismissal is entered into knowingly, voluntarily, and without pressure, it will not be vacated. In this matter, the complainant was advised by counsel. Where a client is represented by counsel, knowledge of the law will be imputed to the client." *Id.* Further, the panel in *Castellanos* found that there was no

evidence that the complainant was unaware of the consequences of withdrawing her charges. *Id.* There also was no evidence that the withdrawal was done involuntarily or was the result of pressure from any individual. *Id.* Similar to the complainant in *Castellanos*, here, Sanchez has been represented by counsel throughout the entirety of the proceedings at issue. All correspondence and filings were done through counsel, including the notice of withdrawal and the January 10, 2012 letter. Further, as stated in the Commission's August 11, 2014 order, the Commission is a neutral body, which does not give legal advice. Thus, it would have been unreasonable for Sanchez's counsel to presume that the Commission would give her advice regarding the legal representation of her client and whether withdrawing her request was in Sanchez's best interest. Additionally, as pointed out by the Commission in its order, there is no evidence that Sanchez's withdrawal of request for review was entered in an involuntary or pressured manner. In fact, the opposite is apparent. Based on the language used in the January 10, 2012 letter that was sent to the Commission and the notice of withdrawal that was served on all parties, it is clear that Sanchez intended to dismiss her request for review and even went so far as to request confirmation of this withdrawal in writing. Since Sanchez's request for withdrawal was voluntary and she acted through counsel thereby imputing knowledge to her, we find that the Commission's decision was not against the manifest weight of the evidence, and thus we affirm its August 11, 2014 order.

¶ 20 Affirmed.