

FIFTH DIVISION  
September 30, 2016

No. 1-14-3949

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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WEN XUAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	11 CH 2512
	)	
ILLINOIS DEPARTMENT OF FINANCIAL	)	
AND PROFESSIONAL REGULATION,	)	Honorable
	)	Diane J. Larsen,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

**ORDER**

*Held:* The circuit court properly denied plaintiff's motion for stay of an administrative agency decision ordering him to cease and desist representing himself as a medical doctor and to pay a civil fine of \$10,000.

¶ 1 In this interlocutory appeal, plaintiff-appellant Wen Xuan, an Illinois State licensed acupuncturist, appeals a circuit court order denying his motion to stay an administrative decision issued by the director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation (Department), ordering him to cease and desist representing himself as a medical doctor and to pay a civil fine of \$10,000. For the reasons that follow, we affirm the circuit court's order denying the stay. Plaintiff represented himself *pro se* in the underlying litigation and brings this appeal *pro se*.

¶ 2 BACKGROUND

¶ 3 In October 2009, pursuant to section 49 of the Medical Practice Act of 1987(Medical Act) (225 ILCS 60/49 (West 2006)), the Department filed a rule to show cause against plaintiff alleging he was practicing medicine without a license. Subsequently, several formal evidentiary hearings on the issue were held before an Administrative Law Judge (ALJ), where the parties presented the testimony of both expert and lay witnesses and introduced into evidence a number of exhibits.

¶ 4 Following the hearings, in August 2010, the ALJ issued a report to the Illinois State Medical Disciplinary Board (Board), finding that the Department had proven by clear and convincing evidence that plaintiff violated section 49 of the Medical Act by misrepresenting himself as a physician. The ALJ noted expert testimony opining that it was a violation of ethics and misleading to the public for an acupuncturist, who was not licensed as a physician or surgeon, to hold himself out as a physician on his business cards, stationery, billing statements, and office signage. The ALJ also noted expert testimony opining that it was beyond the scope of such an acupuncturist to prescribe prescription drugs or instruct a patient to discontinue taking

prescribed medications. The ALJ recommended that the Board order plaintiff to cease and desist the unlicensed practice of medicine and to pay a civil penalty of \$20,000.

¶ 5 In September 2010, the Board adopted the ALJ's findings of fact and conclusions of law and notified plaintiff of its decision, informing him that he had 20 days to file a motion for a rehearing with the Department. Plaintiff filed a motion for rehearing which the Department subsequently denied in an order issued in December 2010. The Department ordered plaintiff to immediately cease and desist the unlicensed practice of medicine and imposed a civil penalty against him in the amount of \$20,000.

¶ 6 In January 2011, plaintiff filed a complaint for administrative review in the circuit court of Cook County. Plaintiff sought reversal of the Department's decision denying his motion for rehearing. Later that month, plaintiff also filed a motion in the circuit court to stay the Department's decision, pending final disposition of the case. The circuit court granted plaintiff's motion to stay, but later continued it in part, limiting the stay to the payment portion of the Department's order.

¶ 7 In July 2012, plaintiff filed an amended complaint for administrative review in the circuit court. Plaintiff sought reversal of the Department's decision and a dismissal of the case with prejudice, or in the alternative, remand for a new hearing before the Board and such further relief as the court deemed just.

¶ 8 Following a hearing on October 19, 2012, the circuit court entered an order affirming the portion of the Department's order directing plaintiff to cease and desist using the titles M.D. or medical doctor. However, the court vacated the portion of the order imposing the civil penalty of \$20,000. The court remanded the matter for the ALJ to reevaluate the civil fine. The court observed that the Department had previously offered to settle the matter with plaintiff for a \$500

fine plus a cease and desist order. In examining the currently imposed civil penalty, the court questioned whether this maximum amount was appropriate under the facts and circumstances of the case.

¶ 9 The court also remanded the matter for the ALJ to reconsider whether the expert testimony given in the previous evidentiary hearings supported a finding that plaintiff had violated the Medical Act. The court emphasized that although the ALJ considered expert opinion that plaintiff's actions were beyond the scope of an acupuncturist, the charge against plaintiff was the unauthorized practice of medicine. The court noted that the expert failed to "opine upon violations of the Medical Act." The court stated that "just because somebody violates the Acupuncture Act doesn't necessarily mean they violated the Medical Act. That has to be shown and proven."

¶ 10 In an order entered on November 27, 2012, the circuit court denied the plaintiff's motion for extension of time and for clarification on the ground that the court's prior order was "not final." The court also denied the Department's oral request for additional expert testimony on remand.

¶ 11 Following remand, in a decision dated January 14, 2013, the Department again ordered plaintiff to cease and desist the unauthorized practice of medicine, but this time reduced the amount of the civil fine from \$20,000 to \$10,000. In April 2013, the Department sent plaintiff a notice informing him that payment of the civil fine was several weeks overdue. In response, plaintiff filed an emergency motion in the circuit court requesting a stay of the Department's January decision.

¶ 12 On April 23, 2013, the circuit court entered an order remanding the matter to the Department for an evidentiary hearing to determine whether a fine against plaintiff was

warranted under the Medical Act. The court ordered the Department to issue a final administrative decision that would be subject to the court's judicial review. In June 2013, the circuit court denied plaintiff's motion seeking to modify the court's April 23rd order.

¶ 13 Upon remand, the matter was set for status on two occasions in an attempt to select a date for an evidentiary hearing. Plaintiff failed to appear at both status hearings. Plaintiff appeared at a subsequent status hearing on November 18, 2014, where the matter was set for a formal evidentiary hearing to be conducted on February 27, 2014.

¶ 14 Plaintiff failed to appear at the February evidentiary hearing. The ALJ conducted the evidentiary hearing in plaintiff's absence. The same expert who testified for the Department in the first administrative hearing, appeared once again as the Department's expert witness. The expert witness opined that when plaintiff recommended to a patient that he stop taking drugs medically prescribed to treat his chronic health problems such as congestive heart failure, high blood pressure, and a heart arrhythmia, these recommendations went beyond the scope of a non-physician acupuncturist and amounted to the unlicensed practice of medicine.

¶ 15 On April 3, 2014, the ALJ issued a report to the Board finding that the Department had proven by clear and convincing evidence that plaintiff violated section 49 of the Medical Act by engaging in the practice of medicine without a license. The ALJ recommended that the Board order plaintiff to cease and desist the unlicensed practice of medicine and to pay a civil penalty of \$10,000.

¶ 16 On April 16, 2014, the Board adopted the ALJ's findings of fact and conclusions of law and notified plaintiff of its decision, and informed him that he had 20 days to file a motion for a rehearing with the Department.

¶ 17 On April 25, 2014, plaintiff filed a motion in the circuit court asking the court to vacate its order of April 23, 2013. In the April 23rd order, the court remanded the matter to the Department for an evidentiary hearing to determine whether a fine against plaintiff was warranted under the Medical Act. The court also ordered the Department to issue a final administrative decision on the matter, subject to the court's judicial review.

¶ 18 In his motion to vacate the April 23rd order, plaintiff argued the circuit court lost its jurisdiction to enter the order, after it had entered the prior orders of October 19, 2012, and November 27, 2012. Plaintiff maintained that these two orders were final and appealable and therefore the court lost its jurisdiction to enter the April 23rd order. The circuit court disagreed with plaintiff's arguments and accordingly issued an order denying his motion to vacate on April 29, 2014.

¶ 19 In a decision dated June 2, 2014, the Department issued a final administrative decision adopting the Board's recommendations of April 16th that plaintiff be ordered to cease and desist the unlicensed practice of medicine and to pay a civil penalty in the amount of \$10,000. The Department also sent plaintiff a notice informing him that he had the right to judicial review of the Department's final administrative decision.

¶ 20 On August 19, 2014, the circuit court denied plaintiff's motion to reconsider and vacate the court's April 29th order.

¶ 21 On September 5, 2014, plaintiff filed a motion in the circuit court seeking to stay the Department's enforcement of its final administrative decision. He also sought to bar collection of the civil fine of \$10,000. A few days later, plaintiff filed a motion asking the court to certify an order pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), so that he could seek an interlocutory appeal from the court's April 29th order.

¶ 22 On December 2, 2014, the circuit court held a hearing on these matters. Following the parties' arguments, the court determined that "the standards for a motion to stay [had] not been met in [plaintiff's] motion." In addition, the court denied plaintiff's motion to certify the matter for interlocutory appeal pursuant to Rule 308; the court determined that the plaintiff had not met "the standards for a 308 appeal."

¶ 23 The circuit court informed plaintiff that if he wanted to challenge the Department's final administrative decision, he would have to file a petition for administrative review. The court informed plaintiff that it retained jurisdiction over the case and would entertain the petition once it was filed.

¶ 24 The court issued an order denying plaintiff's motion for a stay; denying his motion for certification under Rule 308; and granted him leave to file a complaint for administrative review of the Department's final administrative decision of June 2, 2014. The court ordered the case would be dismissed if plaintiff did not file a complaint for administrative review by February 3, 2015, which he did subsequently file.

¶ 25 On December 30, 2014, plaintiff filed a notice of interlocutory appeal indicating he was appealing the circuit court's order of December 2, 2014, as well as its orders entered on April 19, 2014, and April 29, 2014.

¶ 26 ANALYSIS

¶ 27 The primary issue raised in this interlocutory appeal is whether the circuit court abused its discretion when it denied plaintiff's request for a stay of the Department's final administrative decision of June 2, 2014, which ordered him to cease and desist representing himself as a medical doctor and to pay a civil fine of \$10,000. We find plaintiff has forfeited review of this issue on appeal. And moreover, even if the issue had not been forfeited, we would find no basis

for reversal, because plaintiff failed to meet his burden of establishing the statutory elements required for a stay.

¶ 28 A "stay" is a "postponement or halting of a proceeding, judgment, or the like." Black's Law Dictionary 1453 (8th ed. 2004). A stay is a type of injunctive relief. *Ardt v. Illinois Department of Professional Regulation*, 154 Ill. 2d 138, 146 (1992).

¶ 29 At the outset, we note that we have jurisdiction over this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), which permits appeal of an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction," since "the issuance of a stay of an administrative order pending judicial review constitutes an injunction for purposes of an appeal under Supreme Court Rule 307(a)(1)." *Marsh v. Illinois Racing Board*, 179 Ill. 2d 488, 489 (1997); see also *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶¶ 29-35.

¶ 30 Turning to the merits, section 3-111(a)(1) of the Administrative Review Law authorizes the circuit court to stay the decision of an administrative agency pending administrative review, upon notice to the agency and a showing of good cause. 735 ILCS 5/3-111(a)(1) (West 2014). Good cause requires the movant to show: "(i) that an immediate stay is required in order to preserve the status quo without endangering the public, (ii) that it is not contrary to public policy, and (iii) that there exists a reasonable likelihood of success on the merits." *Id.* "In order to establish 'good cause,' all of the elements recited in the statute must be met." *Metz v. Department of Professional Regulation*, 332 Ill. App. 3d 1033, 1037 (2002).

¶ 31 A circuit court has the discretion to stay an agency decision pending administrative review. *Id.* at 1035. Therefore, our review is limited to determining whether the circuit court abused its discretion in granting or denying the stay. *Id.* A circuit court abuses its discretion only



when its ruling is arbitrary, fanciful, or unreasonable, or no reasonable person would take the view adopted by the court, or when its ruling rests on an error of law. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 43.

¶ 32 In this case, plaintiff never attempted to argue or show that he satisfied any of the three statutory requirements for a stay set forth in section 3-111(a)(1) of the Administrative Review Law. The arguments plaintiff presents to us in this interlocutory appeal have nothing to do with the issues as to whether he satisfied the statutory requirements for a stay under section 3-111(a)(1) or whether the circuit court abused its discretion in denying his motion for a stay. This court is not required to develop the parties' arguments for them. See *New v. Pace Suburban Bus Service*, 398 Ill. App. 3d 371, 384 (2010) ("This court is not a repository where the burden of argument and research may be dumped.") Illinois Supreme Court Rule 341(h)(7) (eff. Jan.1, 2016) requires parties' briefs to include cohesive argument and citations to relevant authority for each of its claims. *CE Design, LTD v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18. The fact that a party elects to proceed *pro se* does not relieve him from complying as nearly as possible with the rules of our court. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8.

¶ 33 "The failure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue." *CE Design, LTD*, 2015 IL App (1st) 132572, ¶ 18. Accordingly, we find plaintiff has forfeited review of his claim that the circuit court abused its discretion when it denied his motion for a stay of the Department's decision ordering him to cease and desist representing himself as a medical doctor and to pay a civil fine of \$10,000.

¶ 34 Moreover, even if we were to review this issue, nothing in the record below suggests the circuit court abused its discretion by denying plaintiff's motion for a stay. "The party seeking the

stay bears the burden of proving adequate justification for it." *Kenny v. Kenny Industries, Inc.*, 406 Ill. App. 3d 56, 65 (2010). Our review of the record indicates that even if plaintiff had not forfeited the issue on appeal, his claims would still fail because he would not have been able to satisfy the statutory requirements of section 3-111(a)(1).

¶ 35 For the foregoing reasons, we affirm the order of the circuit court of Cook County denying plaintiff's motion for a stay of the Department's decision ordering him to cease and desist representing himself as a medical doctor and to pay a civil fine of \$10,000.

¶ 36 Affirmed.