2019 IL App (1st) 182203-U

FIRST DIVISION
July 22, 2019

No. 1-18-2203

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GERALD SCHMIDT, Plaintiff-Appellee, v. THOMAS J. DART, in His Official Capacity as Cook County Sheriff; THE COOK COUNTY SHERIFF'S MERIT BOARD; and the COUNTY OF COOK, Defendants-Appellants.	)))))))))))	Appeal from the Circuit Court of Cook County, No. 17 CH 15204 Honorable Pamela McLean Meyerson, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: Where a plaintiff is challenging a decision of the Cook County Sheriff's Merit Board as void based on the Board's lack of authority to hear the case, that plaintiff may do so by bringing a claim for declaratory judgment, injunctive relief, or *mandamus*.

¶ 2 After an administrative hearing, the Cook County Sheriff's Merit Board (Merit Board or Board) granted Sheriff Thomas J. Dart's request to terminate plaintiff Gerald Schmidt. More than four years later, Mr. Schmidt filed a complaint against the Sheriff, the Merit Board, and the County of Cook (the County) (collectively, defendants), arguing that his termination was void

because at the time of his termination the Board was improperly and illegally constituted. Defendants moved to dismiss Mr. Schmidt's complaint on the basis that the circuit court lacked jurisdiction to hear his case. The circuit court denied the motion but at the Sheriff's request certified the following question for our review, which we agreed to consider pursuant to Illinois Supreme Court Rule 308 (eff. July 1, 2017):

> "Where the plaintiff alleges that the Cook County Sheriff's Merit Board ('Merit Board') decision terminating his employment is void, may the plaintiff challenge such a decision by bringing claims for declaratory judgment, injunctive relief and mandamus, or is the sole mode of review under the Administrative Review Law?"

¶ 3 For the following reasons, we answer this question in the affirmative, holding that a plaintiff may challenge a decision of the Merit Board by bringing a claim for declaratory judgment, injunctive relief, or *mandamus*, where, as here, he is challenging the Board's authority to hear the case.

¶ 4 I. BACKGROUND

¶ 5 The Sheriff filed his complaint seeking Mr. Schmidt's termination from the Cook County Sheriff's Office on February 25, 2013. On July 25, 2013, an administrative hearing was held before the Board. The Board issued its decision terminating Mr. Schmidt's employment effective February 25, 2013, on September 12, 2013.

¶ 6 On May 12, 2017, this court issued its opinion in *Taylor v. Dart*, 2017 IL App (1st) 143684-B, ¶¶ 37, 46—another appeal pursuant to Rule 308—in which we held that the Sheriff was not statutorily authorized to appoint a Board member to a less-than six-year term, and that a decision issued by a Board with any improperly appointed member would render that decision void.

¶ 7 On November 15, 2017, Mr. Schmidt filed his initial complaint against defendants seeking declaratory and injunctive relief. Citing *Taylor*, Mr. Schmidt argued that, because the Board was improperly and illegally constituted at the time of his termination, his termination was "void from inception," and he was accordingly entitled to back pay and reinstatement. Mr. Schmidt was granted leave to file an amended complaint on January 4, 2018, in which he requested *mandamus* in addition to declaratory and injunctive relief.

¶ 8 On January 25, 2018, defendants moved to dismiss Mr. Schmidt's amended complaint pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2016). Defendants primarily argued that the circuit court lacked jurisdiction because "Illinois case law is clear that actions for declaratory and injunctive relief are preempted by the Administrative Review Law." In response, Mr. Schmidt argued that the court had jurisdiction to issue the requested relief, and in fact had a duty to declare the Board's order void *ab initio*.

¶ 9 On June 6, 2018, after hearing argument, the circuit court denied the motion to dismiss, finding it did have jurisdiction to consider Mr. Schmidt's complaint "because [he] challenge[d] the Merit Board decision as void."

¶ 10 On July 6, 2018, the Sheriff filed a motion for certification of an interlocutory appeal to this court under Illinois Supreme Court Rule 308(a) (eff. July 1, 2017), asking the circuit court to certify the following question: "Does Section 3-102 of the [Administrative Review Law], 735 ILCS 5/3-102, preclude plaintiff from bringing non-[Administrative Review Law] declaratory, injunctive and mandamus claims in [the] Circuit Court to challenge his 2013 termination?"

¶ 11 On September 17, 2018, the circuit court granted the Sheriff's motion, certified a slightly modified question for our review, and stayed the matter in the circuit court pending appeal.

¶ 12 On October 17, 2018, the Sheriff filed a petition for leave to appeal to this court under

Rule 308. The Merit Board and the County both moved and were allowed to join in the Sheriff's petition. We granted that petition on November 29, 2018.

¶ 13 II. ANALYSIS

¶ 14 After the Sheriff filed the opening brief in this appeal, the other defendants asked to join in the Sheriff's briefing in whole or in part. We allowed those motions, but for simplicity will refer only to the Sheriff as the party presenting the arguments.

¶ 15 A certified question under Rule 308 (eff. July 1, 2017) must be one of law, and therefore our review is *de novo*. *Taylor*, 2017 IL App (1st) 143684-B, ¶ 15. Questions of statutory interpretation are similarly questions of law reviewed *de novo*. *Majid v. Retirement Board of Policemen's Annuity & Benefit Fund of Chicago*, 2015 IL App (1st) 132182, ¶ 13.

¶ 16 As noted above, the circuit court certified the following question for our consideration:

> "Where the plaintiff alleges that the Cook County Sheriff's Merit Board ('Merit Board') decision terminating his employment is void, may the plaintiff challenge such a decision by bringing claims for declaratory judgment, injunctive relief and mandamus, or is the sole mode of review under the Administrative Review Law?"

¶ 17 The Sheriff contends that the question should be answered in the negative, arguing that based on the Administrative Review Law itself and cases interpreting the law, circuit courts are limited to reviewing a final decision of an agency by appealing to the circuit court within 35 days of the decision. Mr. Schmidt, in turn, argues that the circuit court has jurisdiction to consider his complaint against defendants because he is not challenging the substance of the Merit Board's decision, but rather the Board's authority to have made the decision at all, which falls outside the scope of the Administrative Review Law.

¶ 18 This court very recently considered this same question in *Goral v. Dart*, 2019 IL App

(1st) 181646. The plaintiffs in *Goral* also challenged the legality of the Board's composition through a complaint against the Sheriff for declaratory, injunctive, and monetary relief, although unlike here, at the time the plaintiffs in *Goral* filed in the circuit court, their administrative hearings were still pending. *Id.* ¶¶ 7-15. The circuit court dismissed the case for a lack of subject-matter jurisdiction, finding that the "plaintiffs were required to exhaust their administrative remedies before raising [their] claims outside the context of administrative review." *Id.* ¶ 22.

¶ 19 On appeal in *Goral*, we first acknowledged that the Administrative Review Law "governs judicial review of most final administrative decisions," and, where it applies, is "the sole and exclusive method to obtain judicial review of a final administrative decision." (Internal quotation marks omitted.) *Id.* ¶ 29. "Thus, generally speaking, a party aggrieved by an agency action cannot involve the courts until the administrative process has run its course—that is, until the plaintiff has exhausted all administrative remedies." *Id.* ¶ 30 (citing *Castaneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304, 308 (1989)). "But the exhaustion requirement is subject to six exceptions," one of which is that "a party need not exhaust when 'the agency's jurisdiction is attacked because it is not authorized by statute.' " *Id.* (quoting *Castaneda*, 132 Ill. 2d at 309). We continued:

> "In the context of administrative agencies, the term 'jurisdiction' refers to an agency's statutory authority to act. [Citations.] Agencies have no inherent or common-law authority; their power is limited to that given them by the legislative body that created them. [Citation.] So if an agency acts beyond its statutory authority—if it acts without 'jurisdiction'—its actions are invalid and void." *Id.* ¶ 32.

¶ 20 An agency's authority encompasses both substantive authority and, as Mr. Schmidt is challenging here, procedural authority. As we noted in *Goral*, an agency's enabling statute may

include procedural steps that the agency is required to follow, and the "failure to follow those steps deprives the agency of authority—*i.e.*, jurisdiction—to hear the case." *Id.* ¶¶ 34-38 (citing *Taylor*, 2017 IL App (1st) 143684-B, ¶¶ 37, 46; *Vuagniaux v. Department of Professional Regulation*, 208 Ill. 2d 173, 186 (2003); *Daniels v. Industrial Commission*, 201 Ill. 2d 160, 166-67 (2000)). Thus, in *Goral*, where the plaintiffs were challenging the composition of the Board as unlawful, we stated: "the merit of these allegations is beside the point. The important point here is that [they] unquestionably challenge the Board's lawful composition, and thus its authority to act. They clearly fit within the authority exception to the exhaustion requirement." *Id.* ¶ 39.

¶ 21 We see no reason to depart from the well-reasoned analysis in *Goral*. Accordingly, we answer the certified question as follows: yes—a plaintiff may challenge a decision of the Cook County Sheriff's Merit Board terminating his employment by bringing claims for declaratory judgment, injunctive relief, and *mandamus*, where the challenge is to the Board's authority to hear the case.

¶ 22 The Sheriff cites several cases in support of their argument that disciplinary decisions of the Board can only be challenged judicially under the Administrative Review Law, but none of his cited cases involve a plaintiff who challenged the authority of the administrative body to hear a case. *E.g.*, *Ameren Transmission Co. v. Hutchings*, 2018 IL 122973; *Dubin v. Personnel Board of City of Chicago*, 128 Ill. 2d 490 (1989); *Stykel v. City of Freeport*, 318 Ill. App. 3d 839 (2001); *Midland Hotel Corp. v. Director of Employment Security*, 282 Ill. App. 3d 312 (1996). In light of the clear supreme court precedent recognizing this exception to the exhaustion doctrine and this court's recent opinion in *Goral*, we are unpersuaded by the cases the Sheriff relies on.

¶ 23 Finally, the Sheriff asks us to go beyond the certified question and to address the merits

of the underlying case. It is true that, in some instances, we have done so. See *Dowd v. Dowd*, 181 Ill. 2d 460, 472 ("we may go beyond the limits of a certified question in the interest of judicial economy"). But in a Rule 308 appeal, an appellate court's review "is generally limited to considering the certified question [citation] rather than analyzing the propriety of the underlying order." *Casamento v. Berendt*, 2018 IL App (2d) 180086, ¶ 13. And although the Sheriff is convinced—citing *Lopez v. Dart*, 2018 IL App (1st) 171733, and *Cruz v. Dart*, 2019 IL App (1st) 170915—that the *de facto* officer doctrine would clearly apply to bar Mr. Schmidt's claims in this case, our recent holding in *Goral* certainly indicates that the law is continuing to develop in this area. See *Goral*, 2019 IL App (1st) 181646, ¶ 112 (finding that the *de facto* officer doctrine did not bar consideration of the plaintiffs' underlying claims challenging the Board's authority in that case). Accordingly, we decline to address the merits of the underlying claims in Mr. Schmidt's case, and instead leave it to the circuit court to consider the merits of the case in the first instance.

¶ 24 III. CONCLUSION

¶ 25 Certified question answered; case remanded.