2020 IL App (1st) 180024-U

No. 1-18-0024

Order filed February 28, 2020

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DISABILITY SERVICES OF ILLINOIS, NFP,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 16 CH 15599
	)	
ILLINOIS DEPARTMENT OF HUMAN SERVICES,	)	Honorable
Bureau of Accreditation, Licensure and Certification,	)	Kathleen M. Pantle,
	)	Judge, Presiding.
Defendant-Appellee.	)	

JUSTICE HALL delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissal of plaintiff's second amended complaint affirmed where plaintiff failed to exhaust its administrative remedies.

¶ 2 Plaintiff Disability Services of Illinois, NFP, (DSI), appeals from an order of the circuit court of Cook County dismissing its second amended complaint seeking injunctive relief against defendant Illinois Department of Human Services and its Bureau of Accreditation, Licensure and

Certification (collectively the Department). On appeal, DSI contends that the circuit court erred when it dismissed its second amended complaint for failure to exhaust its administrative remedies.[1] We agree and affirm the order of the circuit court. The facts are taken from the pleadings and exhibits in the record on appeal.

¶ 3 BACKGROUND

¶ 4 In 1989, the General Assembly enacted the Community-Integrated Living Arrangements Licensure and Certification Act (210 ILCS 135/1 *et seq*. (West 2016) (Act)). The Act was intended to promote the operation of community-integrated living arrangements (CILA) for the supervision of persons with mental illness or development disability" by licensing mental health and developmental service agencies to provide a range of community-integrated living arrangements for such individuals. 210 ILCS 135/2 (West 2016). The Department issues licenses to agencies to operate CILA homes. The purpose of the licensing is to ensure that the residents are receiving the appropriate services and to maintain "the integrity of the communities by requiring regular monitoring and inspection of placements and other services provided in a [CILA]." 210 ILCS 135/4(b)(1), (3) (West 2016). The Department may visit CILA homes run by licensed agencies to determine compliance with the Act. 210 ILCS 135/4(g)(1) (West 2016).

¶ 5 Pursuant to the Illinois Administrative Procedure Act (210 ILCS 135/9 (West 2016) (Act), the Department promulgated regulations to establish "minimum standards for licensing [CILAs] under the Act." Agencies operating CILA homes are subject to scheduled and unscheduled inspections. See 59 Ill. Adm. Code § 115.440(a)(5), (c) (eff. Aug. 13, 1999) (Code).

[1] This case was fully briefed and ready for disposition on February 21, 2019. The draft was circulated to the panel on January 31, 2020.

Section 115.440(c) sets forth levels of compliance ranging from full compliance at Level 1 to Level 6, which provides for revocation of the agency's license as follows:

> "Revocation of the agency's license to provide CILA services. Revocation shall occur as a result of an agency's consistent and repeated failures to take necessary corrective actions to rectify documented violations, and/or the agency's failure to protect clients from situations that produce an imminent risk. 59 Ill. Adm. Code 115.440(c)(6) (eff. Aug. 13, 1999).

¶ 6 Section 115.440(d) provides that prior to imposing sanctions for violations, the organization is given an opportunity to correct the violations except in cases where "OLAC determines emergency action is necessary to protect the public or an individual interest, safety, or welfare." 59 Ill. Adm. Code 115.440(d) (eff. Aug. 13, 1999). In the case of a revocation of a license, the Department notifies the organization of its right to a hearing. 59 Ill. Adm. Code 115.440(f) (eff. Aug. 13, 1999). The sanction of revocation is defined as follows:

> "(4) Revocation – Revocation of the license is withdrawal by formal actions of the CILA license. The revocation shall be in effect until such time that the provider submits a re-application and the agency can demonstrate its ability to operate in good standing with the Department. The Department has the right not to reinstate a license. *If revocation occurs as a result of imminent risk, all individuals will be immediately relocated to another agency and all CILA funding will be transferred."* (Emphasis ours.) 59 Ill. Adm. Code 115.440(g) (eff. Aug. 13, 1999).

¶ 7 Section 119.325 of the Code provides for the revocation of certifications for developmental training programs under the circumstances set forth therein. Section 119.325(c)

provides "[i]f the Department determines that individuals are at imminent risk which has not or cannot be corrected, it shall immediately close the affected program, plan for the immediate removal of all individuals and deny the certificate of the provider. The affected program shall not operate and shall not receive any Department funding during the period of any appeal." 59 Ill. Adm. Code 119.325(c) (current through rules published in the Ill. Reg. Volume 43, Issue 40, October 4, 2019).

¶ 8 DSI was incorporated in 2015 as a not-for-profit organization providing living arrangements for adults with developmental disabilities. DSI took over the CILA homes formerly operated by Southwest Disabilities Services. On March 1, 2016, DSI was granted a provisional license by the Department to operate CILA homes and a provisional certification to provide developmental training (DT). At the time of these proceedings, DSI operated eight CILA homes.

¶ 9 Between November 14 and November 17, 2016, the Department conducted compliance surveys, *i.e.* inspections, of DSI's CILA homes. The Department found violations which indicated unsatisfactory compliance with CILA standards and posed imminent risk to residents. Entities with a finding of Levels 1 through 3 remain in good standing with the Department. An entity receiving a Level 3 through Level 5 evaluation receives notice of the violations, a correctional plan, and sanctions. For any non-compliance found in Levels 2 through 5, the Department may not revoke an entity's license without providing written notice, after which the entity may request an administrative hearing within 20 days. A Level 6 finding results in the revocation of the entity's CILA license. Because DSI was found in Level 5 compliance, the Department sent DSI written notice on November 28, 2016, in which it submitted a written plan,

issued the provider a restricted license, and performed a re-survey in 60 days. Based on violations discovered during the surveys, DSI was ordered to submit a plan of correction to the Department on or before December 19, 2016.

¶ 10 In her November 28, 2016, letter, Felicia Stanton Gray, acting on behalf of the Department, informed DSI that its license and certification were being moved to Level 6 status and that its provisional license and certification were revoked due to imminent risk to individuals. The letter continued in pertinent part as follows:

> "As you know on November 14-17, 2016, BALC conducted compliance surveys for DSI's CILA and DT programs. Your agency's CILA program was found to be 56% compliant, representing a mere Level V, whereas your agency's DT program was found to be 68% compliant, but also a mere Level V."

Ms. Gray noted that when DSI took over operations of properties formerly operated by another agency, "it also assumed responsibility for correcting and maintaining corrections of all violations issued" to the previous agency. The letter then continued in pertinent part as follows:

> "BALC reached this decision to revoke DSI's provisional license and certification because of health and safety violations and service violations found in all 8 of DSI's homes."

¶ 11 The letter then listed examples of these violations, which included the following: closure for the second time in 18 months of a home on November 14, 2016, due to potential mold; broken windows with glass on the window sill; dampness in the ceiling of a bedroom, with bugs in the area of the ceiling; rotted bedroom closet door, excessive hot water temperatures, bedrooms were uncomfortable, due to dampness and water marks on the walls and ceilings;

holes in the walls; insufficient storage space for the residents' personal items; and insufficient lighting. In addition, a light fixture fell from the ceiling striking one of the BALC workers. In regard to DSI's DT program, the violations included: no evidence that DSI had convened the Community Support Team (CST) to develop individualized service plans within the first 30 days of the resident's entry or sometimes not at all; no evidence that the CST met to agree to carry on services for residents from the prior agency; no evidence of alternative services other than those previously offered by the prior agency; no evidence that residents with the ability and preference to receive community-based DT services were offered them; residents were found with no active daily programming; and DSI billed the Department for services not supported by documentation.

¶ 12 The letter concluded as follows:

> "Furthermore, in light of your agency's failure to comply with service requirements, consistent and repeated failures to correct deficiencies identified and maintain corrections across DSI's CILA's program and failure to maintain full compliance with DT programs, BALC was left with no choice but to find your agency has placed the individuals in its care at imminent risk."

DSI was informed of its right to appeal the Department's decisions by written request within 20 business days.

¶ 13 Procedural History

¶ 14 On December 1, 2016, DSI filed a complaint in the circuit court of Cook County against the Department. The complaint sought an injunction to stop the revocation of its provisional license and certification and to prevent the relocation of its residents and the loss of state funding. On December 5, 2016, the circuit court denied DSI's motion for a temporary restraining

order, in part, because DSI had an adequate remedy at law in that it could request an administrative hearing. On that same date, DSI requested an administrative hearing before the Department.

¶ 15 A. Administrative Proceedings

¶ 16 On December 23, 2016, the parties met with Administrative Law Judge Christa Jones (ALJ Jones) for an initial status conference. The parties clarified that the issue for administrative appeal was the revocation of DSI's license and certification. The parties were advised as to the discovery process and agreed to a hearing date of March 7, 2017. At some point, ALJ Jones heard testimony from certain witnesses.

¶ 17 On April 26, 2017, ALJ Jones presided over a prehearing conference to discuss DSI's claim that the Department was withholding evidence, specifically copies of emails, previously requested in discovery by DSI. The Department was ordered to comply with DSI's request for materials not subject to privilege. The parties agreed to tentative dates for continuation of the hearings and for status of the discovery requests. On May 23, 2017, the parties met again with ALJ Jones to address discovery issues. The parties agreed to another status date.

¶ 18 On July 13, 2017, the parties appeared for status before ALJ Daniel J. Gruber. ALJ Gruber entered an order granting DSI leave to file and a written motion for mistrial and for the Department to respond. In an addendum to the July 13, 2017, order, on July 14, 2017, ALJ Gruber ruled that the Department had complied with all required discovery requests as of June 14, 2017, and discovery was closed.

¶ 19 Following a hearing on July 28, 2017, ALJ Gruber denied DSI's motion for mistrial and a new trial. The ALJ rejected DSI's argument that it should receive a new trial owing to the due

process violations of unfairness and prejudice resulting from the replacement of ALJ Jones. Since the secretary of the Department was the final decision maker, the substitution did not create any form of discernible prejudice amounting to a due process violation. In any event, ALJ Gruber noted that the Department was willing to have its witnesses from the Administrative Hearing recalled for examination, negating any potential due process violations.

¶ 20 On August 3, 2017, ALJ Gruber held a status hearing via telephone with the parties. The ALJ granted DSI's request that the substantive hearings commence on November 13, 2017, due to its counsel's heavy caseload. Another prehearing conference via telephone was schedule for October 30, 2017.

¶ 21 B. Circuit Court Proceedings

¶ 22 On August 1, 2017, DSI filed its second amended complaint. In count I, DSI alleged that the violations cited by the Department did not constitute the "imminent risk" required before its license and certification could be revoked without giving a 30-day notice of the conditions requiring revocation and without holding a hearing. DSI sought a temporary, preliminary and permanent injunctive relief enjoining the Department from: revoking DSI's license and certification, transferring the residents from its CILA homes and transferring funding for the services it provided its residents.

¶ 23 In count II, DSI alleged violations of due process and equal protection. DSI alleged that it had not yet received an administrative hearing because of the Department's failure to timely comply with its discovery requests and the unexplained substitution of ALJ Daniel Gruber for ALJ Jones. DSI further alleged that the revocations of its license and certification were based on racial and political bias based on the contents of the emails it received from the Department in

discovery and newspaper articles. DSI further alleged that the Department failed to provide standards and guidelines for declaring an imminent risk thus denying it the ability to avoid and/or defend itself against such a determination. DSI also filed a motion to stay the administrative hearing requesting that the circuit court use its inherent powers to stay the hearing pending its resolution of the matters raised in the second amended complaint. On October 16, 2017, the circuit court denied DSI's motion to stay the administrative proceedings. The Department filed a combined motion to dismiss the second amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)).

¶ 24 On December 5, 2017, the circuit court dismissed the second amended complaint. The court found that DSI failed to exhaust its administrative remedies and that none of the recognized exceptions to the exhaustion of remedies doctrine applied. The court further found that the lack of notice or hearing prior to the revocation did not deny DSI due process since it could challenge the lack of standards for determining the meaning of "imminent risk" during the administrative proceedings. The court further found that DSI's denial of equal protection claim that the revocation decision was based on racial and political motives and that it was treated differently than other CILA agencies likewise could be addressed in the administrative proceedings. As to DSI's claim for attorney fees for the Department's failure to timely comply with discovery, the court deemed it either a motion for sanctions under Illinois Supreme Court Rule 219(c) (eff. July 1, 2002) or a claim to be heard by the administrative law judge as part of the due process and equal protection claims. Finally, since the Department had agreed to recall the witnesses who had testified before ALJ Jones, the court found that DSI's denial of rights claim based on her substitution was moot.

¶ 25 This timely appeal from the circuit court's order of December 5, 2017, followed.

¶ 26 ANALYSIS

¶ 27 Initially, we note that DSI's appellant's brief fails to comply with Illinois Supreme Court Rule 341(h) (eff. May 25, 2018), which governs the contents of an appellant's brief. Rule 341(h)(9) requires that the appellant's brief contain an appendix containing the items set forth in Illinois Supreme Court Rule 342 (eff. October 1, 2019). Our appellate procedural rules are not merely suggestions, and failure to comply with them is not an inconsequential matter. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. Violations of these rules may result in dismissal of an appeal when the violations interfere with or preclude our review. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). While the missing appendix would have aided our review, in this case its absence does not preclude our review of the issues raised. Therefore, we will address the merits of the appeal.

¶ 28 I. Dismissal of the Second Amended Complaint

¶ 29 DSI contends that the circuit court erred when it dismissed the second amended complaint on the ground that DSI failed to exhaust its administrative remedies.

¶ 30 A. Standard of Review

¶ 31 The Department's motion to dismiss was brought under section 2-619.1 of the Code. "A motion under section 2-619.1 allows a party to combine a section 2-615 motion to dismiss based on insufficient pleadings with a section 2-619 motion to dismiss based on certain defects or defenses." *Atlas v. Mayer, Hoffman & McCann*, 2019 IL App (1st) 180939, ¶ 25. Affirmative matters that may defeat a claim, such as the failure to exhaust remedies, are raised by way of a section 2-619 motion. See *Schwanke, Schwanke & Assoc. v. Martin*, 241 Ill. App. 3d 738, 744

(1993). Therefore, we review the dismissal of the second amended complaint for failure to exhaust administrative remedies under the standard of review applicable to dismissals pursuant to section 2-619 of the Code.

¶ 32 The court reviews the dismissal of a complaint pursuant to section 2-619 of the Code *de novo*. *Atlas*, 2019 IL App (1st) 180939, ¶ 26. A section 2-619 admits the legal sufficiency of the complaint but raises defects, defenses or other affirmative matters defeating the plaintiff's claim. *Atlas*, 2019 IL App (1st) 180939, ¶ 25. The court reviews all pleadings and supporting documents in the light most favorable to the nonmovant. *Atlas*, 2019 IL App (1st) 180939, ¶ 26. We may affirm the judgment on any basis found in the record, regardless of the circuit court's reasoning. *Atlas*, 2019 IL App (1st) 180939, ¶ 26.

¶ 33 B. Discussion

¶ 34 1. Relevant Statutory Provisions

¶ 35 Section 115.440 of the Illinois Administrative Code (59 Ill. Adm. Code 115.440 (eff. Aug. 13, 1999) (Code)) provides that the Department has the authority to refuse or revoke a license to operate a CILA home under certain enumerated conditions. Section 115.440 also sets forth levels of compliance, ranging from full compliance with CILA standards (Level 1) to revocation based on the licensee's consistent and repetitive failure to eliminate or ameliorate violations and/or failing to protect clients from situations that produce imminent risk (Level 6). 59 Ill. Adm. Code 115.440(c) (eff. Aug. 13, 1999).

¶ 36 Section 115.440(d) provides that prior to imposing sanctions for violations, the licensee is given an opportunity to correct the violations, except in cases where the Department "determines emergency action is necessary to protect the public or an individual interest, safety, or welfare."

59 Ill. Adm. Code 115.440(d) (eff. Aug. 13, 1999). In the case of a revocation of a license, the Department notifies the organization of its right to a hearing. 59 Ill. Adm. Code 115.440(f) (eff. Aug. 13, 1999).

¶ 37 The Department may impose sanctions based on the level of a licensee's failure to meet the CILA standards. Pertinent to the present case is the sanction applicable to a level 6 determination, which is as follows:

> "(4) Revocation – Revocation of the license is withdrawal by formal actions of the CILA license. The revocation shall be in effect until such time that the provider submits a re-application and the agency can demonstrate its ability to operate in good standing with the Department. The Department has the right not to reinstate a license. *If revocation occurs as a result of imminent risk, all individuals will be immediately relocated to another agency and all CILA funding will be transferred."* (Emphasis ours.) 59 Ill. Adm. Code 115.440(g) (eff. Aug. 13, 1999).

¶ 38 Section 119.325 of the Code provides for the revocation of certifications for developmental training programs under the circumstances set forth therein. Section 119.325(c) provides "[i]f the Department determines that individuals are at imminent risk which has not or cannot be corrected, it shall immediately close the affected program, plan for the immediate removal of all individuals and deny the certificate of the provider. The affected program shall not operate and shall not receive any Department funding during the period of any appeal." 59 Ill. Adm. Code 119.325(c) (current through rules published in the Ill. Reg. Volume 43, Issue 40, October 4, 2019).

¶ 39 2. Exhaustion of Remedies Doctrine

¶ 40 A party aggrieved by an administrative action must first pursue all available administrative remedies before resorting to the courts. *Canel v. Topinka*, 212 Ill. 2d 311, 320 (2004). The exhaustion requirement allows the administrative agency to fully develop and consider the facts of the case before it and to allow the agency to utilize its expertise, which may result in the aggrieved party obtaining relief from the agency, making judicial review unnecessary. *Canel*, 212 Ill. 2d at 320-21.

¶ 41 Our supreme court requires strict compliance with the exhaustion of remedies doctrine. *Maschek v. City of Chicago*, 2015 IL App (1st) 150520, ¶ 47. However, there are recognized exceptions to the exhaustion doctrine: (1) where a statute, ordinance or rule is attacked as unconstitutional on its face; (2) where issues of fact are not presented, and agency expertise is not involved; (3) where the administrative remedy is inadequate or futile or where the litigant will be subjected to irreparable injury due to lengthy administrative procedures that fail to provide interim relief; (4) where multiple administrative remedies exist and at least one has been exhausted; and (5) where the agency's jurisdiction is attacked because it is not authorized by statute. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 309 (1989).

¶ 42 DSI argues that it was not required to exhaust its administrative remedies because it raised a facially unconstitutional violation and because it challenged the jurisdiction of the Department to act to revoke its license and certification. We note that DSI raised the application of other exceptions in connection with the denial of its motion to stay the administrative proceedings. For reasons set forth later in this order, we do not need to address them.

¶ 43 a. Facially Unconstitutional Exception

¶ 44 DSI maintains that it made a facial constitutional challenge to sections 115.440 and 119.325(c) of the Code on the ground of vagueness.

¶ 45 A party who challenges the validity of a statute on its face is not required to exhaust its administrative remedies. *Poindexter v. State of Illinois, ex rel. Department of Human Services*, 229 Ill. 2d 194, 207 (2008). Administrative review is confined to the proofs offered and the record created before the agency, whereas a facial attack on the constitutionality of a statute presents purely legal questions and does not depend for its assertion or resolution on the administrative record. *Poindexter*, 229 Ill. 2d at 207. A facial challenge to the constitutionality of a statute is the most difficult to make successfully because a statute is facially invalid only if no set of circumstances exists under which the statute would be valid. *Oswald v. Hamer*, 2018 IL 122203, ¶ 40. "[I]f any situation exists where a statute could be validly applied, a facial challenge must fail." *Oswald*, 2018 IL 122203, ¶ 40.

¶ 46 In contrast, in an "as-applied" challenge a plaintiff's claim is based on how the statute or rule was applied in a particular context in which the plaintiff acted or proposed to act, making the facts surrounding the plaintiff's particular circumstances relevant. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). "If a plaintiff prevails in an as-applied claim, he may enjoin the objectionable enforcement of the enactment only against himself, while a successful facial attack voids the enactment in its entirety and in all applications." *Napleton*, 229 Ill. 2d at 306. Where the challenge is not that the statute on its face is unconstitutional but rather that it was applied in a discriminatory or arbitrary manner, the challenging party must first seek relief through the administrative remedies provided. *Phillips v. Graham*, 86 Ill. 2d 274, 289 (1981).

¶ 47 DSI maintains that sections 115.440 and 119.25(c) of the Code are unconstitutionally vague because the Code's definition of imminent risk is too broad, and there are no guidelines to allow a licensee to determine the existence of an imminent risk prior to the revocation of its license. "A statute violates constitutional principles for vagueness only where ' "its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts." ' " *Morgan v. Department of Financial & Professional Regulation*, 374 Ill. App. 3d 275, 292 (2007) (quoting *Stern v. Northwest Mortgage Inc.*, 179 Ill. 2d 160, 168 (1997), quoting *People v. Burpo*, 164 Ill. 2d 261, 266 (1995). " 'A statute will be considered unconstitutionally vague on its face only where it is incapable of any valid application in the sense that no standard of conduct is specified at all.' " *Morgan*, 374 Ill. App. 3d at 292-93 (quoting *Burpo*, 164 Ill. 2d at 266).

¶ 48 In *Morgan*, the reviewing court rejected the plaintiff's claim that the statute allowing the defendant to summarily suspend his psychologist's license based on a determination of imminent danger was unconstitutionally vague. While the statute did not define "imminent danger," the court determined that the dictionary definitions of "imminent" and "danger" indicated the appearance of threatened and impending injury so as to place a reasonable man on the defensive. *Morgan*, 374 Ill. App. 3d at 293. The court concluded that "the term 'imminent danger' is not 'so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts.' " *Morgan*, 374 Ill. App. 3d at 293 (quoting *Burpo*, 164 Ill. 2d at 266).

¶ 49 Here, the term "imminent risk" is defined in the Code. Section 115.120 of the Code defines "imminent risk" as "[a] preliminary determination of immediate, threatened or

impending risk of illness, mental injury, or physical injury to an individual as would cause a reasonably prudent person to take immediate action and that is not immediately corrected, such as environmental or safety hazards." 59 Ill. Adm. Code 115.120 (eff. March 17, 2003). The fact that there is a certain amount of discretion in the determination of imminent risk does not leave the Department with no cognizable standard. See *Morgan*, 374 Ill. App. 3d at 293.

¶ 50 Moreover, DSI cannot succeed on a facial challenge based on vagueness grounds. In *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, the plaintiff challenged the defendant's weed ordinance on the ground that the term "weed" was "inherently subjective and thus fatally unspecific, while the periodic care requirement ordinance for parkways was "fatally unspecific." The plaintiff maintained that both ordinances were facially void for vagueness. In rejecting the plaintiff's facial challenge to the ordinances, this court quoted from the supreme court's opinion in *Maddux v. Blagojevich*, 233 Ill. 2d 508 (2009), as follows:

> " 'Void for vagueness is a concept derived from the notice requirements of the due process clause. A statute can be impermissibly vague for either of two independent reasons: (1) if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; and (2) if it authorizes or even encourages arbitrary and discriminatory enforcement. [Citations.] As a general rule, a litigant whose conduct falls squarely within a statute's prohibition cannot complain of the vagueness of the law as applied to others. [Citation.] Moreover, in order to succeed on a vagueness challenge that does not involve a first amendment right, a party must establish that the statute is vague as applied to the conduct for which the party is being prosecuted.' "
> *Shachter*, 2011 IL App (1st) 103582, ¶ 83 (quoting *Maddux*, 233 Ill. 2d at 544).

In *Shachter*, this court held that the plaintiff's conduct in failing to control the weeds on his property and maintain the parkway fell within the terms of the two ordinances, and it was clear that the two ordinances did not implicate any first amendment rights. The plaintiff had no standing to make a facial challenge to those ordinances. *Shachter*, 2011 IL App (1st), 103582, ¶¶ 83-84. Instead, the plaintiff was limited to an as-applied to challenge based on the conduct for which he was cited. *Shachter*, 2011 IL App (1st) 103582, ¶ 83.

¶ 51 Likewise, in the present case, DSI's alleged conduct fell within the terms of sections 115.440 and 119.25(c) of the Code, and it is clear that neither of those sections of the Code implicate any of DSI's first amendment rights. Therefore, DSI does not have standing to make a facial constitutional challenge to the Code and its constitutional challenge on vagueness grounds is limited to an as-applied challenge based on the conduct for which it was cited. Since only facial challenges are exceptions to the exhaustion of administrative remedies doctrine, DSI failed to establish the facial constitutional challenge exception to the exhaustion of remedies doctrine to defeat the Department's motion to dismiss. Thus, DSI cannot raise a constitutional challenge to the Code without first exhausting its administrative remedies.

¶ 52 b. Jurisdiction to Act Exception

¶ 53 DSI challenges whether the Department had jurisdiction to revoke its license and certification because it had no statutory authority to do so. DSI points out that it scored a Level 5 on the November 14 through 17, 2016, surveys, which required it to submit a plan for correction within 30 days, in this case, December 19, 2016. See 59 Ill. Adm. Code 115.440(c)(5) (eff. Aug. 13, 1999). DSI asserts the Department failed to follow its own rules and revoked its license and

certification without waiting for the corrective plan to be submitted. See 59 Ill. Adm. Code 115.440(a)(3) (eff. Aug. 13, 1999).

¶ 54 The term "jurisdiction" applies only to the authority to hear and decide the case and does not depend on the correctness of the decision. *One Way Liquors, Inc. v. Byrne*, 105 Ill. App. 3d 856, 861 (1982). "A body has jurisdiction to make a wrong decision as well as a right decision." *Byrne*, 105 Ill. App. 3d at 861.

¶ 55 In the present case, sections 115.440 and 119.25(c) permit the Department to revoke a license and a certification if the residents of a CILA home are at imminent risk. In its second amended complaint, DSI recognized the Department's authority to revoke by alleging that the only way the Department could legally revoke DSI's license and certification was if there was an imminent risk to the residents.[2] While DSI alleged that there was no imminent risk and that its residents were safe, the Department determined that an imminent risk existed, and having made that determination, it had the authority to act to protect the residents of DSI's CILA homes.

¶ 56 An administrative proceeding is an administrative investigation instituted for the purpose of ascertaining and making findings of fact. Here, the parties' dispute is a factual one, *i.e.*, did an imminent risk to the residents exist, and one where the administrative agency can use its expertise on the evidence presented by the parties. Based on the parties' evidence, the agency can then make a determination, which may result in the aggrieved party obtaining relief from the agency, eliminating the need for judicial review. See *Canel*, 212 Ill. 2d at 320-21.

[2] DSI used the term "imminent threat" instead of "imminent risk" as stated in section 115.120 of the Code.

¶ 57 Since the Department's jurisdiction to act to revoke DSI's license and certification is authorized by the Code, that exception to the exhaustion of remedies doctrine does not apply in this case.

¶ 58 3. Due Process and Equal Protection Violations

¶ 59 DSI contends that the dismissal of its second amended complaint was erroneous considering DSI's allegations of violations of its right to due process and equal protection. DSI alleged its rights to these constitutional provisions were violated by the following actions of the Department and/or its agents: failure to establish guidelines for when an imminent risk existed; stopping funding prior to final hearing; not paying for past services; conducting a campaign to harass and shut down DSI's CILA's homes for political reasons; shutting down DSI's CILA's homes due to the racial bias of a member of the Quality Care Board; intentional withholding of emails evidencing the bias against DSI; delaying the administrative process by not answering discovery in a timely manner, causing DSI to incur attorney fees; and not providing proper notice of surveys and conducting them before December 1, 2016, for political purposes.

¶ 60 DSI maintains that it is futile to pursue its administrative remedies because an administrative agency lacks the authority to decide constitutional issues. *Arvia v. Madigan*, 209 Ill. 2d 520, 526 (2004); see *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278 (1998) ("[A]dministrative agencies lack the authority to invalidate a statute on constitutional grounds or even question its validity"). DSI argues that the circuit court has authority to rule on its constitutional claims, citing generally, *Castaneda*. However, since DSI's due process and equal protection challenges are as-applied, not facial challenges, *Castaneda* does not exempt DSI from exhausting its administrative remedies first before seeking a judicial remedy.

¶ 61 Moreover, in *Texaco-Cities Service Pipeline Co.*, our supreme court continued as follows:

> "[I]t is advisable to assert a constitutional challenge on the record before the administrative tribunal, because administrative review is confined to the proof offered before the agency. Such a practice serves the purpose of avoiding piecemeal litigation and more importantly, allowing opposing parties a full opportunity to present evidence to refute the constitutional challenge." *Texaco-Cities Service Pipeline Co.*, 182 Ill. 2d at 278-79.

¶ 62 In the present case, DSI will not be deprived of its as-applied constitutional challenges by proceeding first in an administrative hearing where the evidence in support of and against its constitutional claims may be presented. In the event either party seeks administrative review in the circuit court, they will have a fully developed record to present to the court for review.

¶ 63 II. Denial of Motion to Stay the Administrative Proceedings

¶ 64 DSI contends that the circuit court erred by not granting a stay of the administrative proceedings. DSI requested the circuit court to stay the administrative proceedings pending the court's ruling on its second amended complaint. The court denied the motion to stay and dismissed the second amended complaint for DSI's failure to exhaust its administrative remedies. We have ruled that the dismissal of the second amended complaint was proper.

¶ 65 "An appeal is moot if no actual controversy exists or if events have occurred which make it impossible to grant the complaining party effectual relief." *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005). Even if we were to determine that the motion to stay should have been granted, considering the circuit court's decision to dismiss the complaint and our

affirmance of that decision, the reason to stay the administrative proceedings, *i.e.* second amended complaint, no longer exists. In short, there is no effective relief we can give to DSI. Therefore, DSI's motion to stay the administrative proceedings pending that decision is moot. See *In re Marriage of Peters-Farrell*, 216 Ill. 2d at 291 (the judgment of dissolution of marriage rendered moot the wife's challenge on appeal to the issuance of subpoenas to pharmacies for records of her medications).

¶ 66 CONCLUSION

¶ 67 We conclude that the circuit court's dismissal of DSI's second amended complaint was correct. DSI failed to establish that an exception to the exhaustion of remedies applied in this case. We further conclude that since dismissal of the second amended complaint was proper, the motion to stay the administrative proceedings pending the dismissal of the second amended complaint is moot.

¶ 68 The judgment of the circuit court is affirmed.

¶ 69 Affirmed.