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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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ROBERT H. SWANSON,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-MR-127
	)	
ILLINOIS DEPARTMENT OF CHILDREN	)	
AND FAMILY SERVICES,	)	Honorable
	)	Thomas E. Mueller,
Defendant-Appellee.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* The agency's finding that plaintiff's request for expungement of a child-abuse indication was untimely was not against the manifest weight of the evidence: the agency provided evidence that the required notice was sent, which evidence was corroborated by the fact that plaintiff's wife received a notice, and an ALJ deemed plaintiff incredible.

¶ 2 Robert H. Swanson appeals the judgment of the circuit court upholding an order of the Illinois Department of Children and Family Services (the agency) that dismissed as untimely his request for the expungement of a finding of child abuse. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2007, the agency began investigating Swanson, who was working as an elementary school teacher's aide, under State Central Register number 1750381-A. Swanson was provided with a document that described the process. That document also noted that he would have the right to appeal any finding of child abuse, something referred to by the agency as an "indication," and that he would be provided with specific information on how to appeal. Swanson retained counsel, who asked the agency to have no further direct contact with Swanson.

¶ 5 On May 30, 2007, the agency issued a letter to Swanson informing him that the investigation was complete, that he had been indicated for sexual molestation and a substantial risk of sexual abuse, and that he had 60 days from the date of the letter to appeal. A letter sent the same day to Swanson's wife at the same address did not contain the specific allegations or appeal information, but stated that she could request a copy of the investigation report. Swanson contends that he never received his letter. Swanson's wife received her letter and requested a copy of the investigation report in November 2007. Ultimately, criminal charges were brought against Swanson based on the same allegations that resulted in the indication.

¶ 6 In September 2007, the agency issued a second indicated report against Swanson involving separate allegations of sexual molestation, in State Central Register number 1773739-A. Criminal charges were also brought against Swanson based on the new indication. Swanson received the letter notifying him of the findings and he timely appealed. That appeal was stayed pending the outcome of the criminal proceedings.

¶ 7 In April 2010, Swanson was acquitted of the criminal charges. On May 25, 2010, he sent a letter to the agency asking that the stay be lifted and for either the "appeals" to go forward or the agency to reconsider the previous findings. The agency granted Swanson a hearing on whether to

expunge the September 2007 indication, which had been timely appealed. An Administrative Law Judge (ALJ) for the agency granted the expungement in September 2010.

¶ 8 On March 2, 2011, Swanson wrote to the agency, seeking expungement of the May 30, 2007, indication, stating that he was never adequately served notice of it. He stated that the only person who was given notice was his estranged wife and noted that his other indication had been expunged. On March 18, 2011, the agency dismissed the request as untimely because Swanson did not file it within 60 days of the notification of the completion of the investigation, as required by section 7.16 of the Abused and Neglected Child Reporting Act (Act) (325 ILCS 5/7.16 (West 2010)). Swanson sought review in the circuit court, which remanded for a determination of whether proper notice had been provided.

¶ 9 On December 15, 2011, a hearing was held before an agency ALJ. Kathy Byrne, an agency investigator, testified that she provided Swanson with the formal notice of the investigation and informed his attorney that he was going to be indicated. She said that the computer file on Swanson's case was closed on May 29, 2007.

¶ 10 James Craven, the State Central Register Administrator, testified that it was standard practice to send notification letters to various people, including the perpetrator, when there was an indicated finding. The day after the investigation was closed on the computer, it would automatically generate the letters, which would be sent by regular mail. Any that was returned as undeliverable would be retained for the office's records, and a clerk would attempt to identify the correct address and resend the letter. Craven personally checked the office records and determined that a notification was sent to Swanson on May 30, 2007. There was no record of the notice being returned or of any problem with the computer that might have affected the generation of the letter.

¶ 11 Swanson and his wife both testified that they never saw a letter from the agency addressed to Swanson and that they lived at the same address for the past 24 years. Swanson admitted that he read the letter addressed to his wife and that he showed it to his attorney. He said that he did not attempt to appeal at that time because the letter was not addressed to him and did not contain instructions for how to appeal. He stated that he knew the indication existed, but said that he had never seen the notification letter before having it shown to him at the hearing.

¶ 12 The ALJ found that the notice was sent, there was no evidence that it was returned or misdelivered, the Swansons admitted receiving another letter sent the same day, and Swanson was not credible. The ALJ stated that any claim that Swanson was unaware of the need to appeal after reading the letter addressed to his wife and consulting his attorney was outlandish and that Swanson's insistence that he had not seen the notice until the hearing demonstrated willful avoidance. The ALJ's findings were adopted in full as the agency's final determination. Swanson appealed, and the circuit court affirmed, finding that the agency's determination was not against the manifest weight of the evidence and that the doctrine of laches applied. Swanson appeals.

¶ 13 II. ANALYSIS

¶ 14 Swanson contends that the agency erred when it determined that his request for expungement was untimely.

¶ 15 "In an appeal from an administrative agency's decision, we review the agency's determination, not that of the trial court." *Lambert v. Downers Grove Fire Department Pension Board*, 2013 IL App (2d) 110824, ¶ 23. Under the Administrative Review Law, a reviewing court considers all questions of fact and law presented by the entire record. 735 ILCS 5/3-110 (West 2010). This court reviews factual questions under the manifest weight standard, questions of law

*de novo*, and mixed questions of law and fact under the clearly erroneous standard. *Lambert*, 2013 IL App (2d) 110824, ¶ 23. “An administrative agency’s factual findings are against the manifest weight of the evidence only when the opposite conclusion is clearly evident.” *Clarcor, Inc. v. Hamer*, 2012 IL App (1st) 111674, ¶ 26.

¶ 16 “In Illinois, review of an administrative decision may only be obtained by a statutory provision, whereas review of circuit court decisions is guaranteed by the state’s constitution.” *Carroll v. Department of Employment Security*, 389 Ill. App. 3d 404, 407 (2009). The Act provides that judicial review of the agency’s final decisions will be in accordance with the Administrative Review Law. 325 ILCS 5/11.6 (West 2010). Under that law, parties to a proceeding before an agency are barred from obtaining judicial review of the agency’s decision unless review is sought “within the time and in the manner” provided by the statute. 735 ILCS 5/3-102 (West 2010).

¶ 17 The Act requires the agency to maintain a central register of all cases of suspected child abuse or neglect. 325 ILCS 5/7.7 (West 2010). After a report is made, the child protective service unit must investigate and determine whether the report is indicated, unfounded, or undetermined. 325 ILCS 5/7.12, 7.14 (West 2010). A person who is subject to an indicated report may request that the agency amend the record of the report or remove the record of the report from the State Central Register within 60 days after the notification of the completion of the investigation, determined by the date of the notification sent by the agency. 325 ILCS 5/7.16 (West 2010).

¶ 18 The administrative agency bears the burden of establishing that a request for expungement was untimely. See *Carroll*, 389 Ill. App. 3d at 411. “Because it is difficult for a sender to prove that an item was received by the addressee, the general rule is that correspondence is presumed to have been received when the correspondence has been placed in a properly addressed envelope with

adequate postage affixed and deposited in the mail.” *First National Bank of Antioch v. Guerra Construction Co., Inc.*, 153 Ill. App. 3d 662, 667 (1987). “The presumption is not conclusive and may be rebutted by evidence that the correspondence was not received by the addressee.” *Id.* Evidence of general office practice regarding mailing is insufficient unless accompanied by evidence that the practice was followed in the particular instance in question or by corroborating evidence that the mail was received. *Id.* “[D]irect testimony from the person who actually performed the mailing is not necessary if corroborating circumstances are otherwise sufficient.” *Carroll*, 389 Ill. App. 3d at 411. “Defendants do not bear the burden of proving a mailing date beyond a reasonable doubt, but rather must show that it is more probable than not that the mailing occurred on a specific date.” *Id.*

¶ 19 Testimony that a person personally checked records and a computer system to confirm that an item was sent in accordance with office custom has been deemed sufficient, even when that person did not remember actually mailing the item. *Id.* at 412. Further, mailing can be shown by corroborating evidence, including the facts that other mailings sent at the same time arrived and that an item sent was not returned. *Tabor & Co. v. Gorenz*, 43 Ill. App. 3d 124, 130 (1976).

¶ 20 For example, in *Tabor*, there was proof of the office custom, corroborated by evidence that correctly addressed forms had been prepared in accordance with that custom. In addition, other corroborating circumstances existed: the defendant admitted receiving other mailings pursuant to the same business practice, a copy of the item in question had been received by the plaintiff’s branch office, and none of the confirmations sent out with the item were returned by the post office.

¶ 21 Here, *Tabor* is on point. Craven testified about office custom and he personally checked office records to confirm that the notification was sent. Further, there was corroborating evidence

that another notification sent the same day, through the same system, arrived at Swanson's address. Nothing was returned by the post office. In addition, the ALJ found that Swanson lacked credibility. Under these circumstances, the agency's determination that Swanson received proper notice was not against the manifest weight of the evidence.

¶ 22

### III. CONCLUSION

¶ 23 Based upon its factual findings, the agency's ultimate determination that the request was untimely was not clearly erroneous. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 24 Affirmed.