2011 IL App (1st) 101979-U

FOURTH DIVISION
September 1, 2011

No. 1-10-1979

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EDDIE L. RAINEY, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF THE ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; and P. GREEN-JEFFERSON, STATE OF ILLINOIS DEPARTMENT OF EMPLOYMENT BENEFIT PAYMENT CONTROL, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. Nos. 09 M6 4426 10 L 50508 Honorable Elmer James Tolmaire, III, Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Salone concurred in the judgment.

O R D E R

Held: Where plaintiff improperly filed one complaint in the circuit court when it should have been filed in the Court of Claims, and untimely filed his second complaint, the trial court properly dismissed both complaints for lack of jurisdiction.

¶ 1 *Pro se* plaintiff Eddie Rainey appeals from the trial court's May 11, 2010, dismissal of two complaints filed against various parties, including the State of Illinois Department of Employment Security (Department) and the Department's Board of Review (Board). On appeal, plaintiff contends that the trial court erred in dismissing his cases. We affirm.

¶ 2 The record includes an October 21, 2009, Board decision regarding benefits obtained by plaintiff for a period in 2007 from November 18 through December 22. The decision reveals that plaintiff admitted that he worked and earned wages during this designated time period, and that he knowingly failed to disclose this information while receiving unemployment benefits. The Board decision states that plaintiff "justified his false statements as 'equitable relief' for benefits denied him in 2005 in the filing of a previous claim." The Board concluded that the benefits which plaintiff had received in 2007 while he was actually employed were subject to recoupment and plaintiff was subject to penalties for failing to disclose his employment in order to obtain unemployment benefits. The Board's decision was dated and mailed October 21, 2009.

¶ 3 On November 23, 2009, plaintiff filed a *pro se* complaint (2009 case) against the State of Illinois, the Department, and P. Green-Jefferson (an agent of the Department) (09 M6 4426). In the complaint, plaintiff stated that the Department had recouped all overpayment for the period of November through December 2008 [*sic*], and had levied a monetary penalty, apparently in reference to the Board's October 2009 decision. Plaintiff further alleged that he had been wrongfully terminated by his employer on May 17, 2005, and the Department denied him unemployment benefits. On some unidentified later date, his employer reinstated his employment without back pay. Plaintiff complained that the Department failed to grant him benefits for the employment period beginning March 17, 2005, to May 5, 2005. Plaintiff sought only monetary relief in the amount of $9,805 plus court costs.

¶ 4 The Department filed a motion to dismiss the 2009 case for lack of subject matter jurisdiction, pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 2-619(a)(1) (West 2008)), arguing that the case was barred by sovereign immunity because the complaint sought monetary damages against the Department. Plaintiff apparently filed a response but it is not included in the record. On March 11, 2010, the trial court entered an order granting the

Department's motion to dismiss, dismissing the case without prejudice and with leave to amend, and transferring the case to the Law Division for proper assignment.

¶ 5 On March 23, 2010, plaintiff filed a *pro se* complaint (2010 case) for administrative review against the Department, the director of the Department, the Board, and P. Green-Jefferson (No. 10-L-50508). In the complaint, plaintiff requested judicial review of the Board's October 21, 2009, decision.

¶ 6 The Department, the director of the Department, and the Board (collectively "State defendants") filed a section 2-619 motion to dismiss the 2010 case for lack of subject matter jurisdiction because plaintiff's complaint was not filed within the 35-day time limit required by section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2008)). In support, the State defendants attached an affidavit of Andrew Kot, the acting Chief Hearings Referee of the Board, in which he attested to knowledge of the facts of preparation and mailing of Board decisions, and knowledge specifically of the mailing of plaintiff's decision. He further attested that the decision of the Board was mailed to plaintiff on October 21, 2009.

¶ 7 On May 5, 2010, the court consolidated the two cases. By separate orders entered on May 11, 2010, the trial court granted the motion to dismiss the 2010 case and dismissed "without prejudice" the 2009 case.

¶ 8 Plaintiff filed a motion to reconsider the May 11, 2010, orders. In his motion, plaintiff argued that his 2009 complaint timely sought administrative review of the October 2009 Board decision and his 2010 complaint "should have been construed as an amended complaint" because the 2009 case was still pending. Plaintiff argued as follows:

> "The sole basis for Defendant's motion to dismiss which this Court granted on May 11, 2010 was that the newly filed complaint was filed after the limitations period. Since the new complaint was filed by a pro se litigant following an order allowing

> him to file an amended complaint, the Court should treat the complaint as a continuation of the first action which was still pending and was consolidated with this case on May 5, 2010."

¶ 9 For the purpose of plaintiff's motion to reconsider, the court consolidated the two cases for hearing and denied the motion on June 17, 2010. The order includes the express finding that this is a final and appealable order. See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 10 Plaintiff filed a timely notice of appeal asking this court to reverse the June 17, 2010, order, contending that the complaint was timely filed.

¶ 11 On appeal, plaintiff maintains that his 2009 complaint was a timely filed complaint for administrative review of the 2009 Board decision and his 2010 complaint was his amended version of the 2009 complaint. Plaintiff observed that a new case number was generated when he filed his 2010 complaint and now there are two cases seeking the same relief. Plaintiff's position has no legal merit.

¶ 12 Initially, the State defendants contend that plaintiff's brief should be stricken for failing to comply with the requirements of Supreme Court Rule 341(h) (eff. July 1, 2008) and the appeal should be dismissed. While we agree with the observed deficiencies, we decline to strike the brief. Plaintiff's *pro se* status does not relieve him of the burden of complying with the supreme court rules governing appellate procedures. *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 425 (2005). However, because we are able to discern the legal issues from the record and the State defendants' brief, we decline to dismiss the appeal. See *Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2011) (the court may entertain an appeal as long as it understands the issues plaintiff intends to raise and where it has "the benefit of a cogent brief of the other party").

¶ 13 The State defendants argue that the 2009 case was properly dismissed because it was barred by sovereign immunity. We agree.

¶ 14 The State Lawsuit Immunity Act provides that the state "shall not be made a defendant or party in any Court" except as provided in the Court of Claims Act, the Illinois Public Labor Relations Act, and the State Officials and Employees Ethics Act. 745 ILCS 5/1 (2008). The Court of Claims Act provides that the Illinois Court of Claims has exclusive jurisdiction over "[a]ll claims against the State founded upon any law of the State of Illinois." 705 ILCS 505/8(a) (West 2008). For purposes of sovereign immunity, suits against a State department or agency are considered to be suits against the State. *Meyer v. Department of Public Aid*, 392 Ill. App. 3d 31, 34 (2009). When a plaintiff seeks a monetary judgment against a State agency payable out of State funds, he must bring his action in the court of claims. *Meyer*, 392 Ill. App. 3d at 35. The circuit court lacks jurisdiction to hear a claim when sovereign immunity applies. *Meyer*, 392 Ill. App. 3d at 34.

¶ 15 Here, in the 2009 case, plaintiff filed a complaint in the circuit court naming a State agency, the Department of Employment Security, as a defendant, and requesting a monetary award of $9,805 plus court costs. The proper venue for plaintiff to seek a monetary judgment against a State agency based on State laws is the Court of Claims, which has exclusive jurisdiction over such actions. Therefore, the trial court properly dismissed the 2009 case for lack of subject matter jurisdiction.

¶ 16 As to the 2010 case, the State asserts it was properly dismissed as an untimely filed request for judicial review of an administrative decision. We agree.

¶ 17 Courts only have jurisdiction to review an administrative decision as provided by law. Ill. Const. 1970, art. VI, §§ 6, 9; *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 121 (2007). A party seeking review of an administrative decision must comply strictly with the procedures prescribed by statute because a court exercises "special statutory jurisdiction" when it reviews an administrative decision and may only do so as provided by statute. *Collinsville Community Unit School District Number 10 v. Regional Board of School*

Trustees, 218 Ill. 2d 175, 181-82 (2006). Therefore, if the procedures dictated by statute are not strictly followed, the trial court does not have jurisdiction to review the decision. *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 350 (2006).

¶ 18 Section 3-103 of the Administrative Review Law states that an action to review a final administrative decision "shall be commenced by the filing of a complaint and the issuance of a summons 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." 735 ILCS 5/3-103 (West 2008). A decision is considered served when a copy has been deposited in the United States mail. 735 ILCS 5/3-103 (West 2008); *Nudell v. Forest Preserve District of Cook County*, 333 Ill. App. 3d 518, 522 (2002), *aff'd*, 207 Ill. 2d 409 (2003).

¶ 19 Here, plaintiff did not file his 2010 case within the 35-day statutory deadline. The decision of the Board was mailed to plaintiff on October 21, 2009. In addition to the final page of the Board's decision showing that the decision was mailed on October 21, 2009, the State defendants attached an affidavit of the acting Chief Hearings Referee, Andrew Kot, attesting that the decision was mailed to plaintiff on the same date. See *Carroll v. Department of Employment Security*, 389 Ill. App. 3d 404, 411 (2009) (an affidavit of a person with knowledge of the office customs when mailing a decision who also has personal knowledge that the custom was followed for the decision at issue is sufficient to prove date of mailing). Plaintiff did not file his request for judicial review of the administrative decision until March 23, 2010, well after the 35-day time limit. As plaintiff failed to strictly comply with the requirements of section 3-103, the trial court properly dismissed the 2010 case for lack of jurisdiction. *Rodriguez*, 218 Ill. 2d at 350.

¶ 20 Plaintiff claims that the 2009 case was a timely filed request for administrative review and that his 2010 complaint should be construed as the amended version of his 2009 complaint. However, plaintiff has provided no analysis or citation to legal authority, and has therefore

forfeited these issues. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Palm v. 2800 Lake Shore Drive Condominium Association*, 401 Ill. App. 3d 868, 881-82 (2010).

¶ 21 Even if plaintiff had not forfeited these issues, they are completely unsupported by the record. Plaintiff claims that his 2009 complaint was a timely filed request for administrative review. Section 3-108 of the Administrative Review Law requires that a complaint seeking review of an administrative decision "shall contain a statement of the decision or part of the decision sought to be reviewed." 735 ILCS 5/3-108 (West 2008). In his 2009 complaint, plaintiff alleged the Department denied him unemployment benefits to which he was entitled in 2005. Importantly, the 2009 complaint failed to mention the 2009 Board decision and did not ask for review of any administrative decision. The only request for relief in the 2009 complaint was monetary. Furthermore, the 2009 Board decision had nothing to do with the alleged denial of unemployment benefits to plaintiff in 2005 but, rather, involved plaintiff's admitted ineligibility to receive unemployment benefits in 2007. Therefore, plaintiff's 2009 complaint cannot be construed as a request for administrative review.

¶ 22 Plaintiff also argues that his 2010 complaint was the amended version of his 2009 complaint. However, the 2010 complaint was filed as a separate complaint and does not reference the 2009 complaint. Further, while the 2009 complaint seeks monetary relief, the 2010 complaint requests judicial review of the 2009 Board decision. The trial court also recognized that the two complaints were distinct, made clear by its issuance of separate orders dismissing each complaint. Moreover, on May 11, 2010, the trial court again dismissed the 2009 complaint without prejudice giving plaintiff another opportunity to amend the complaint after it was transferred to the law division. The record fails to support plaintiff's claim that the 2010 complaint was the amended version of the 2009 complaint.

¶ 23 Based on the record and circumstances, we find no reason to disturb the circuit court's orders.

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¶ 24 Affirmed.