

FIRST DIVISION
April 16, 2012

No. 1-10-2241

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JUDITH M. GODFREY,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
)	
v.)	No. 09 L 51248
)	
)	
PROPERTY TAX APPEAL BOARD and)	
COOK COUNTY BOARD OF REVIEW,)	
)	
)	Honorable
)	Mark J. Ballard,
Defendants-Appellants.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court. Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

ORDER

Held: Plaintiff's failure to follow the requirements of the Administrative Review Law (735 ILCS 5/3-103 (West 2005)) required dismissal of her complaint for administrative review.

Plaintiff, Judith M. Godfrey, appeals from a circuit court order dismissing her complaint for administrative review of a decision of the Property Tax Appeal Board (PTAB). For the reasons that follow, we affirm.

On October 27, 2008, plaintiff, who was represented by counsel, participated in a hearing before the PTAB. Plaintiff was appealing a decision of the Cook County Board of Review (Board) which had rejected her claims that her real property had been overvalued for property tax assessment purposes. Following the hearing, the PTAB issued a final administrative decision on August 24, 2009, upholding the Board's property valuation and tax assessment.

On September 22, 2009, plaintiff filed a complaint in the law division of the circuit court of Cook County for administrative review of the PTAB's decision. Plaintiff named the PTAB and the Board as defendants. On November 17, 2009, the case was transferred from the law division to the county division.

On January 28, 2010, the Board filed a motion to dismiss the complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)). The Board argued that pursuant to provisions of section 3-102 of the Administrative Review Law (Act) (735 ILCS 5/3-103 (West 2005)), plaintiff's complaint should be dismissed because plaintiff failed to serve the Board with a copy of the summons and complaint within the 35-day period mandated by section 3-103 of the Act (735 ILCS 5/3-103 (West 2005)).

Section 3-102 of the Act provides in relevant part that "[u]nless review is sought of an

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administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision." 735 ILCS 5/3-102 (West 2005).

Section 3-103 of the Act provides in relevant part that "[e]very action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of 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 2005).

With regard to the service of summons, section 3-105 of the Act provides in relevant part:

"Summons issued in any action to review the final administrative decision of any administrative agency shall be served by registered or certified mail on the administrative agency and on each of the other defendants * * * Service on the administrative agency shall be made by the clerk of the court by sending a copy of the summons addressed to the agency at its main office in the State. The clerk of the court shall also mail a copy of the summons to each of the others defendants, addressed to the last known place of residence or principal place of business of each such defendant. *The plaintiff shall, by affidavit filed with the complaint, designate the last known address of each defendant upon whom service shall be made.*" (Emphasis added.) 735 ILCS 5/3-103 (West 2005).

In this case, the PTAB's final administrative decision was served on the plaintiff on August 24, 2009. Applying the 35-day period specified in section 3-103 of the Act, plaintiff had until September 28, 2009, in which to file her complaint for administrative review and to ensure that summonses were timely issued and served upon the defendants.

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Review of the record shows that plaintiff filed a summons and complaint for administrative review on September 22, 2009, within the 35-day window. However the complaint failed to include the required affidavit designating "the last known address of each defendant upon whom service shall be made," as required by section 3-105 of the Act, and as a result, the summonses were never timely served on the Board or the PTAB within the 35-day window.

As the circuit court explained, it is the filing of the affidavit that triggers the clerk of the court to issue and serve the summons. "Our supreme court has recognized that this affidavit is the means by which the clerk becomes aware of the defendant's address." *Burns v. Department of Employment Security*, 342 Ill. App. 3d 780, 788 (2003). When the plaintiff filed a summons and complaint for administrative review on September 22, 2009, she failed to file an accompanying affidavit with the complaint setting forth the last known addresses of the Board or the PTAB. This failure resulted in the Board not being served with a summons and complaint until December 23 or 31, 2009, well outside the 35-day window mandated by section 3-103 of the Act.

On April 29, 2009, after hearing oral argument on the Board's motion to dismiss, the circuit court granted the Board's motion dismissing plaintiff's complaint for administrative review. The circuit court also denied plaintiff's motion to strike the Board's reply, including the Rule 137 relief sought.

In denying plaintiff's motion to strike and for Rule 137 relief, the circuit court rejected plaintiff's contentions that the Board had asserted an untruth when it claimed that it was not served with a copy of the summons and complaint within the 35-day period mandated by section

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3-103 of the Act. At the end of the hearing, the circuit court stated that it was not going to make its order final or appealable at that time. The circuit court offered plaintiff the opportunity to present the court with any additional evidence by way of affidavits.

On May 13, 2010, plaintiff filed a motion to reconsider and vacate the order of April 29, 2010, and for a substitution of judge on the basis of alleged bias. The PTAB filed a response to the motion for reconsideration as well as its own motion to dismiss and an amended motion to dismiss. The PTAB argued that, like the Board, it had not been timely served with summons.

The first motion heard was plaintiff's motion for substitution of judge. The motion was heard by Judge Patrick E. McGann. Plaintiff argued that the filing of the affidavit was not a jurisdictional requirement and that Judge Mark Ballard had exhibited a lack of impartiality by raising the issues of the affidavit *sua sponte*. After hearing oral arguments, Judge McGann denied plaintiff's motion for substitution of judge. He noted that circuit court judges have the authority to consider their own jurisdiction. Judge McGann then held that plaintiff had not demonstrated any bias on the part of Judge Ballard merely because the judge had not agreed with plaintiff's position.

On July 13, 2010, the circuit court heard argument on the plaintiff's motion for reconsideration and the PTAB's amended motion to dismiss. The circuit court questioned plaintiff's counsel regarding what diligence and good-faith effort counsel had taken to effectuate service on the Board between November 17, 2009, the time counsel first allegedly discovered that the Board had not been served, and December 23 or 31, 2009, when he served the Board. Counsel responded that he did not know and had no record with him of the steps he took to

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correct the problem. At the conclusion of the hearing, the circuit court took the matter under advisement.

On July 16, 2010, the circuit court entered a memorandum opinion and order denying plaintiff's motion for reconsideration and granting the PTAB's amended motion to dismiss. The court stated that although plaintiff filed her complaint within the 35-day period, she did not properly cause summons to be served against each defendant within this period because she never filed the required affidavit with the complaint. The court also determined that plaintiff's counsel failed to establish that he made a good-faith effort to effectuate service within the 35-day period, that would warrant an exception to the 35-day requirement. The court further held that the dismissal of the Board from the matter was fatal to the complaint in its entirety.

We find that the circuit court properly dismissed plaintiff's complaint for administrative review. The Act is a departure from the common law and, as such, its provisions must be strictly adhered to by the parties. *Wilson v. State Employees' Retirement System*, 336 Ill. App. 3d 199, 203 (2002).

Section 3-102 of the Act expressly makes review of an administrative decision contingent upon compliance with the Act's provisions. *Id.* As mentioned, this section of the Act provides in relevant part that "[u]nless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision." 735 ILCS 5/3-102 (West 2005).

Although the 35-day period for issuance of a summons by the clerk of the court under

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section 3-103 of the Act is mandatory rather than jurisdictional, the procedures for review must still be strictly followed because the Act is a departure from the common law. *Gunther v. State of Illinois Civil Service Commission*, 344 Ill. App. 3d 912, 914 (2003). Therefore, absent a good-faith effort on the part of a plaintiff to name and serve a necessary party as required by the Act, dismissal of the complaint for review is required. *Id.* We review *de novo* a dismissal of a complaint pursuant to section 2-619 of the Code. *Wackrow v. Niemi*, 231 Ill. 2d 418, 422 (2008).

Review of the record reveals that plaintiff did not strictly adhere to the procedures set out in the Act. The PTAB's final administrative decision was served on the plaintiff on August 24, 2009. Under the 35-day period specified in section 3-103 of the Act, plaintiff had until September 28, 2009, in which to file her complaint for administrative review and to ensure that summonses were timely issued and served upon each of the defendants.

The record shows that on September 22, 2009, within the 35-day window, plaintiff filed a summons and complaint for administrative review naming the Board and the PTAB as defendants. However, the complaint failed to include the required affidavit designating "the last known address of each defendant upon whom service shall be made," as required by section 3-105 of the Act, and as a result, the summonses were never timely served on the Board or the PTAB within the 35-day window.

Plaintiff's failure to follow the requirements of the Act required dismissal of her complaint for administrative review. 735 ILCS 5/3-102 (West 2005); see *Gunther*, 344 Ill. App. 3d at 914. In addition, the record does not disclose any evidence on plaintiff's part demonstrating a good-faith effort to serve the Board.

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Accordingly, we affirm the circuit court's order granting the Board's motion dismissing plaintiff's complaint for administrative review. In light of our affirmance, we need not address plaintiff's remaining contentions concerning the substitution of judge, the motion to strike the Board's reply, Rule 137 relief, or the granting of the PTAB's amended motion to dismiss.

Affirmed.