2012 IL App (1st) 112805-U

FOURTH DIVISION
June 28, 2012

No. 1-11-2805

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANASTASIA JONAS, Plaintiff-Appellant, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, MARY RICHARDSON LOWRY, President, NORMAN BOBINS, Member, TARIQ BUTT, Member, PEGGY DAVIS, Member, ROXANNE WARD, Member, CLARE MUNANA, Member, ALBERTO A. CARRERO, JR., Member, TERRY MAZANY, Chief Executive Officer, ESTELA BELTRAN, Secretary, Defendants-Appellees (CHRISTOPHER KOCH, ISBE Superintendent, and ILLINOIS BOARD OF EDUCATION, Defendants).	)	Appeal from the Circuit Court of Cook County No. 11 CH 08181 Honorable Sophia Hall, Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

Held: The circuit court did not err in granting defendant's motion to dismiss for lack of jurisdiction where plaintiff had failed to exhaust her administrative remedies prior to seeking judicial review.

¶ 1 Plaintiff-appellant Anastasia Jonas filed a complaint in the Circuit Court of Cook County after she was terminated from her employment as a tenured teacher with the Chicago Public Schools. Defendant-appellee the Board of Education of the City of Chicago (Chicago Board) moved to dismiss the complaint on the grounds that the court lacked jurisdiction because Jonas had failed to request a hearing before the Illinois State Board of Education (Illinois Board) prior to filing her complaint. The court agreed that it lacked jurisdiction and dismissed Jonas's complaint. On appeal, Jonas argues that she did request a hearing before the Illinois Board and therefore jurisdiction was proper in the circuit court, or, alternatively, that she was not required to seek a hearing prior to filing her complaint. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 On December 2, 2010, the Chicago Board sent Jonas and her union representative a dismissal charge alleging that Jonas violated its residency requirement when she failed to maintain a residence within the city of Chicago. Approximately one week later, on December 9, a pre-suspension hearing was held, at which both Jonas and her union representative were present and informed of the charges against her. According to the Chicago Board, Jonas had 10 days following receipt of the dismissal charge during which to request a hearing before the Illinois Board pursuant to section 34-85 of the School Code (105 ILCS 5/34-85(a)(2) (West 2008) (amended by Pub. Act 97-8, §5 (eff. Jan. 13, 2011))), but failed to do so. Thus, on January 26,

2011, the Chicago Board adopted a resolution dismissing Jonas from employment with the Chicago Public Schools for her failure to comply with the residency requirement.

¶ 4 One week later, Jonas filed a complaint for administrative review in circuit court in which she alleged that the Chicago Board's decision was contrary to the law and facts; was contrary to the manifest weight of the evidence; incorrectly applied the law to the facts of the case; and was arbitrary and capricious. The Chicago Board filed a motion to dismiss the complaint arguing that because Jonas had not exhausted her administrative remedies before seeking review of its decision, the court lacked jurisdiction. Jonas conceded that she had not requested a hearing with the Illinois Board at any time prior to January 26, 2010, but maintained that exhaustion was not required where no issues of fact existed and where it would have been futile to pursue relief before the administrative agency.

¶ 5 After hearing argument, the circuit court granted the Chicago Board's motion and dismissed Jonas's complaint with prejudice. Jonas timely filed this appeal.

¶ 6 ANALYSIS

¶ 7 In her opening brief, Jonas presents the following issues for our review:

> "1) Whether the trial court erred in dismissing the Plaintiff's Complaint for Administrative Review?
>
> 2) Whether the Plaintiff was required to exhaust her administrative remedies prior to filing her Complaint for Administrative Review?"

In response, however, the Chicago Board only briefly addresses the issues presented by Jonas and instead primarily argues that we should affirm its decision to terminate Jonas and find the

residency requirement constitutional.[1] Needless to say, these arguments are well outside the scope of the narrow issues presented by Jonas for our review and we do not address them in our decision today. See *Cleys v. Village of Palatine*, 89 Ill. App. 3d 630, 635 (1980) ("[a] court of review is confined to the issues raised by appellant and will not consider those urged by appellee except where they are related to appellant's issues.")

¶ 8 Having thus clarified the scope of our review, we turn to the merits of Jonas's claim that the lower court erred in dismissing her complaint for lack of jurisdiction pursuant to section 2-619(a)(1) and (a)(9) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(1), (a)(9) (West 2010). When evaluating a section 2-619 motion to dismiss, all pleadings and supporting documents must be viewed in the light most favorable to the plaintiff. *Paszkowski v. Metropolitan Water Reclamation District of Greater Chicago*, 213 Ill. 2d 1, 5 (2004). Dismissal is proper only where a plaintiff can prove no set of facts that would support the cause of action. *Id.* We review *de novo* the circuit court's order of dismissal. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006).

¶ 9 The law is clear that before an aggrieved party may seek judicial review of an administrative decision, she must first exhaust all available administrative remedies. *Illinois Bell Telephone Co. v. Allphin*, 60 Ill. 2d 350, 358 (1975). The requirement of exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the case before it; allows the agency to apply its expertise; and allows the aggrieved party the opportunity to succeed before the agency, thus making judicial review unnecessary. *Castaneda v. Illinois*

[1] Jonas did not file a reply brief.

Human Rights Commission, 132 Ill. 2d 304, 308 (1989).

¶ 10 Jonas agrees that after receiving notice of a proposed dismissal by the Chicago Board, the administrative remedy of a hearing before the Illinois Board was available to her. Specifically, at the time of Jonas's dismissal, section 34-85 of the School Code provided that no hearing upon charges of dismissal is required "unless the teacher within 10 days after receiving notice requests in writing of the board that a hearing be scheduled." 105 ILCS 5/34-85 (West 2008) (amended by Pub. Act 97-8, §5 (eff. Jan. 13, 2011)). After a request is made, a hearing must be scheduled between 15 to 30 days after the charges have been approved.[2] *Id.* At the hearing, a teacher is able to appear with counsel and has the privilege of cross-examining witnesses, offering evidence and witnesses of her own, and presenting a defense to the charges. *Id.* Following the conclusion of the hearing, the hearing officer submits his findings and recommendation to the local Board of Education, which makes the ultimate decision as to whether the teacher should be dismissed. *Id.*

¶ 11 On appeal, Jonas maintains that she orally requested a hearing before the Illinois Board during the pre-suspension hearing of December 9, 2010. However, in Jonas's response to the Chicago Board's motion to dismiss in the lower court, she explicitly stated that she "did not dispute the Board's finding that she lived outside the city limits of Chicago and *did not request a hearing with the Illinois State Board of Education regarding the dismissal charges before January 26, 2011*." (Emphasis added.) The Chicago Board aptly notes that this constitutes a judicial admission which Jonas may not repudiate on appeal. See *Rath v. Carbondale Nursing &*

[2] This section has since been amended to, in part, increase the time a teacher has to request a hearing from 10 to 17 days, and allow the hearing to commence within 75 calendar days from when a hearing officer is selected. 105 ILCS 5/34-85(a)(2), (a)(5) (West 2010).

Rehabilitation Center, Inc., 374 Ill. App.3d 536, 538 (2007) ("[j]udicial admissions are binding upon the party making them and cannot be controverted.")

¶ 12 A judicial admission is a statement made either during a judicial proceeding or contained in a document filed with the court. *Elliott v. Industrial Commission of Illinois*, 303 Ill. App. 3d 185, 187 (1999), quoting *Williams Nationalease, Ltd. v. Motter*, 271 Ill. App. 3d 594, 597 (1995). The statement, made by a party, must be clear, unequivocal, and concern a concrete fact within that party's knowledge. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475 (2010), quoting *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). Jonas's definitive statement that she did not request a hearing before the Illinois Board prior to January 26 indisputably meets these criteria. As such, Jonas is bound by this admission and cannot now contend that a hearing was requested. See *Rath*, 374 Ill. App.3d at 538.

¶ 13 Even assuming *arguendo* that Jonas's statement in her response did not constitute a judicial admission, she has nevertheless failed to provide factual support for her claim that she sought a hearing with the Illinois Board. Instead, she only states that if the Chicago Board had been required to answer her complaint, a written transcript of the pre-suspension hearing would have been provided which would have revealed that she made a request for a hearing. Significantly, no explanation is offered for why Jonas herself could not provide this transcript to the lower court in response to the Chicago Board's motion to dismiss. Ultimately, the failure to provide a complete record on appeal requires us to resolve our doubts arising from the incompleteness of the record against Jonas (see *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)), and reject her assertion that she requested a hearing.

¶ 14 In the alternative, Jonas argues that she was not required to request a hearing prior to seeking judicial review of the Chicago Board's decision. It is true that there are a number of exceptions to the general rule that exhaustion of administrative remedies must occur before an aggrieved party may seek judicial review of an agency decision. See *Castaneda*, 132 Ill. 2d at 308. For instance, exhaustion is not required where there is an allegation that the rule or ordinance is facially unconstitutional; where one of several administrative remedies have been exhausted; where it would be futile to seek relief before the agency; or where no factual issues are presented and no agency expertise is involved. *Midland Hotel Corp. v. Director of Employment Security*, 282 Ill. App. 3d 312, 319 (1996), citing *Castaneda*, 132 Ill. 2d at 308-09. In the case *sub judice*, Jonas maintains that (1) it would have been futile to pursue her case before the agency; and (2) that no issues of fact or agency expertise were presented. We disagree.

¶ 15 In support of her claim of futility, Jonas cites *Canel v. Topinka*, 212 Ill. 2d 311 (2004), which we find inapposite. There, the plaintiff sought recovery of dividends issued on shares of stock that had been presumed abandoned and delivered to the state but in fact belonged to him. *Id.* at 315. According to the plaintiff, although section 15 of the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025/15 (West 1998)), allowed the state discretion in returning dividends to owners along with unliquidated stock, the office of the Treasurer of the State of Illinois had never before returned any income on securities to the owner. *Id.* at 319-20. As such, our supreme court held that it would have been futile to require the plaintiff to pursue a hearing before the office of the Treasurer. *Id.*

¶ 16 Here, in contrast, Jonas does not argue that the Chicago Board never made exceptions for

employees who were unable to comply with its residency requirement. Instead, she maintains that when she informed the Chicago Board at her pre-suspension hearing that she was unable to reside in Chicago due to her husband's occupation as a pastor, which required him to live in a parish home outside the city, the Chicago Board declined to waive the requirement of city residency. Therefore, according to Jonas, it would have been futile to pursue a hearing before the Illinois Board, whose advisory decision serves only as a recommendation to the Chicago Board. See 105 ILCS 5/34-85 (West 2008) (amended by Pub. Act 97-8, §5 (eff. Jan. 13, 2011)).

¶ 17 Significantly, there is no suggestion in the record or the briefs that the Illinois Board would necessarily recommend that no exception should be made to the policy. While it may be unlikely that the Chicago Board would reverse the decision it made at the pre-suspension hearing upon the Illinois Board's contrary recommendation, our supreme court has explicitly held that "the fact that there are clear indications that the agency may or will rule adversely is generally inadequate to terminate the administrative process or to avoid the exhaustion requirement." *Castaneda*, 132 Ill. 2d at 328. Moreover, in contrast to *Canel*, Jonas does not contend that the Chicago Board has never followed the recommendation of the Illinois Board. Accordingly, we conclude that it would not have been futile for Jonas to pursue the administrative remedy of appearing before the Illinois Board.

¶ 18 Similarly, we find that although the factual issue of whether Jonas was in compliance with the Chicago Board's residency policy was never in dispute, agency expertise was still required in order to determine if an exception to the residency requirement would be appropriate in Jonas's circumstances. Indeed, it is only where an issue of statutory construction is presented

that we have held that agency expertise is not implicated. See, *e.g.*, *Brandt Construction Co. v. Ludwig*, 376 Ill. App. 3d 94, 105 (2007) (legal questions involving statutory interpretation are outside the scope of agency expertise); see also *Poindexter v. State ex rel. Dept. of Human Services*, 372 Ill. App. 3d 1021, 1024-25 (2006); *Cook County State's Attorney v. Illinois Local Labor Relations Board*, 166 Ill. 2d 296, 306 (1995). As this is not the case here, we cannot agree with Jonas that this exception to the exhaustion doctrine allowed her to bypass a hearing before the Illinois Board prior to bringing her complaint in circuit court. Thus, we decline to reverse the circuit court's dismissal of Jonas's complaint for lack of jurisdiction.

¶ 19 CONCLUSION

¶ 20 For the reasons stated, we affirm the circuit court's order dismissing Jonas's complaint for administrative review.

¶ 21 Affirmed.