2017 IL App (2d) 160436-U
No. 2-16-0436
Order filed February 23, 2017



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| JANICE JOHANSSON,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>NAPERVILLE COMMUNITY UNIT SCHOOL DISTRICT 203, ILLINOIS STATE BOARD OF EDUCATION, and ELIZABETH SIMON,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of Du Page County.<br><br>No. 15-MR-1078<br><br>Honorable Bonnie M. Wheaton, Judge, Presiding. |

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JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Plaintiff's amended complaint for administrative review was properly denied and dismissed with prejudice where plaintiff failed to demonstrate that a remand to the Illinois State Board of Education was required.

¶ 2 Plaintiff, Janice Johansson, appeals from an order of the Circuit Court of Du Page County entered on May 9, 2016, denying her amended complaint for administrative review and dismissing it with prejudice. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was employed as a tenured special education teacher by defendant, Naperville Community Unit School District 203 (District). Throughout the events in question, plaintiff was assigned to Naperville North High School (NNHS). In 2008, the District issued plaintiff a "Notice to Remedy," citing eight deficiencies in her conduct with students, classroom aides, and other school professionals. She was first issued a "Notice to Remedy" in 2004 for similar deficiencies. At the end of the 2008-09 school year, the District rated plaintiff's performance as "satisfactory." Nevertheless, the District decided to evaluate plaintiff for an additional year. In her second year at NNHS, plaintiff taught two algebra and two world culture classes. Plaintiff received an "unsatisfactory" rating for the 2009-10 school year based on deficiencies in planning and preparation, classroom environment, instruction, and professional responsibility.

¶ 5 In October 2010, the District placed plaintiff on a 90-day remediation plan consisting of three quarters. In 2011, after receiving two more unsatisfactory ratings, plaintiff took a medical leave. When plaintiff returned in 2013, the District modified the remediation plan to accommodate her medical restrictions. However, on November 4, 2013, after plaintiff received a third unsatisfactory rating, the District dismissed her from its employ.

¶ 6 Plaintiff appealed to defendant, Illinois State Board of Education (Board). Because of plaintiff's ongoing illness, the hearing officer granted her nearly a four-month extension to file discovery responses. The hearing officer also gave plaintiff a six-month postponement of the hearing.

¶ 7 A seven-day hearing took place between November 17, 2014, and April 24, 2015. Sixteen witnesses, including plaintiff, testified. The District's witnesses generally testified that, from their first-hand observations, plaintiff did not fulfill the requirements of the remediation

plan. At the end of the first quarter of the remediation plan, the remediation team concluded that plaintiff failed to demonstrate consistent progress in six areas related to classroom instruction. The remediation team also noted concerns with plaintiff's performance in completing tasks that were outlined in weekly remediation meetings.

¶ 8 In the second quarter, the remediation team reported that plaintiff's interactions with students and parents improved, but concerns remained in five areas related to classroom instruction. The District rated plaintiff's second quarter performance as unsatisfactory. Plaintiff testified that the stress of the first two quarters was overwhelming, and she took a medical leave. When plaintiff returned, the District implemented the third quarter of the remediation plan, with accommodations for her medical restrictions. The remediation team reported that, overall, plaintiff's classroom performance in the third quarter was unsatisfactory. Specifically, plaintiff had not demonstrated knowledge of the targets (goals for instruction) and did not differentiate learning (apply instruction techniques to fit each individual student). Additionally, the team found that plaintiff did not demonstrate effective discussion techniques. Plaintiff's use of classroom time was also noted as an ongoing problem. The remediation team's observations of plaintiff in the classroom were documented in written reports and in periodic "summative reports."

¶ 9 Plaintiff testified for almost two full days of the hearing. According to plaintiff, the remediation plan was not achievable, although she followed through with the tasks that the team gave her. She described herself as overworked and stressed. Plaintiff testified that the hostility of the remediation team prevented her success.

¶ 10 Six of plaintiff's colleagues testified to plaintiff's professionalism and dedication. Collectively, they described plaintiff as hardworking and committed to her students. One of the

witnesses had seen plaintiff using lesson plans and exit slips (written student responses to questions teachers pose at the end of a class).

¶ 11 On June 26, 2015, the hearing officer issued a 30-page "opinion and award." The hearing officer found that plaintiff failed to remediate the deficiencies identified in the remediation plan and upheld the District's dismissal of plaintiff for cause. Specifically, the hearing officer found that the remediation plan was achievable. The hearing officer commented that the District's "evidence of [plaintiff's] persistent deficiencies [was] detailed and extensive." The hearing officer noted that plaintiff's evidence was "primarily anecdotal and generally uncorroborated." The hearing officer further noted that plaintiff's documentary evidence "was sparse."

¶ 12 On July 29, 2015, plaintiff filed a complaint for administrative review. On January 28, 2016, plaintiff filed an amended complaint. Plaintiff also "supplemented" the record with over 400 pages of documents that were not part of the administrative record. These documents were plaintiff's lesson plans that she argued should have been introduced at the administrative hearing by her counsel, because they proved her compliance with the remediation plan.[1]

¶ 13 On May 9, 2016, at the administrative review hearing before the circuit court, plaintiff requested a remand for a new hearing before the Board. She argued that the administrative record was "woefully deficient," because her illness had prevented her from fully participating in the administrative proceedings. The court commented that the hearing officer had "bent over backwards" to accommodate plaintiff's medical condition. The court noted that plaintiff was present at the hearing and that she testified for two days. The court also found that plaintiff had competent legal representation before the Board. The court observed that plaintiff was

[1] Plaintiff asserts that the supplemental documents are but a "scintilla" of the documentary evidence that she compiled after the termination of the administrative proceedings.

"dissatisfied with the result," but that her failure to submit documents was not the hearing officer's or the District's fault. The court ruled that there was "more than sufficient evidence" to warrant denial of administrative review, and the court found that the Board's decision was not against the manifest weight of the evidence. The court specifically declined to exercise its discretion to remand to the agency. Plaintiff filed a timely appeal.

¶ 14 II. ANALYSIS

¶ 15 In an administrative review action, the appellate court reviews the decision of the administrative agency and not the decision of the circuit court. *Kimble v. Illinois State Board of Education*, 2014 IL App (1st) 123436, ¶ 73. The findings and conclusions of the administrative agency on questions of fact are *prima facie* true and correct. *Kimble*, 2014 IL App (1st) 123436, ¶ 73. The agency's findings of fact will be upheld unless they are against the manifest weight of the evidence. *Kimble*, 2014 IL App (1st) 123436, ¶ 74.

¶ 16 Even though plaintiff asserts that the correct standard of review is manifest-weight-of-the-evidence, she does not challenge the Board's decision on that ground. Rather, plaintiff contends that the record is inadequate, because she was too ill to participate fully in the proceedings. She also claims that her attorney rendered ineffective assistance of counsel. Plaintiff seeks a remand to the Board for a new hearing.

¶ 17 A remand to the administrative agency for further proceedings is within a court's discretion when the record is inadequate or if the facts are insufficient to allow a resolution of the issue. *Commonwealth Edison Co. v. Department of Local Government Affairs*, 126 Ill. App. 3d 277, 289 (1984). A remand for further fact-finding is necessary only where the record of the administrative hearing is clearly inadequate. *Commonwealth Edison*, 126 Ill. App. 3d at 291. A circuit court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no

reasonable person would take the view adopted by the trial court. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23.

¶ 18 The District raises two preliminary matters. First, the District moves to strike plaintiff's supplemental documents. We grant the motion. We are limited to reviewing the record that was before the agency, and we may not consider new or additional evidence. *North Avenue Properties, L.L.C. v. Zoning Board of Appeals of the City of Chicago*, 312 Ill. App. 3d 182, 185 (2000). Plaintiff's argument that she is not offering the documents as evidence is not well taken, because in essence she is arguing that the compiled documents demonstrate that she can prevail in a new hearing before the Board.

¶ 19 The District's second contention is that plaintiff forfeited her arguments by failing to raise them before the hearing officer. Issues that are not brought before the administrative agency will not be considered for the first time on administrative review. *Lehmann v. Department of Children and Family Services*, 342 Ill. App. 3d 1069, 1078 (2003). The hearing officer was aware of plaintiff's illness, as Hearing Officer Simon extended plaintiff numerous courtesies because of it. Additionally, we do not believe that plaintiff could be expected to bring the alleged deficiencies of her counsel to the hearing officer's attention. Plaintiff's expertise was in special education, not the law. Furthermore, there was nothing the hearing officer could have done. This was a civil hearing. If plaintiff was unhappy with her lawyer, her remedy was to discharge him. Consequently, we decline to find forfeiture.

¶ 20 Plaintiff contends that remand to the Board is necessary, because (1) the record that was produced "as a result of the administrative process" is inadequate, and (2) after the Board considers plaintiff's additional evidence, further findings of fact will be required. Plaintiff relies on three cases. *Gallo v. Amoco Corp.*, 102 F.3d 918 (7th Cir. 1996), was a federal ERISA

(Employee Retirement Income Security Act) case with no application to our facts. In *Figueroa v. Doherty*, 303 Ill. App. 3d 46, 51-52 (1999), the matter was remanded for a new administrative hearing where the referee's failure to provide the Spanish-speaking plaintiff with a complete translation of the proceedings deprived the plaintiff of a fair hearing. In *Board of Education of Rich Township High School District No. 227, Cook County, Illinois, v. Brown*, 311 Ill. App. 3d 478, 491 (1999), constitutional issues were raised that required a remand to the *circuit court* for further hearings. In both *Figueroa* and *Rich Township*, the records were insufficient for reasons beyond the plaintiffs' control.

¶ 21 In our case, plaintiff complains of a record that she created. Plaintiff cites the hearing officer's finding that her documentary evidence was "sparse," as though the sparseness were the hearing officer's fault. The hearing officer did not preclude plaintiff from presenting evidence. Indeed, plaintiff does not point to anything that the hearing officer did to deprive her of a fair hearing. The record shows that the hearing officer liberally adjusted the discovery and hearing schedules when plaintiff requested more time because of her illness. If plaintiff was too ill to participate in the proceedings, she should have requested another postponement.

¶ 22 Plaintiff also maintains that a remand is necessary so that the Board can make further findings of fact. It is within the court's discretion to remand when the facts in the record are inadequate to allow resolution of the issue. *Commonwealth Edison*, 126 Ill. App. 3d at 289. That clearly is not our situation. The hearing spanned seven days. Sixteen witnesses testified. The hearing officer made extensive factual findings. Plaintiff merely complains that the facts in her favor did not carry the day.

¶ 23 The evidence supported the Board's decision. An administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion in clearly evident.

*Morgan v. Department of Financial & Professional Regulation*, 388 Ill. App. 3d 633, 654 (2009). If the record contains evidence to support the agency's decision, it should be affirmed. *Morgan*, 388 Ill. App. 3d at 654. Here, the evidence showed that plaintiff had been served with two notices "to remedy," the first in 2004, and the second in 2008. Plaintiff received a satisfactory rating after her first year at NNHS, but the principal made the decision to evaluate her for another year. In the second year, the summative report concluded that plaintiff had difficulties in planning and preparation, classroom environment, instruction, and professional responsibility. The next step was the remediation plan, and the evidence showed that plaintiff did not fulfill its requirements. While plaintiff disputed the District's evidence, in analyzing claims arising from an agency's determination, the agency's findings and conclusions on questions of fact are *prima facie* true and correct. *Board of Trustees of the Police Pension Fund of the Village of Mundelein v. Jagielnik*, 271 Ill. App. 3d 869, 875 (1995).

¶ 24 Furthermore, section 3-111(a)(7) of the Administrative Review Act (735 ILCS 5/3-111(a)(7) (West 2014)) provides that no remandment shall be made on the ground of newly discovered evidence unless it appears to the satisfaction of the court that such evidence was discovered after the termination of the administrative proceedings and that it could not have been discovered by the exercise of reasonable diligence. Plaintiff admits that her documents existed at the time of the hearing, but she asserts that she was not able to "compile" them due to "flare-ups" of her illness. Plaintiff's illness was unfortunate. However, her illness did not eliminate the requirement of reasonable diligence. In any event, the documents are not newly discovered evidence, and plaintiff does not provide a theory under which they would be admissible.

¶ 25 Plaintiff next contends that she is entitled to a new hearing because her counsel rendered ineffective assistance. The only case she cites is *People v. Greer*, 79 Ill. 2d 103 (1980). *Greer*

was a criminal case in which the defendant was sentenced to death for two murders. *Greer*, 79 Ill. 2d at 108. The Sixth Amendment right to counsel (U.S. Const. Amend. VI) ensures an accused a fair trial. *People v. Hoskins*, 168 Ill. App. 3d 904, 909 (1988). Plaintiff cites no authority extending this constitutional right to litigants before an administrative agency. Moreover, we agree with the trial court that plaintiff's counsel was competent. Consequently, remand is not necessary, and the Board's decision is affirmed. Accordingly, we hold that the trial court did not abuse its discretion in denying the amended complaint for administrative review and in dismissing it with prejudice.

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, the decision of the Board and, thus, the judgment of the circuit court of Du Page County are affirmed.

¶ 28 Affirmed.