2017 IL App (2d) 160995-U
No. 2-16-0995
Order filed August 15, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JOSEPH GILLES, Plaintiff-Appellant, v. CAROL STREAM FIRE PROTECTION DISTRICT; RICHARD KOLOMAY, as fire chief of the Carol Stream Fire Protection District; THE BOARD OF FIRE COMMISSIONERS OF THE CAROL STREAM FIRE PROTECTION DISTRICT; KEN ANDERKO, DAVID CARLSON, and RONALD MURRAY, as members of the Board of Fire Commissioners of the Carol Stream Fire Protection District; THE BOARD OF TRUSTEES OF THE CAROL STREAM FIRE PROTECTION DISTRICT; and WILLIAM NATICK, RICHARD FISHER, JAMES PANOPOULOS, KARL LANGHAMMER, and BRIAN JORDAN, as members of the Board of Trustees of the Carol Stream Fire Protection District, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. No. 15-MR-215 Honorable Bonnie M. Wheaton, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: On administrative review, the decision to terminate plaintiff's employment with the Carol Stream Fire Protection District was affirmed where: (1) the fire chief's amended complaint was sufficient to apprise plaintiff of the charges against him and to allow him to prepare a defense; (2) the fire chief proved the allegations against plaintiff; (3) the order that plaintiff refused to obey was lawful; (4) plaintiff was not prejudiced by any evidentiary errors that may have occurred during the administrative proceedings; (5) plaintiff was not prejudiced by an *ex parte* communication between the fire chief and one of the commissioners; (6) plaintiff was not prejudiced by alleged prosecutorial misconduct; and (7) the circumstances warranted the termination of plaintiff's employment. Additionally, by failing to present a cogent legal analysis supported by relevant authority, plaintiff forfeited his argument that the trial court erred in refusing to allow him to re-file certain tort claims.

¶ 2 Plaintiff, Joseph Gilles, was employed for 18 years by the Carol Stream Fire Protection District (the District). During that time, he served as a firefighter, lieutenant, and ultimately a battalion chief. In 2013, the fire chief, Richard Kolomay, commenced an action before the Board of Fire Commissioners of the Carol Stream Fire Protection District (the Board of Fire Commissioners) seeking plaintiff's termination. Following a lengthy evidentiary hearing, the Board of Fire Commissioners found in Kolomay's favor and recommended termination of plaintiff's employment. The Board of Trustees of the Carol Stream Fire Protection District (the Board of Trustees) confirmed the Board of Fire Commissioner's findings and recommendations. Plaintiff filed a complaint for administrative review in the Circuit Court of Du Page County. Plaintiff appeals from the circuit court's order upholding the administrative decision. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The administrative proceedings took more than a year to complete, and the record is voluminous. We will outline the parties' respective theories of the case and then provide additional factual background in the analysis section as needed to understand plaintiff's specific arguments.

¶ 5 The District operated as a paramilitary organization. Kolomay, the chief, was at the top of the pyramid. Robert Hoff served as deputy chief under Kolomay. Below Hoff were three battalion chiefs: Dave Reid, John Bellandi, and plaintiff. Below the battalion chiefs were the lieutenants, and below the lieutenants were the paramedics and firefighters. It is undisputed that each employee of the District was required to comply with orders given by higher ranking employees.

¶ 6 In September 2013, Kolomay sought plaintiff's termination for his refusal to comply with an order to sign a performance improvement plan (P.I.P.). In the amended complaint, Kolomay alleged that, by failing to sign the P.I.P., plaintiff was guilty of insubordination. Kolomay also alleged that plaintiff violated both the District's rules of conduct and the "cause" clauses of the Board of Fire and Police Commissioners Act (65 ILCS 5/10-2.1-17 (West 2016)) and the Fire Protection District Act (70 ILCS 705/16.13b (West 2016)).

¶ 7 The evidence at the hearing was conflicting in many respects. Kolomay presented evidence that plaintiff was obese (well in excess of 300 pounds) and had significant difficulties communicating with and leading his subordinates. According to Kolomay and certain other employees of the Department, those problems had been noted within the Department for several years prior to 2013. However, things came to a head in the spring of 2013 when plaintiff fell asleep during important meetings. At that point, Kolomay arranged for plaintiff to be medically evaluated. Plaintiff was diagnosed with sleep apnea but was found fit for duty multiple times. Nevertheless, Kolomay testified that plaintiff had some behavioral issues that surfaced during the spring of 2013, including improperly handling a personnel matter and using his vacation days when he should have used sick days. On July 17, 2013, Kolomay presented plaintiff with three disciplinary measures (two one-day suspensions and a written reprimand), along with the P.I.P.

In Kolomay's mind, the P.I.P., although undoubtedly challenging for plaintiff, was designed to correct the myriad deficiencies that had been noted by plaintiff's colleagues. Despite being ordered to sign the P.I.P., plaintiff refused to do so. Kolomay believed that such failure to comply with an order from a superior was detrimental to the Department and justified plaintiff's termination.

¶ 8 Plaintiff presented evidence casting things in a different light. Although he had been overweight throughout his career, he emphasized that his weight had never been a problem as he rose through the ranks. Nor did he have a significant disciplinary history prior to 2013. Plaintiff disagreed with Kolomay's allegations that he was an ineffective communicator or leader. To that end, he noted that Kolomay had actually commended him on his leadership and communication skills approximately seven months before he was asked to sign the P.I.P. He also insisted that he never had any behavioral issues while he was in the process of getting medically cleared for duty.

¶ 9 According to plaintiff, Kolomay wanted to push him out of the Department for refusing to participate in covering up what we will call the "Medford Drive incident." On August 25, 2012, certain employees of the District responded to an address on Medford Drive in response to a report that a person was choking. Kolomay asked plaintiff to gather information regarding the District's response to that call. Plaintiff determined that there were multiple problems with the way that the call had been handled, and he recommended the termination of one particular employee. Kolomay instead ordered that employee to participate in a P.I.P. Plaintiff testified that Kolomay told him at one point that this employee's P.I.P. was designed for her failure. Plaintiff believed that Kolomay began retaliating against him after he gave the employee a

passing score on one portion of her P.I.P. Kolomay denied saying that the P.I.P. was designed for failure and he denied retaliating against plaintiff.

¶ 10 Plaintiff further insisted that he was never explicitly ordered to sign his own P.I.P., but was instead ordered to choose one of three options: (1) sign the P.I.P.; (2) refuse to sign the P.I.P. and face termination; or (3) negotiate a separation agreement. Plaintiff maintained that he exercised his second option and thus never disobeyed an order from Kolomay. Plaintiff explained that he refused to sign the P.I.P. because it was vague and called for Kolomay's subjective assessment of his performance. Plaintiff distrusted Kolomay and believed that Kolomay would use any non-compliance with the terms of the P.I.P. to justify terminating his employment.

¶ 11 The Board of Fire Commissioners made the following findings: Kolomay ordered plaintiff to sign the P.I.P.; the behaviors and deficiencies which the P.I.P. addressed fell within Kolomay's authority as the chief; such behaviors and deficiencies were brought to Kolomay's attention prior to the Medford Drive incident; the P.I.P. was a lawful order; and the P.I.P. was not in retaliation for plaintiff's actions in connection with the Medford Drive incident. If plaintiff felt that the P.I.P. was ambiguous, the District's rules and regulations required him to seek clarification. Kolomay also had a legitimate interest in plaintiff's health, which included dozing off or falling asleep during meetings. Even though plaintiff was found medically fit for duty, Kolomay had the authority to express concerns regarding plaintiff's weight. Additionally, certain portions of plaintiff's testimony were not credible, including his statement that Kolomay told him that the other employee's P.I.P. had been designed for her failure.

¶ 12 Following a subsequent hearing to determine the appropriate disciplinary measure, the Board of Fire Commissioners recommended plaintiff's termination. The Board of Trustees confirmed that decision.

¶ 13 Plaintiff filed a complaint for administrative review. While the administrative review action was pending in the trial court, plaintiff filed an amended complaint adding claims for retaliatory discharge, conspiracy, and violations of the Whistleblower Act (740 ILCS 174/1 *et seq*. (West 2016)). The court dismissed those claims without prejudice pending the resolution of the count seeking administrative review. The court subsequently upheld the administrative decision and refused to allow plaintiff to re-file his tort claims in this particular proceeding. Plaintiff timely appeals.

¶ 14 II. ANALYSIS

¶ 15 Plaintiff raises eight issues on appeal. With the exception of the last issue, which involves the trial court's refusal to allow plaintiff to re-file his tort claims, we review the decision of the Board of Trustees, not the trial court's decision. *Swoboda v. Board of Trustees of the Village of Sugar Grove Police Pension Fund*, 2015 IL App (2d) 150265, ¶ 7.

¶ 16 (1) Sufficiency of Kolomay's Amended Complaint

¶ 17 Plaintiff first argues that the allegations in Kolomay's amended complaint were vague and insufficient to apprise him of the charges against him. According to plaintiff, the amended complaint was deficient because "the actual orders were not factually alleged" and because "it was not factually alleged how Gilles' failure to obey the alleged orders violated the various statutes and Carol Stream Fire Protection District rules." Specifically, plaintiff asserts that the amended complaint did not mention whether the order at issue was written or oral. He thus claims that he was deprived of the ability to prepare a defense.

¶ 18 "It is settled that the charges or complaint in an administrative proceeding need not be drawn with the same precision, refinements, or subtleties as pleadings in a judicial proceeding." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 93 (1992). Instead, "the charge in an administrative proceeding need only reasonably advise the respondent as to the charges so that he or she will intelligently be able to prepare a defense." *Abrahamson*, 153 Ill. 2d at 93. The adequacy of such notice implicates due process concerns (see *Abrahamson*, 153 Ill. 2d at 92-93), and courts generally review due process challenges *de novo* (see *Grimm v. Calica*, 2017 IL 120105, ¶ 18).

¶ 19 Kolomay alleged the following in his amended complaint. On or about July 17, 2013, he requested a meeting with plaintiff to address disciplinary charges and the implementation of a P.I.P. Plaintiff refused to sign the P.I.P. and requested additional time to review the document. Kolomay granted that request. On or about July 18, Kolomay sent plaintiff a letter ordering him to appear at the District on July 29 with the signed P.I.P. Plaintiff reported to Kolomay's office as directed on July 29 but refused to sign the P.I.P. On or about August 2, plaintiff was sent a second letter ordering him to sign the P.I.P. or face charges for termination.

¶ 20 According to the amended complaint, plaintiff did not sign the P.I.P., and he therefore engaged in insubordination on multiple occasions for failing to obey a lawful order from a superior officer. Kolomay alleged that such misconduct violated the "cause" requirements of the Board of Fire and Police Commissioners Act and the Fire Protection District Act, as well as the following four of the District's rules of conduct:

> "(1) **Prohibited Conduct #2: Disobedience of Orders** – Failure to obey and fully execute any lawful order, written or oral, given by a superior which shall include

but not be necessarily limited to matters covered by these rules and regulations, all general and special orders, policies, and procedures of the District;

(2) **Prohibited Conduct #15: Duty to Read/Understand and Comply with Orders** – Failure to read, understand, or comply with all rules and regulations, general and special orders, policies and procedures of the District, written or verbal orders of a superior. To this end, it shall be considered to be neglect of duty to fail to inquire of a superior until the matter is resolved, any question as to the meaning or application of any law, rule, or regulation, general or special order, policy or procedure, written or verbal order;

(3) **Prohibited Conduct #24: On/Off Duty Conduct – Morale/Efficiency/Image/Public Confidence** – Engaging in conduct, written or oral expression on or off-duty which adversely affects the morale or efficiency of the District, or in the alternative, engaging in conduct on or off-duty which may destroy public respect for the member and/or the District and/or destroy confidence in the operation of the Districts [*sic*] service; and

(4) **Prohibited Conduct #26: Insubordination** – Insubordination toward a superior." (Underlining and emphasis in original.)

¶ 21 These allegations fairly apprised plaintiff as to the nature of the charges so that he could intelligently prepare a defense. There was nothing vague about the amended complaint: plaintiff was sent letters on July 18 and August 2, 2013, ordering him to sign the P.I.P., and he failed to do so. The District's rules cited in the amended complaint prohibited employees from refusing to comply with orders from superiors. The amended complaint was legally sufficient. See *Griggs v. North Maine Fire Protection Board of Fire Commissioners*, 216 Ill. App. 3d 380, 383

(1991) (complaint was sufficient where it apprised the plaintiff of "the date, time, place, individuals involved and present, and the nature of the alleged acts of misconduct").

¶ 22 Plaintiff relies on *Nelmark v. Board of Fire and Police Commissioners of the City of DeKalb*, 159 Ill. App. 3d 751 (1987). In *Nelmark*, counts I and II of the complaint charged the plaintiff with specific instances of misconduct occurring on September 12, 1985. *Nelmark*, 159 Ill. App. 3d at 752. Count III then alleged that the plaintiff "failed to fully, efficiently and/or effectively perform his duty as a Fireman of the City of DeKalb and to justify the salary/fringe benefits paid him by the City of DeKalb." *Nelmark*, 159 Ill. App. 3d at 752-53. The board found the plaintiff guilty on all three counts; however, with respect to count III, the conduct that formed the basis of the guilty finding had not been specifically detailed in the complaint. *Nelmark*, 159 Ill. App. 3d at 755. On administrative review, we affirmed the board's decision as to counts I and II but reversed the decision with respect to count III. *Nelmark*, 159 Ill. App. 3d at 758. We emphasized that "the testimony in support of count III involved several separate incidents over a substantial period of time, the details of which were not even remotely hinted at in the language of count III." *Nelmark*, 159 Ill. App. 3d at 758. Unlike in *Nelmark*, the amended complaint here reasonably informed plaintiff that he faced termination for refusing to comply with an order on July 18 and August 2, 2013.

¶ 23 (2) Whether Kolomay Proved the Allegations in the Amended Complaint

¶ 24 According to plaintiff, even if the amended complaint was legally sufficient, Kolomay failed to prove that he ordered plaintiff to sign the P.I.P. on July 18 and August 2, 2013. He argues that the administrative findings to the contrary were against the manifest weight of the evidence.

¶ 25 In an administrative review action, the findings of the administrative agency on questions of fact are deemed to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2016). The appellate court's function is to ascertain whether the agency's findings were against the manifest weight of the evidence. *McCleary v. Board of Fire and Police Commission of the City of Woodstock*, 251 Ill. App. 3d 988, 992 (1993). In doing so, the court should not reweigh the evidence, determine witness credibility, or substitute its judgment. *McCleary*, 251 Ill. App. 3d at 992. An administrative decision is not against the manifest weight of the evidence simply because an opposite conclusion is reasonable or the reviewing court might have ruled differently. *Abrahamson*, 153 Ill. 2d at 88. Instead, the administrative decision will be reversed "only if the opposite conclusion is clearly evident." *Abrahamson*, 153 Ill. 2d at 88.

¶ 26 The evidence was undisputed that on July 17, 2013, Kolomay presented plaintiff with a written reprimand and two one-day suspensions. Kolomay also presented plaintiff with the P.I.P. during that same meeting. At the conclusion of the meeting, Kolomay gave plaintiff additional time to review the P.I.P.

¶ 27 The parties disputed whether plaintiff was ever explicitly "ordered" to sign the P.I.P., as opposed to merely being "requested" to do so or given an "option" to do so. In support of his argument that he ordered plaintiff to sign the P.I.P., Kolomay relied on the following language in a letter that he wrote to plaintiff on July 18, 2013: "Pending your written acknowledgement to agree with the PIP, you are to report to the Fire Chief's office on July 29th at 0800 hours in a Class B battalion chief uniform. If you refuse to provide written acknowledgment to agree with the PIP, or do not respond to this PIP by July 29th at 0800 hours[,] formal charges for termination will be written." (Underlining in original.) Plaintiff, on the other hand, maintains

that this letter did not contain an order, but was at most "a threat to agree to the P.I.P. by July 29 or face termination."

¶ 28 The parties agree that plaintiff showed up to work promptly on July 29, 2013, but was sent home when he refused to sign the P.I.P. Kolomay wrote another letter to plaintiff on August 2, which included the following language:

> "You are hereby ordered to sign the PIP and immediately commence exercising your best efforts to satisfactorily meet the requirements of the PIP. If you persist in your refusal to sign and complete the PIP you must exercise one of the other options set forth below. To be explicitly clear, this is an order from the Fire Chief to either sign the PIP or select one of the other options below.
>
> You are hereby notified that you are being offered three options by the Fire District:
>
> **Option 1**
>
> Sign the approval and understanding section of the PIP as ordered by the Fire Chief and report for duty on Monday, August 12th, 2013 ready to immediately commence exercising your best efforts to complete the requirements of the PIP.
>
> **Option 2**
>
> If you choose to not sign the approval and understanding section of the PIP, you will be served with charges for your termination with the Fire District ***.
>
> **Option 3**
>
> You can choose to amicably separate from the Fire District with a *Separation Agreement* acceptable to both yourself and the Fire District.

> **You have twenty-four (24) hours to respond from the time you open and read this email and attached letter. You are ordered to respond via email to the Fire Chief indicating which one of the three options that you wish to pursue. Should you choose not to respond with an appropriate option or within the allotted time period you will be deemed to have selected Option 2 and from 24 hours after the opening of this email shall be deemed to be absent without authorized leave.**
>
> It is unfortunate that we are at this juncture of your career but your failure to report for duty as ordered ready and willing to meet the requirements of the performance improvement plan[,] which was specifically designed with the intent that you would be successful in meeting the goals set out for you, has left me with no alternative. ***" (Underlining and emphases in original.)

Plaintiff insists that this letter merely ordered him to choose one of the three options, which he did by electing to face charges of termination.

¶ 29 The Board of Fire Commissioners rejected plaintiff's contention that he was never ordered to sign the P.I.P. It found that plaintiff's argument on this point was "not credible" and did "not make sense." The Board of Trustees confirmed the Board of Fire Commissioners' decision. These conclusions were not against the manifest weight of the evidence. As an initial matter, the fact that a communication to a subordinate does not appear in the language of an "order" is not always a deciding factor; rather, "[i]t is the nature of the activity that is significant." *Zinser v. Board of Fire & Police Commissioners of the City of Belleville*, 28 Ill. App. 2d 435, 439 (1961). In light of the various communications between Kolomay and plaintiff in the summer of 2013, there was no confusion that the only way plaintiff was going to continue his employment with the District was if he signed the P.I.P. There was thus a clear directive for

plaintiff to sign the P.I.P., and the Board of Fire Commissioners and the Board of Trustees reasonably rejected plaintiff's attempts to parse the language in Kolomay's letters.

¶ 30 Even if Kolomay was required to use the word "order," he explicitly informed plaintiff in the August 2, 2013, letter that he was "hereby ordered to sign the PIP and immediately commence exercising [his] best efforts to satisfactorily meet the requirements of the PIP." It was a reasonable inference from the evidence that the "options" were intended only to spell out what would happen if he continued to refuse to comply with the direct order.

¶ 31 Plaintiff nevertheless asserts that Kolomay "admitted that he did not order Gilles to sign the P.I.P. on July 18, 2013." Plaintiff cites a portion of Kolomay's testimony where he said on cross-examination that it was on July 17th, not July 18th, that he ordered plaintiff to sign the PIP on or before July 29th. Plaintiff reads far too much into this isolated bit of testimony. To the extent that there were any inconsistencies in Kolomay's testimony, it was the role of the administrative tribunal, not this court, to evaluate the witnesses' credibility. *Griggs*, 216 Ill. App. 3d at 384. Moreover, we note that at one point even plaintiff appeared to acknowledge that the July 18th letter contained an order to sign the P.I.P. ("Q. In the letter on July 18th, 2013, you were ordered to sign the document or face termination charges; correct? A. Yes.").

¶ 32 Plaintiff briefly proposes that even if he disobeyed an order to sign the P.I.P., Kolomay failed to prove how such failure violated the "cause" clauses cited in the amended complaint. See 65 ILCS 5/10-2.1-17 (West 2016) ("Except as hereinafter provided, no officer or member of the fire or police department *** shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense."); 70 ILCS 705/16.13b (West 2016) ("[N]o officer or member of the fire department of any protection district who has held that position for one year shall be removed or discharged except for just cause ***."). Plaintiff

fails to develop a cogent argument in support of this point, and any argument that he could have raised along these lines is forfeited. See Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) (an appellant's brief must contain "the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on"); *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12 ("Mere contentions, without argument or citation to authority, do not merit consideration on appeal.").

¶ 33 (3) Whether the Order to Sign the P.I.P. was Lawful

¶ 34 Plaintiff next argues that even if he was ordered to sign the P.I.P., such order was unlawful. Relying on *Buege v. Lee*, 56 Ill. App. 3d 793 (1978), and *Phillips v. Hall*, 113 Ill. App. 3d 409 (1983), he proposes that we should review Kolomay's order to determine whether it was issued in good faith and involved a reasonable exercise of discretion. Plaintiff challenges the propriety of the order on numerous fronts. He argues that Kolomay did not create the P.I.P. in good faith. He also maintains that the P.I.P. was unreasonable for five reasons: (1) it sought plaintiff's personal transformation; (2) it embodied discrimination, malice, and prejudice; (3) it was vague and confusing; (4) it was subjective and lacked defined criteria for judging his performance; and (5) signing the P.I.P. would have required plaintiff to admit to the allegations therein.

¶ 35 As explained above, the evidence regarding plaintiff's job performance and whether he could have benefitted from the P.I.P. was conflicting. The parties also had different ideas about whether Kolomay genuinely wanted to help plaintiff or instead wanted to push him out of the Department. The Board of Fire Commissioners assessed the credibility of the witnesses while making reasonable inferences from the documentary evidence presented. After a lengthy hearing, it ultimately ruled in Kolomay's favor, and the Board of Trustees confirmed that

decision. We reiterate that, even if an opposite conclusion might have been reasonable, such is not the standard for overturning an administrative decision. See *Sheehan v. Board of Fire and Police Commissioners of the City of Des Plaines*, 158 Ill. App. 3d 275, 287 (1987). Instead, we will not disturb the decision unless we are "able to conclude that all reasonable and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous, and that the opposite conclusion is clearly evident." *Sheehan*, 158 Ill. App. 3d at 287. For the following reasons, the opposite conclusion is not clearly evident.

¶ 36 Plaintiff submits that Kolomay did not act in good faith but instead engaged in conduct that was "designed to crush" him due to "discrimination, prejudice and malice." He also asserts that the reprimands that he received on July 17, 2013, were fabricated and issued without an investigation into the underlying allegations. The Board of Fire Commissioners found, however, that Kolomay had "a legitimate interest in his subordinate's physical health" and that "Kolomay's intervention with [plaintiff] regarding his weight was a legitimate exercise of Chief Kolomay's authority." It also noted that plaintiff had the right to appeal those reprimands if he disagreed with them, yet he failed to do so. The Board of Trustees confirmed the Board of Fire Commissioners' decision. These findings were not against the manifest weight of the evidence, as it was not clearly evident from the record that Kolomay acted in bad faith or that the P.I.P. was malicious and discriminatory.

¶ 37 The P.I.P. was a 15-page, single-spaced document organized in five sections. Section one explained the purpose of the plan, which was to "facilitate constructive discussion between Battalion Chief Joseph Gilles and his supervisors and to clarify the work performance to be

improved." It stated that failure of any portion of the P.I.P. could result in disciplinary action, including termination.

¶ 38 Section two of the P.I.P. explained the history of plaintiff's work performance issues, including "personal appearance, hygiene, personality[,] and organizational and leadership skills." According to the P.I.P., plaintiff had "struggled with personal and professional integrity issues directly related to his personnel and peers during the five years since he was promoted to battalion chief." Certain flaws were apparent in the earlier period of plaintiff's career but were "less magnified" when he held positions with less responsibility. Although the District had devoted time and effort to training plaintiff since he became a battalion chief, his professional and personal integrity had degenerated rather than improved. The P.I.P. listed numerous deficiencies in plaintiff's performance, such as "being inconsistent due to a lack of fire-related training being conducted on his shift, censored or minimal communication throughout his shift, a questionable commitment to his shift personnel, not taking part in the fitness initiative program or training, and not setting a good example for his personnel so as to be able to lead-by-example."

¶ 39 The P.I.P. identified three "main core issues" with plaintiff's performance: (1) he lacked the management and leadership skills that were needed to lead personnel; (2) he did not garner necessary respect so as to be effective as a manager or leader; and (3) he was not trusted as a manager or leader. Section three of the P.I.P. explained each of those core issues in greater detail and expressed concerns about plaintiff's weight.

¶ 40 Section four of the P.I.P. listed 7 goals for plaintiff: (1) designing a personal agenda; (2) participating in a structured physical fitness program; (3) improving his personal and professional appearance; (4) cultivating interpersonal relationships with his personnel and

command staff to build integrity, respect, and trust; (5) building and committing to the loyalties of the organization and the people for whom he was responsible; (6) improving communication; and (7) improving conflict resolution methods. Each goal included a number of objectives for plaintiff. Section five of the P.I.P. indicated that the plan was designed for plaintiff's success and that his performance would be reviewed regularly with written progress reports generated every three months. Plaintiff was advised to direct any questions to Kolomay.

¶ 41 We determine that the Board of Fire Commissioners and the Board of Trustees were justified in rejecting plaintiff's myriad challenges to the reasonableness of the P.I.P. Plaintiff complains that the P.I.P. demanded nothing less than his "personal transformation." But if the testimony of Kolomay and his witnesses was to be believed, plaintiff needed such personal transformation. Issues such as hygiene, personal appearance, and mannerisms while dining are understandably important in the atmosphere of a fire station where people have to work and live around each other during 24-hour shifts. Plaintiff cites no authority supporting his position that a fire chief is powerless to demand that a subordinate take steps to correct personal issues that affect life at the station. Nor was it unreasonable for Kolomay to order plaintiff to take control of his weight, which at times exceeded 360 pounds.

¶ 42 Plaintiff also complains that the P.I.P. was vague and confusing. Yet, as the Board of Fire Commissioners noted, he never requested clarification of any portion of it.

¶ 43 According to plaintiff, the P.I.P. was subjective and lacked defined criteria as to how he would be judged, which could allow Kolomay to terminate him for anything. Although plaintiff's success or failure under the P.I.P. would have depended in large part on Kolomay's subjective evaluation of plaintiff's efforts and improvement, we fail to see why that rendered the order to sign it unreasonable. Every employment evaluation has a subjective component to it. If

plaintiff made sincere efforts toward complying with the P.I.P. and Kolomay nevertheless sought to have him terminated over some trivial matter, this would be a very different case. But plaintiff never attempted to comply with the P.I.P. His fear that Kolomay would not evaluate him fairly under the plan was not an excuse for refusing to comply with a clear order.

¶ 44 Plaintiff further complains that signing the P.I.P. would have required him to admit to allegations of misconduct. But he fails to direct our attention to any particular allegations of "misconduct" in the P.I.P. with which he disagreed. More important, he never voiced such concerns to Kolomay when he had multiple opportunities to discuss the P.I.P.

¶ 45 As explained over 55 years ago:

> "[T]he head of a city police or fire department must have such discretion to carry out programs of training and retraining as are necessary to maintain a high quality of public service. Though this is not an unlimited discretion, we are disinclined to disturb this type of order unless it clearly appears to have been arbitrarily exercised." *Zinser*, 28 Ill. App. 2d at 439-40.

It is apparent that courts should not interfere with the internal operations of a fire department unless there is a very good reason to do so. In the present case, the Board of Fire Commissioners and the Board of Trustees reasonably found that Kolomay did not exercise his authority over plaintiff in an arbitrary fashion.

¶ 46 (4) Evidentiary Rulings

¶ 47 Plaintiff next challenges the admission of certain business records and opinion testimony. We note at the outset that "[t]he strict rules of evidence that apply in a judicial proceeding do not apply in proceedings before an administrative agency." *McCleary*, 251 Ill. App. 3d at 993. Instead, "[t]echnical errors in the proceedings before the administrative agency or its failure to

observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him or her." 735 ILCS 5/3-111(b) (West 2016). An administrative tribunal's decision to admit or exclude evidence is reviewed under the abuse-of-discretion standard of review. *ManorCare Health Services, LLC v. Illinois Health Facilities & Services Review Board*, 2016 IL App (2d) 151214, ¶ 29. "An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or where there is an application of impermissible legal criteria." *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400, 408 (2005).

¶ 48 (A) Business Records

¶ 49 Plaintiff challenges the admission of Chief's Exhibits 42-43 and 48-50, which contained notes that Kolomay took during five meetings and interviews from August 2011 through June 2013. The notes reflect the opinions of plaintiff's co-workers—Kolomay, Bellandi, Reid, and Lieutenant Rob Schultz—regarding plaintiff's job performance. Kolomay introduced these exhibits to rebut plaintiff's retaliation defense and to show that plaintiff's performance deficiencies had been documented over the course of years. According to plaintiff, Kolomay failed to lay the proper foundation to admit these exhibits as business records. Specifically, plaintiff argues that, although Kolomay testified that he *kept* the notes in the ordinary course of business, he never explicitly said that he *made* them in the ordinary course of business. Plaintiff insists that the admission of this evidence was prejudicial to him because he was deprived of his right of cross-examination, and because the Board of Fire Commissioners expressed in its written order that Exhibits 42 and 43 were "core" to its findings.

¶ 50 Illinois Supreme Court Rule 236(a) (eff. Aug. 1, 1992) provides:

> "Any writing or record, whether in the form of any entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility. The term 'business,' as used in this rule, includes business, profession, occupation, and calling of every kind."

"The foundation necessary under Rule 236 is only that the party tendering the record demonstrates that the record was made in the regular course of business and at or near the time of the transaction." *Bayview Loan Servicing, LLC v. Szpara*, 2015 IL App (2d) 140331, ¶ 42.[1]

¶ 51 Kolomay testified that Exhibit 42 was a photograph of a whiteboard which contained his notes and thoughts during an August 2011 meeting with Nicole DiVencentis, a nurse who was in charge of the District's continuing education program for paramedics. Exhibit 43 was a photograph taken by Kolomay on August 9, 2012, of a whiteboard that was used during that day's staff meeting. According to Kolomay, that whiteboard contained his own writing but reflected input from Bellandi and Reid regarding plaintiff's weaknesses. Asked why he took the photographs of the whiteboards that became Chief's Exhibits 42 and 43, Kolomay responded:

[1] Illinois Rule of Evidence 803(6) (eff. April 26, 2012) also lists a hearsay exception for records of regularly conducted activity. That rule of evidence did not make any substantive changes to the case law interpreting Supreme Court Rule 236. *Szpara*, 2015 IL App (2d) 140331, ¶ 42, n.5.

"As a matter of record, we have note taking." He testified that it was his practice to keep notes of meetings regarding employee performance concerns in the regular course of his business as chief.

¶ 52 Kolomay further testified that Exhibits 48-50 contained his notes from his interviews with Bellandi, Reid, and Schultz, respectively, in early June 2013. Kolomay testified that these notes were the types of notes that he regularly kept in the course of his business as chief. Asked why he kept notes of his meetings in June 2013, he responded that "[i]t was going to be a matter of record for investigative purposes with the idea as to whether or not I was going to write a PIP." He used the information from those June 2013 interviews to prepare plaintiff's P.I.P.

¶ 53 Although Kolomay did not lay the foundation in the precise language of Supreme Court Rule 236(a), in light of the fact that these were administrative proceedings rather than more formal judicial proceedings, we hold that the Board of Fire Commissioners did not abuse its discretion in admitting Chief's Exhibits 42-43 and 48-50. With respect to the issue of whether exhibits 42 and 43 were made in the ordinary course of business, Kolomay asserted that "[a]s a matter of record, we have note taking." He also made it clear that all of the notes at issue were taken during the various meetings and were kept in the ordinary course of business. Although it might have been better practice for Kolomay's counsel to have elicited testimony that more closely mirrored the language of the rule, we cannot say that the Board of Fire Commissioners abused its discretion by admitting these exhibits.

¶ 54 Even if Kolomay did not lay the proper foundation to admit these notes under the business records exception to the hearsay doctrine, plaintiff has not shown prejudicial error. See *Wisam 1, Inc. v. Illinois Liquor Control Commission*, 2014 IL 116173, ¶ 46 (" '[W]here there is sufficient competent evidence to support an administrative decision, the improper admission of

hearsay testimony in the administrative proceeding is not prejudicial error.' " (quoting *Abrahamson*, 153 Ill. 2d at 94)). As explained above, there was ample competent evidence to support the administrative findings in favor of Kolomay. Additionally, the Board of Fire Commissioners detailed its numerous reasons for rejecting plaintiff's retaliation defense, most of which had nothing to do with the alleged hearsay contained in the five challenged exhibits. For example, the Board of Fire Commissioners reasoned that if Kolomay had wanted to "cover up the Medford Drive incident," he would not have assigned plaintiff to investigate the incident. The Board of Fire Commissioners also found it important that certain District employees were indeed disciplined in connection with the Medford Drive incident, that Kolomay cooperated with other agencies and relied on legal advice from the District's attorneys, and that plaintiff never asserted that the P.I.P. was retaliatory until after Kolomay initiated these disciplinary proceedings. Even if we were to disregard Chief's Exhibits 42-43 and 48-50, it is thus clear that the Board of Fire Commissioners rejected plaintiff's theory of the case by making reasonable inferences from the other evidence that was properly admitted.

¶ 55 Plaintiff mentions that the Board of Fire Commissioners indicated in its order that Chief's Exhibits 42 and 43 were "core to its findings." Although that is true, it listed 22 other exhibits that were likewise "core to its findings." The Board of Fire Commissioners also cited hundreds, if not thousands, of lines of testimony that it claimed supported its core conclusions of fact and determinations of credibility.

¶ 56 Moreover, plaintiff was not denied the right to question his co-workers about their opinions of his work performance. He cross-examined Kolomay and Schultz at length, and nothing in the record suggests that Bellandi or Reid would have been unavailable to testify had plaintiff elected to call them as witnesses. Under the circumstances, even if Kolomay did not lay

the proper foundation to admit his notes as business records, any prejudice to plaintiff did not rise to the level of requiring a new hearing.

¶ 57 (B) Opinion Testimony

¶ 58 Plaintiff next argues that the Board of Fire Commissioners admitted improper opinion testimony. He complains that Schultz was allowed to testify that plaintiff would improve his performance as a battalion chief by: improving his communication skills, creating a personal agenda, participating in a physical fitness program, improving his professional appearance, and developing interpersonal relationships with employees. Plaintiff also notes similar testimony from Hoff that working toward the goals in the P.I.P. would "definitely improve" plaintiff's performance. According to plaintiff, these were not proper lay opinions, but were "into the realm of expert testimony." To that end, he notes that neither Schultz nor Hoff were "qualified as experts in the fields of communication, physical fitness and interpersonal relationships, nor did they have any specialized knowledge on the psychological impact one's appearance has on others."

¶ 59 There was no error. Illinois Rule of Evidence 701 (eff. Jan. 1, 2011) provides: "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Schultz and Hoff both worked with plaintiff and had the opportunity to observe him, so their opinions about how he could improve his work performance were rationally based on their perceptions. They were not offering opinions that were based on any scientific, technical, or other specialized knowledge. Nor did the situation demand expert

testimony. Nevertheless, Hoff was indeed tendered to the Board of Fire Commissioners as an expert in "fire district operations and management, including employee supervision."

¶ 60 Additionally, given that plaintiff disputed whether the P.I.P. was justified, Schultz's and Hoff's opinions were helpful to the determination of that issue. Plaintiff had the opportunity to cross-examine Schultz and Hoff about the bases for their opinions. Under these circumstances, the Board of Fire Commissioners did not abuse its discretion in admitting this lay opinion testimony. See *MJ Ontario, Inc. v. Daley*, 371 Ill. App. 3d 140, 149-150 (2007) (liquor commission did not abuse its discretion by allowing lay witnesses to testify that granting the plaintiff a late-hour liquor license would have negative effects on the neighborhood).

¶ 61 (5) *Ex Parte* Communication

¶ 62 Plaintiff also argues that a due process violation occurred when Kolomay had an *ex parte* communication with Commissioner Ronald Murray. The factual context surrounding this issue is as follows. Kolomay commenced these disciplinary proceedings on September 24, 2013. On October 3, 2013, following multiple emails among various persons to set a schedule for the proceedings, Murray asked Kolomay in a private email whether this matter was "something new or ongoing," indicating that he wanted to be brought up to speed. He also asked Kolomay if "this [was] something new for all the commissioners." Kolomay sent the following response email to Murray:

> "Well you are unfortunately being indoctrinated as a new Fire Commissioner with a public hearing for a pre-existing disciplinary situation involving a battalion chief. I don't think a Fire Commission hearing for a disciplinary situation has ever happened in the history of the Fire District to answer your question. The battalion chief is an exempt rank position not subject to the collective bargaining agreement and the arbitration process as

> well[,] given his option to appeal to the Fire Commission for a hearing on the alleged charges. Unfortunately, as legal counsel has advised me, I cannot even explain the case to you due to placing undue bias upon (you) the Board. However, the Commission attorney will do a great job in providing you with the proper documents to review and a Q &A briefing. Please believe me and with your experience, that what is being done here is very justified and researched with legal and medical on our end. Up until even the last meeting with the charged individual and the FD attorney I asked to him [*sic*] to re-evaluate everything to this point and sit with the Fire Chief one last time to understand the consequences his [*sic*] choices (without his own legal counsel) – but he refused. It's crazy Ron, but we have seen many as such in our years on the job. Again, I am sorry I can't give you more."

Murray replied to Kolomay: "Interesting to say the least. Thanks for giving me as much as you can. It helps."

¶ 63 When plaintiff learned of this *ex parte* communication, he filed a motion to disqualify Murray. At a hearing on the motion, Murray represented that he had no other communications with Kolomay regarding this disciplinary matter, that he could "[a]bsolutely" be fair and impartial, and that he would "[m]ost definitely" make his determination solely based on the evidence introduced at the hearing. In light of Murray's representations, the Board of Fire Commissioners denied plaintiff's motion.

¶ 64 We presume that the administrative officers were objective and capable of judging the controversy fairly. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill. App. 3d 1023, 1040 (1988). Although *ex parte* communications with board members in their adjudicative roles are improper, an agency's decision will not be reversed absent a showing of

prejudice to the complaining party. *Waste Management of Illinois*, 175 Ill. App. 3d at 1043. Bias or prejudice is shown only where a disinterested observer might conclude that a member of the administrative body "had in some measure adjudged the facts as well as the law of the case in advance of hearing it." *Sangirardi v. Village of Stickney*, 342 Ill. App. 3d 1, 11-12 (2003).

¶ 65 After thoroughly reviewing the record, we are convinced that plaintiff did not suffer prejudice from the *ex parte* communication between Kolomay and Murray early in the course of the administrative proceedings. There is no reason to doubt that Murray was being sincere when he assured the parties that he could be impartial and judge the matter solely based on the evidence presented at the hearing. Nothing in the record supports plaintiff's assertion in his brief that Murray was Kolomay's "friend." Additionally, no member of the Board of Fire Commissioners or the Board of Trustees, including Murray, ever made any remark during these proceedings that would remotely suggest that they prejudged the facts or the law. This distinguishes the case from *Williams v. Board of Trustees of the Morton Grove Firefighters' Pension Fund*, 398 Ill. App. 3d 680, 694 (2010), where a member of the adjudicating tribunal took on a role "that was more akin to advocacy than statements of a disinterested decisionmaker."

¶ 66 Plaintiff grasps at straws to find three instances of Murray purportedly exhibiting bias. Plaintiff notes that Murray at one point asked the following question: "If his [plaintiff's] pay ends on November 8th and we're not meeting until December 2nd, what happens between that time?" According to plaintiff, "Murray was concerned about Gilles getting paid when he should not have been." We disagree that this remark showed bias. Murray asked this question after the parties had debated whether plaintiff should receive compensation during the pendency of the administrative proceedings. Considered in context, the question was appropriate.

¶ 67 Plaintiff also mentions that "[o]n May 15, 2014, Commissioner Murray was quick to remember testimony from many months before in order to limit Gilles' cross-examination." Again, there was no impropriety. Plaintiff testified in Kolomay's case-in-chief and again in his own case-in-chief. When plaintiff's counsel asked him a certain question during his own case-in-chief, Kolomay's counsel objected that the question had been asked and answered on February 13th. The Board of Fire Commissioner's attorney asked the Commissioners whether it would be of assistance to them to have the question answered, or whether they remembered the answer from the prior testimony. Murray responded: "I believe I remember." We see no prejudice in this statement. If anything, it showed that Murray was listening closely to the evidence.

¶ 68 Plaintiff finally asserts that "[o]n January 3, 2014, it was Commissioner Murray who wanted to go into executive session after his own attorney recommended that certain documents should be produced over Kolomay's objection." Plaintiff does not attempt to explain how this amounted to bias, and we cannot fathom how it would.

¶ 69 For these reasons, although the *ex parte* communication between Kolomay and Murray was inappropriate, there was no prejudice to plaintiff that would justify ordering a new hearing.

¶ 70 (6) "Prosecutorial Misconduct"

¶ 71 Plaintiff next argues that there were three additional due process violations at the administrative hearing resulting from what he calls "prosecutorial misconduct": Kolomay's counsel wrongfully accused plaintiff and his attorneys of violating the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d *et seq.* (2012)); Kolomay did not produce all documents relating to the July 2013 reprimands; and Kolomay did not produce certain other documents after the Board of Fire Commissioners directed production.

¶ 72 The discussion of HIPAA violations arose during the discovery process when Kolomay questioned how plaintiff had obtained documents containing the protected health information of another person. The Board of Fire Commissioner's attorney admonished the Commissioners that there was no evidence of a HIPAA violation, and the dispute between the parties was ultimately settled with the entry of an agreed protective order. There was no prejudice to plaintiff.

¶ 73 Nor did plaintiff suffer prejudice from any failure on the part of Kolomay to produce e-mails relevant to the reprimands. Indeed, plaintiff acknowledges in his brief that he "had these emails and was able to use them in his defense."

¶ 74 With respect to plaintiff's third contention, Kolomay submitted to the Board of Fire Commissioner's attorney 80 pages of documents that he claimed were privileged. Following an *in camera* review, the Board of Fire Commissioner's attorney determined that 14 of those pages were not privileged. When Kolomay nevertheless refused to produce 6 of those 14 pages, plaintiff filed a motion to dismiss the complaint. The Board of Fire Commissioner's attorney recommended denying plaintiff's motion to dismiss. As part of his reasoning, he explained that the 6 pages at issue were not relevant to plaintiff's defenses. The Board of Fire Commissioners adopted its attorney's recommendation.

¶ 75 We have reviewed the 6 pages that Kolomay refused to produce, as they were sealed and included as part of the record on appeal. Four of those pages are a September 2012 performance investigation summary relating to one of the employees who was involved in the Medford Drive incident. The document does not specifically discuss the Medford Drive incident, but rather presents an overall assessment of the employee's skills. There is also a cover sheet indicating that this performance investigation summary was sent to Kolomay's attorneys, with a copy to deputy chief Hoff and chief administrative officer Perry Johnson. The last page is an e-mail

exchange on June 6 and 7, 2013, between Kolomay and one of his attorneys relating to granting leave time to that same employee.

¶ 76 We hold that Kolomay's failure to produce these materials did not deprive plaintiff of a fair hearing. The parties do not address the issue of whether these materials were actually privileged. Assuming that they were not privileged, they were marginally relevant, if at all, to these proceedings. They would not have assisted plaintiff in presenting his retaliation defense. Accordingly, plaintiff suffered no prejudice.

¶ 77 (7) Reasonableness of Termination

¶ 78 Plaintiff submits that discharge was unreasonable and too severe a disciplinary measure in light of the numerous errors that occurred during the administrative proceedings. Having rejected all of plaintiff's arguments regarding the alleged errors, we need not detain ourselves for long. "[W]ith respect to judicial review of an administrative decision involving discipline of public employees, it is well settled that a reviewing court can not substitute its judgment for that of an administrative agency if the charges are not arbitrary or unreasonable, the evidence sustains the charges and the decision of the agency is related to the requirements of service." *Griggs*, 216 Ill. App. 3d at 383. An administrative agency is accorded discretion to determine whether there is cause for discipline, and we review that decision with substantial deference. *Griggs*, 216 Ill. App. 3d at 383. Disobedience of a proper order from a superior officer within a fire department is cause for discharge. *Nelmark*, 159 Ill. App. 3d at 759.

¶ 79 Kolomay's order for plaintiff to sign the P.I.P. was not arbitrary, unreasonable, or unrelated to the requirements of plaintiff's service. During the aggravation/mitigation portion of the administrative hearing, Kolomay explained that plaintiff's misconduct had a negative impact on other employees. Kolomay also testified that he could not rely on plaintiff and that the issues

identified in plaintiff's P.I.P. had not been resolved. Thus, the totality of the circumstances justified the decision to terminate plaintiff's employment.

¶ 80 (8) Re-filing Tort Claims

¶ 81 Finally, plaintiff argues that the trial court abused its discretion when it refused to allow him to re-file his tort claims upon the denial of his complaint for administrative review.

¶ 82 Plaintiff filed his original complaint for administrative review on February 13, 2015. On January 8, 2016, he was granted leave by agreement of the parties to file an amended complaint adding claims for retaliatory discharge, conspiracy, and violations of the Whistleblower Act. The defendants moved to dismiss the tort claims pursuant to section 619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)). The trial court dismissed those claims without prejudice, "pending the outcome of the underlying administrative review." The court explained that the tort claims were "separate and apart from * * * the administrative record," and that it was "premature to bring those actions or those allegations in the separate counts." According to the court, "there has to be an orderly progression to this case, and that progression requires the Court to determine the discharge itself and whether it's supported by the record."

¶ 83 On October 27, 2016, the court ruled on the administrative review count and upheld the Board of Trustee's decision. Plaintiff's counsel then indicated that he intended to re-file the tort claims and asked for a status date. The court responded:

> "Not in this proceeding. You may refile them in another proceeding, but the only thing that is before me is the administrative law. If you want to file them in, again, you may do so, but it is not in this case."

Plaintiff argues on appeal that the court's decision on October 27 was improper, because "[i]f the court did not want the additional counts to be filed as part of the Complaint in Administrative

Review, it should not have granted Gilles leave to do so." He submits that, because the court permitted him to file the tort counts, "due process and the fundamental principles of fairness and justice require that said counts be given appropriate attention by the Court." He fears that if he were to re-file the tort claims in a different proceeding, he might "come under attack for not bringing the additional counts in administrative review."

¶ 84 We find plaintiff's argument to be forfeited due to his failure to cite pertinent authority and present a cogent analysis. The only case that he cites is *Zurich Insurance Company v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591 (1991), which involved an interlocutory appeal from the denial of a motion to stay a cause of action due to the "automatic stay" provisions of the Bankruptcy Code. Plaintiff quotes boilerplate language from *Zurich* detailing the abuse of discretion standard of review. This is perplexing, given that plaintiff asserts in the header of this section of his brief (without citing any authority) that the *de novo* standard of review applies. Plaintiff notably fails to cite authority supporting his assertion that the trial court was obligated to allow him to re-file his tort claims under this particular case number. Nor does plaintiff articulate any prejudice, apart from speculating that he might in the future "come under attack" on some unspecified grounds if he re-files the claims. We decline to consider plaintiff's undeveloped and unsupported argument. See Ill. S. Ct. R. 341(h)(7) (an appellant's brief must contain "the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on"); *Hall*, 2012 IL App (2d) 111151, ¶ 12 ("Mere contentions, without argument or citation to authority, do not merit consideration on appeal.").

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated, we affirm the order of the Circuit Court of Du Page County upholding the decision of the Board of Trustees of the Carol Stream Fire Protection District.

¶ 87 Affirmed.