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2015 IL App (3d) 140015-U

Order filed April 7, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

MICHAEL SPAH,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit
Plaintiff-Appellant,)	Henry County, Illinois,
)	
v.)	Appeal No. 3-14-0015
)	Circuit No. 06-MR-71
)	
CITY OF COLONA,)	Honorable
)	Thomas C. Berglund
Defendant-Appellee.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly granted defendant's motion to dismiss for lack of jurisdiction plaintiff's section 2-1401 petition challenging the validity of the police commission board that terminated plaintiff's employment as a police officer.

¶ 2 Plaintiff Michael Spah sought to vacate the trial court's dismissal of his complaint for administrative review, alleging that the makeup of the police board that terminated his employment as a police officer was improper. After vacating the dismissal, the trial court granted a motion to reconsider filed by defendant City of Colona, and reinstated the dismissal order. Spah appealed. We affirm.

¶ 3

FACTS

¶ 4

Plaintiff Michael Spah was discharged from his position as a police officer for defendant City of Colona in 2004 by the City of Colona Board of Police Commissioners. Spah filed a complaint for administrative review and the trial court remanded the case, finding that the Board had considered improper hearsay. Hearings took place and the Board issued a decision again terminating Spah. He filed a complaint for administrative review, challenging the discharge determination. The City moved to dismiss on the basis that Spah failed to name the Board, the chief of police, and the Colona police department as defendants as mandated by statute. See 735 ILCS 5/3-107(a) (West 2006). The trial court granted the City's motion to dismiss in February 2007.

¶ 5

In October 2008, Spah filed a motion to vacate the judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)). In his motion, Spah argued that he had discovered two members of the Board were also members of the zoning board of appeals at the time he was discharged and that the zoning board members were prohibited from also serving on the police board. See 65 ILCS 5/10-2.1-3 (West 2006); City of Colona Municipal Ordinance No. 12-01, § 2-2-2(B) (adopted Aug. 13, 2001). Colona moved to dismiss Spah's motion to vacate. The trial court granted Colona's motion and dismissed Spah's motion to vacate. Spah moved to reconsider and the trial court granted his motion in March 2010, stating it had acted prematurely in granting Colona's motion to dismiss. Colona filed a motion to reconsider, and following arguments, the trial court granted Colona's motion to reconsider the trial court's grant of Spah's motion to vacate the dismissal order, thereby upholding its earlier dismissal of Spah's motion to vacate. Spah appealed.

¶ 6

ANALYSIS

¶ 7 The issue on appeal is whether the trial court properly dismissed Spah's motion to vacate the trial court's earlier dismissal of his complaint for administrative review. Spah acknowledges on appeal that a section 2-1401 petition is not an appropriate means to challenge an administrative order but argues that the Board's order of discharge must be vacated as void, and that its validity as a void order may be raised at any time.

¶ 8 Section 2-1401 of the Civil Code provides a means where final judgments may be vacated more than 30 days after entry. 735 ILCS 5/2-1401 (West 2006); *Krain v. Illinois Department of Professional Regulation*, 295 Ill. App. 3d 577, 579-80 (1998). A section 2-1401 petition is not a proper means to challenge an administrative decision. *Krain*, 295 Ill. App. 3d at 580. The Administrative Review Law (ARL) is the sole and exclusive means to seek judicial review of an administrative decision. *Rodriguez v. DuPage County Sheriff's Merit Comm'n*, 328 Ill. App. 3d 899, 902 (2002). Other statutory, equitable or common law vehicles for review are prohibited. *Rodriguez*, 328 Ill. App. 3d at 903.

¶ 9 The ARL requires that all parties of record before the administrative agency be named defendants in the administrative review action. *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees of St. Clair County*, 218 Ill. 2d 175, 183 (2006). Noncompliance with the joinder requirements requires dismissal of the complaint. *Collinsville Community Unit School District No. 10*, 218 Ill. 2d at 183. The failure of a party to object to insufficient joinder does not operate as a waiver of the statutory requirements or relieve the complaining party from complying with the statute. *Cuny v. Annunzio*, 411 Ill. 613, 617 (1952). Issues of law are reviewed *de novo*. *Brennan v. Kadner*, 351 Ill. App. 3d 963, 967 (2004).

¶ 10 In his complaint for administrative review, Spah named only the City of Colona as defendant. He failed to name the other parties to the administrative action, namely, the Board of Police Commissioners and the police department. Dismissal is the proper remedy for failure to strictly comply with the statutory requirements. Moreover, administrative decisions are subject to review only under the Administrative Review Law; a 2-1401 motion is not an available means for review.

¶ 11 Spah admits that a section 2-1401 motion is not the proper vehicle to challenge the Board's decision but submits that the improper makeup of the Board makes its discharge order void and allows him to raise the issue at any time. Spah argues that this court should *sua sponte* consider that the Board exceeded its authority in issuing an order because it was made up of two improper members. He asserts that two members were on the Board in violation of local ordinance and state statute that prohibit officers from serving on two boards. The two police board members in question also served on the Colona Zoning Board of Appeals at the time Spah was discharged.

¶ 12 Regardless of the propriety of the Board's makeup, Spah still lacks any mechanism for administrative review due to his failure to name all defendants. Based on this procedural defect in Spah's complaint, we find the trial court properly granted Colona's motion to reconsider the trial court's grant of Spah's motion to reconsider the trial court's dismissal of Spah's motion to vacate the trial court's order dismissing his complaint for administrative review.

¶ 13 For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 14 Affirmed.