2013 IL App (5th) 120423-U

NO. 5-12-0423

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

QUICK STOP FOOD SHOP, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 12-MR-192
	)	
THE VILLAGE OF CAHOKIA and GARY CORNWELL, as Mayor and Liquor Control Commissioner,	)	Honorable
	)	Stephen P. McGlynn,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Spomer and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: Where Quick Stop Food Shop, Inc., failed to exhaust administrative remedies prior to seeking judicial review, the trial court lacked subject matter jurisdiction to hear the case, and dismissal of the complaint was correct.

¶ 2 FACTS

¶ 3 Quick Stop Food Shop, Inc., operates a convenience store in Cahokia, Illinois. The store opened in 2004. Since opening, the store has sold alcohol, pursuant to a liquor license issued annually by the Village of Cahokia and the State of Illinois. The last liquor license was issued on May 16, 2011, and was not due to expire until June 30, 2012.

¶ 4 Without any prior notification, Cahokia's mayor, Gary Cornwell, accompanied by several village police officers, went to the Quick Stop Food Shop (Quick Stop) on March 1, 2012, and confiscated the store's liquor license. After revoking the liquor license, Mayor Cornwell ordered Quick Stop and its owner, Omar Hamdan, to immediately discontinue

alcohol sales. A letter dated March 1, 2012, from Mayor Cornwell to Hamdan was delivered at the time of the confiscation of his liquor license. The letter stated:

> "Upon my recent review of all liquor licenses, it has come to my attention that the lot line of your store at 995 Range Lane, is within 100 feet of the lot line of the Cahokia High School premises. This is a violation of State Law and the Village of Cahokia Ordinances. You are to stop selling alcohol immediately."

The letter contains no reference to the specific laws or ordinances violated. Also, the letter omits any reference to a public hearing on the matter and/or appeal rights.

¶ 5 After the liquor license was revoked, Quick Stop Food Shop, Inc., filed a complaint in St. Clair County circuit court seeking a writ of *mandamus* ordering the Village of Cahokia and Mayor Cornwell to reinstate the license. Quick Stop alleged that seizure of its license violated its due process rights. In support, Quick Stop cited to section 7-5 of the Liquor Control Act of 1934, which provided a three-day written notification period before a license could be revoked. 235 ILCS 5/7-5 (West 2010). The complaint also sought federal damages for an alleged civil rights violation. The defendants removed the case to federal court. Quick Stop filed a first amended complaint which did not include the federal claim, and the case was remanded to St. Clair County circuit court. The defendants filed a motion to dismiss the first amended complaint arguing that Quick Stop failed to exhaust all available administrative remedies prior to filing the civil complaint. The trial court granted the defendants' motion on September 4, 2012. From this order, Quick Stop appeals.

¶ 6 LAW AND ANALYSIS

¶ 7 If the trial court is asked to rule on a motion to dismiss a case for failure to state a cause of action pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)), the court must determine whether the complaint sets forth sufficient facts that, if established, could entitle the plaintiff to relief. *Doyle v. Holy Cross Hospital*, 186 Ill. 2d

104, 109-10, 708 N.E.2d 1140, 1144 (1999). The trial court must accept all well-pleaded facts in the complaint as true and draw reasonable inferences from those facts that are favorable to the plaintiff. *Id.* Our review on appeal is *de novo* because the trial court did not judge any witness's credibility or weigh facts. *In re Estate of Mayfield*, 288 Ill. App. 3d 534, 542, 680 N.E.2d 784, 789 (1997).

¶ 8 In Illinois, the administration of liquor licenses is regulated by the Illinois Liquor Control Act of 1934 (Act). 235 ILCS 5/1-1 to 12-4 (West 2010). "The mayor or president of the board of trustees of each *** village *** shall be the local liquor control commissioner *** and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted ***." 235 ILCS 5/4-2 (West 2010). If a store is within 100 feet of a school, then retail sale of alcoholic liquor is not allowed. 235 ILCS 5/6-11(a) (West 2010); Village of Cahokia Code of Ordinances § 113.18. The ability to revoke or suspend a liquor license is addressed in section 7-5 of the Act, which states as follows:

> "The local liquor control commissioner may revoke or suspend any license issued by him if he determines that the licensee has violated any of the provisions of this Act or of any valid ordinance ***. ***
>
> However, no such license shall be so revoked or suspended and no licensee shall be fined except after a public hearing by the local liquor control commissioner with a 3 day written notice to the licensee affording the licensee an opportunity to appear and defend." 235 ILCS 5/7-5 (West 2010).

The administrative regulations set out the procedure to be followed upon revocation of a liquor license. If a local liquor control commissioner revokes a liquor license, the licensee "may, within 20 days after notice of such order or action, *** appeal[ ] *** to the State Commission." 235 ILCS 5/7-9 (West 2010). Upon appeal, the Illinois Liquor Control

Commission (State Commission) must review the propriety of the action of the local liquor control commissioner and determine whether he proceeded according to applicable law, whether the order is supported by specific findings, and whether those findings are supported by substantial evidence. *Id.* After the State Commission makes its decision, the petitioner can only seek judicial review after he asks the State Commission for a rehearing. 235 ILCS 5/7-10 (West 2010). Only final decisions of the State Commission are subject to judicial review in accordance with provisions of the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2010)). 235 ILCS 5/7-11 (West 2010).

¶ 9 Generally, if an administrative agency is involved in a proceeding, a party must exhaust all administrative remedies before being allowed to seek relief in the courts. *Newkirk v. Bigard*, 109 Ill. 2d 28, 35, 485 N.E.2d 321, 324 (1985).

¶ 10 Quick Shop argues that there is an exception to this general rule if the "agency rule or order is being challenged on its face as not being authorized by statute." *Newkirk*, 109 Ill. 2d at 35, 485 N.E.2d at 324. Quick Shop contends that any order entered by an entity without the power to enter the order is considered to be void *ab initio*. *City of Chicago v. Fair Employment Practices Comm'n*, 65 Ill. 2d 108, 112, 357 N.E.2d 1154, 1155 (1976). In further support, Quick Shop cites to a case from this court, *Harris v. Regional Board of School Trustees of Union Co.*, 82 Ill. App. 3d 710, 403 N.E.2d 33 (1980)–a case which allowed judicial review even though administrative remedies had not been exhausted.

¶ 11 In *Harris*, there were two school districts required to hold hearings regarding a citizen petition to detach a portion of one school district and attach that portion to a second district–a change of school district boundaries. *Harris*, 82 Ill. App. 3d at 711-13, 403 N.E.2d at 34-36. Only one school district had held the mandatory hearing. *Id.* We held that seeking a writ of *mandamus* in the trial court was necessary because without the other district holding the mandatory hearing, there was nothing that could be reviewed administratively. *Harris*, 82

Ill. App. 3d at 713, 403 N.E.2d at 36. Therefore, the only available relief was in the judicial system. *Id.* The defendants distinguish *Harris* factually and because it did not involve the Liquor Control Act.

¶ 12 The defendants claim that the other cases cited as authority by Quik Shop are also distinguishable. Both cases hold that there is an exception to the rule that administrative review must be exhausted before a plaintiff can seek relief in the courts. That exception allows the plaintiff to directly seek review in the judicial system if the "agency rule or order is being challenged on its face as not being authorized by statute." *Newkirk*, 109 Ill. 2d at 35, 485 N.E.2d at 324; see also *City of Chicago*, 65 Ill. 2d at 112, 357 N.E.2d at 1155.

¶ 13 In *Newkirk v. Bigard*, the parties sought an order from the state mining board which would integrate all interests in a tract of land so that oil and gas drilling operations could begin. *Newkirk*, 109 Ill. 2d at 31-32, 485 N.E.2d at 322. The resulting mining board order erroneously omitted certain statutory provisions. *Newkirk*, 109 Ill. 2d at 36, 485 N.E.2d at 324. Omitted from the mining board order were election provisions (time and manner in which a petitioner could participate in the oil and gas process) and equitable alternatives for the property owners should they elect not to participate in the risk and cost of the drilling operations. *Id.* The court agreed that the omissions in the mining board's order left the order subject to challenge, but held that the mining board still maintained the authority to issue the order despite its omissions. *Id.* "An agency's jurisdiction or authority is not lost merely because its order may be erroneous." *Id.* at 37-38, 485 N.E.2d at 325 (citing *Illini Coach Co. v. Illinois Commerce Comm'n*, 408 Ill. 104, 110, 96 N.E.2d 518, 521 (1951)). The error of the mining board simply left the order voidable–not automatically void. *Id.* at 38, 485 N.E.2d at 325. In disagreeing with the plaintiff's argument, the court stated that if it accepted the theory which sought to have the mining board's order declared void, that "argument would allow a collateral attack on an order whenever the agency has failed to follow the

exact letter of a statutory provision." *Id.* at 39, 485 N.E.2d at 326.

¶ 14 The case of *City of Chicago v. Fair Employment Practices Comm'n*, involved a sex discrimination claim. *City of Chicago*, 65 Ill. 2d at 111-12, 357 N.E.2d at 1155. Although the plaintiff in this case did not exhaust administrative reviews, the court found that judicial review was appropriate because the Illinois Fair Employment Practices Commission exceeded its jurisdiction. *Id.* The Commission impermissibly entered an order directing the employer to pay the worker's attorney fees related to the sex discrimination claim. *Id.* The court likened the Commission's order to a case where a trial court lacked the inherent power to make a specific order. *Id.* at 112, 357 N.E.2d at 1155. If the court exceeds its jurisdiction, the resulting judgment or order is void. *Id.* The agency was powerless to award attorney fees, as its powers "are strictly confined to those granted in their enabling statutes." *Id.* at 113, 115, 357 N.E.2d at 1155, 1156. Consequently, because the Commission lacked the authority to award attorney fees, its order was void and was subject to collateral attack in the judicial system. *Id.* at 115, 357 N.E.2d at 1156.

¶ 15 *Newkirk* stands for the proposition that a mere error on the part of the administrative agency or entity does not render the entire order void. Therefore, use of the judicial system to address the error before exhaustion of administrative remedies is improper. In this case, Mayor Cornwall erred in not providing the advance notice of the alleged violation of the state and local liquor laws. The order revoking the liquor license is voidable for lack of proper notice–but is not void *ab initio* as argued by Quick Stop. *Newkirk* does not support Quick Stop's argument that it can bypass further administrative review. In *City of Chicago*, the administrative order at issue went beyond the statutory authority of the applicable agency, and was thus subject to attack directly in the judicial system. While the order in this case was entered without advance notification, the underlying power to revoke a liquor license was not at issue. Further review of this matter should have been undertaken pursuant to

administrative procedures. Appeal to the State Commission was the proper procedure for review of Quick Stop's license revocation. 235 ILCS 5/7-9 (West 2010).

¶ 16 The defendants argue that the case of *Cypress Lounge v. Town of Cicero* is controlling. We agree. In that case, a local liquor control commission decided not to renew the liquor license previously issued to Cypress Lounge. *Cypress Lounge v. Town of Cicero*, 165 Ill. App. 3d 867, 867-68, 520 N.E.2d 790, 790-91 (1987). The Town of Cicero invited Cypress Lounge to apply for a liquor license classification that would allow liquor sales until 2 a.m. *Id.* at 868, 520 N.E.2d at 791. Cypress Lounge desired a license classification that allowed liquor sales until 6 a.m. *Id.* Cypress Lounge filed suit against the Town of Cicero seeking a temporary restraining order asking to maintain the status of its liquor license and to afford it with a hearing. *Id.* The trial court granted the motion and entered its order compelling the Town of Cicero to afford Cypress Lounge a hearing. *Id.* The Town of Cicero successfully sought to have the order stayed in order to appeal that decision. *Id.* On appeal, Cicero argued that the trial court lacked subject matter jurisdiction to grant Cypress Lounge's motion because Cypress Lounge failed to exhaust administrative remedies as required by the Liquor Control Act before seeking review in the circuit court. *Id.* The appellate court concluded that since Cypress Lounge was not attacking the validity of the local liquor commission's rules, instead attacking its application, that the trial court lacked jurisdiction to hear Cypress Lounge's claim. *Id.* at 868-69, 520 N.E.2d at 792. The court concluded that there was no authority allowing it to supersede the rule that Cypress Lounge was required to exhaust administrative remedies prior to seeking review in the court system. *Id.* at 869, 520 N.E.2d at 792.

¶ 17 By not appealing the liquor license revocation, Quick Stop failed to exhaust all applicable administrative remedies under the Liquor Control Act prior to seeking judicial review. Consequently, the trial court lacked subject matter jurisdiction to hear the case and

correctly dismissed Quick Stop's amended complaint.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 20 Affirmed.