

2024 IL App (1st) 230917-U

No. 1-23-0917

Order filed March 29, 2024

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LAVELLE DELANEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 23 L 756
)	
CITY OF CHICAGO,)	Honorable
)	Moira S. Johnson
Defendant-Appellee.)	Judge, presiding

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Van Tine concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's judgment dismissing plaintiff's complaint with prejudice for lack of subject matter jurisdiction where plaintiff did not exhaust his administrative remedies.

¶ 2 Plaintiff Lavelle Delaney appeals *pro se* from an order of the circuit court dismissing his *pro se* complaint against defendant, the City of Chicago (City), with prejudice due to a lack of subject matter jurisdiction because plaintiff did not exhaust administrative remedies. We affirm.

¶ 3 The record on appeal does not contain reports of proceedings. The following facts are gleaned from the common law record, which contains, *inter alia*, plaintiff's *pro se* amended complaint for employment discrimination and retaliation, the City's motion to dismiss, and the circuit court's order dismissing the case with prejudice.

¶ 4 Plaintiff was a truck driver employed by the City's Streets and Sanitation Department. According to his amended complaint, in 2016, a coworker spread a rumor that plaintiff was gay, and subsequently plaintiff experienced discrimination including homophobic slurs and denial of overtime. After plaintiff spoke with his supervisor, who "laughed at the issue," plaintiff filed a complaint with the department of human resources in 2017. Afterwards, he began receiving undesirable work assignments and faulty equipment, and was bullied by colleagues. In March 2018, plaintiff filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC), after which plaintiff continued to receive poor treatment from colleagues and supervisors. In July 2020, plaintiff filed a charge of discrimination with the Illinois Department of Human Rights (IDHR).

¶ 5 On August 14, 2020, plaintiff signed voluntary withdrawal request forms with the IDHR, asserting that he wished to withdraw his charges and had reached a settlement with the City. On August 28, 2020, the IDHR entered orders of closure approving plaintiff's request to withdraw his charges, which also terminated the EEOC's processing of the charge.

¶ 6 On February 25, 2021, plaintiff filed a one-page complaint in the circuit court, case number 21 L 2115, alleging workplace harassment in retaliation for his having filed a discrimination charge

with the EEOC.¹ He also claimed that he was denied the right to “be at home” with his ill wife, and was treated unfairly by being required to work overtime. Plaintiff initially named “James Szewczyu [sic]” as sole defendant.² Szewczyk filed a motion to dismiss plaintiff’s initial complaint, which the court granted without prejudice on May 4, 2021. Plaintiff filed his first amended complaint on May 25, 2021, alleging gender discrimination and retaliation. He named the City and Szewczyk as defendants. The court granted defendant Szewczyk’s motion to dismiss on November 18, 2021, which was the basis for the appeal in appellate case number 1-21-1582.

¶ 7 Plaintiff filed several motions during the pendency of case number 21 L 2115, including motions for a substitution of judge and to consolidate the case with an identical action against the City, case number 21 L 9860.³ The circuit court dismissed plaintiff’s amended complaint without prejudice without ruling on the motions. Plaintiff then filed four timely motions directed against the dismissal order, including motions “to reinstate,” “to vacate,” “to alter or amend” the judgment, and “to set aside.”

¶ 8 While those motions were pending, plaintiff appealed from the order dismissing his amended complaint. We dismissed for lack of jurisdiction because the dismissal order was not final and appealable. See *Delaney v. City of Chicago*, No. 1-21-1582 (July 18, 2022) (disposition order). We noted that the trial court did not rule on the motions for a substitution of judge and to consolidate prior to dismissing the complaint without prejudice, and a dismissal without prejudice is not a final and appealable order under Rule 303(a)(1). We further noted that the trial court had

¹ This complaint is included in the record for plaintiff’s appeal from the dismissal of his amended complaint in case number 21 L 2115 (appeal No. 1-21-1582). See *Auto-Owners Insurance Co. v. Konow*, 2016 IL App (2d) 150860, ¶ 7 (appellate court may take judicial notice of its own records).

² A later filing establishes that Szewczyk was plaintiff’s foreman in his department.

³ The circuit court ultimately dismissed case number 21 L 9860 as duplicative litigation.

not ruled on plaintiff's four (timely) posttrial motions directed against the dismissal order, and so plaintiff's notice of appeal was not effective under Illinois Supreme Court Rule 303(a) (eff. July 1, 2017).

¶ 9 On remand, the case was renumbered to 23 L 756. Plaintiff filed a second amended complaint against the City on November 14, 2022, alleging gender discrimination and retaliation in violation of the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq* (West 2022)), citing sections 2-102(A) and 6-101(A) of the Act (775 ILCS 5/2-102(A) (West 2022); 775 ILCS 5/6-101(A) (West 2022)).

¶ 10 On April 3, 2023, the City filed a motion to strike and dismiss plaintiff's second amended complaint pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2022)). The City argued that plaintiff failed to exhaust his administrative remedies under the Act prior to filing his court action, because he voluntarily withdrew his IDHR charges and did not receive a "right to sue" notice. The City thus contended that the circuit court lacked jurisdiction over plaintiff's claims.

¶ 11 On April 25, 2023, the court granted the City's motion to dismiss plaintiff's complaint with prejudice, finding that it lacked subject matter jurisdiction.

¶ 12 On April 28, 2023, plaintiff filed a motion directed at the circuit court's order, arguing that the court failed to address certain motions, including his motion seeking a substitution of judge, motion "for continue," and motion to consolidate. Plaintiff argued that the court violated his civil and constitutional rights, and he did "not understand," "accept," or "consent" to the court's April 25, 2023, order. On May 2, 2023, the court ordered plaintiff's April 28, 2023, motion to address

the prior filed motions be stricken as moot.⁴ Plaintiff appealed the dismissal with prejudice of his amended complaint and the order striking his motion to address the prior motions as moot.

¶ 13 On appeal, plaintiff contends that the circuit court “disregard[ed]” this court’s “directives” in dismissing the case. Plaintiff argues that because the circuit court initially dismissed his case without addressing his motion for substitution of judge and motion to consolidate, the appellate court remanded “signifying the trial court’s apparent oversight of pivotal motions.” Plaintiff also argues that the court erroneously altered the case number “and records misrepresented the date of [plaintiff’s] filing his motion for substitution of judge,” and that the City “has falsified the records sent over to the appeals court” and failed to “honor” the appellate court’s order.

¶ 14 First, we note that plaintiff’s brief fails to comply with the requirements of Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020), which governs the content of appellate briefs. For example, his brief does not contain a statement of facts necessary to understanding the case, stated accurately and fairly without argument or comment, and with appropriate reference to the relevant pages in the appellate record. See Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020). Nor does it contain an argument section containing his contentions “and the reasons therefor” with citations to the record and legal authority supporting his claims. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). Plaintiff’s brief provides no citations to the record, and he does not articulate a legal argument which would allow a meaningful review of his claims.

¶ 15 A reviewing court is entitled to briefs that present an organized and coherent legal argument in accordance with the supreme court rules. *Twardowski v. Holiday Hospitality*

⁴ On May 10, 2023, plaintiff filed another motion requesting the court address the motions which were outlined in this court’s prior order on appeal. The record does not contain any ruling on this motion.

Franchising, Inc., 321 Ill. App. 3d 509, 511 (2001). A party's status as a *pro se* litigant does not relieve him of the obligation to comply with the applicable appellate practice rules. *Fryzel v. Miller*, 2014 IL App (1st) 120597, ¶ 26. The supreme court rules are not suggestions, and we may strike a brief or dismiss an appeal where the appellant's brief does not comply with Rule 341's requirements. *Epstein v. Davis*, 2017 IL App (1st) 170605, ¶ 22. In this case, however, we have the benefit of a cogent appellee's brief, and therefore decline to dismiss the appeal on this basis. See *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 14 (reviewing merits of the appeal despite appellant's numerous violations of Supreme Court Rule 341(h)).

¶ 16 The circuit court dismissed plaintiff's complaint pursuant to section 2-619(a)(1) of the Code (735 ILCS 5/2-619(a)(1) (West 2022)), which permits dismissal of an action where the court lacks subject matter jurisdiction. We review *de novo* the circuit court's dismissal of the complaint under section 2-619 of the Code. *Pinkston v. City of Chicago*, 2023 IL 128575, ¶ 22.

¶ 17 The Act's purpose is "to secure for all individuals in Illinois freedom from unlawful discrimination in connection with employment." *Blount v. Stroud*, 232 Ill. 2d 302, 309 (2009). To that end, it created the IDHR and Illinois Human Rights Commission (IHRC), respectively, to investigate charges brought by aggrieved parties claiming civil rights violations, and to review IDHR decisions and adjudicate civil rights complaints. *Id.* The Act sets forth "comprehensive administrative procedures governing the disposition of alleged civil rights violations." *Id.* Notably, the Act did not expressly authorize private suits and established that no Illinois court will have

jurisdiction over the subject of an alleged civil rights violation other than as established by the Act. *Blount*, 232 Ill. 2d at 310; 775 ILCS 5/8-111(D) (West 2020).⁵

¶ 18 Plaintiff brought his discrimination and retaliation claims under sections 2-102(A) and 6-101(A) of the Act, respectively. Under Article 2 of the Act, it is a civil rights violation for an employer to engage in harassment, as defined by the Act as “any unwelcome conduct on the basis of an individual’s *** sex [or] *** sexual orientation *** that has the purpose or effect of substantially interfering with the individual’s work performance or creating an intimidating, hostile, or offensive working environment.” 775 ILCS 5/2-102(A) (West 2020); 775 ILCS 5/2-101(E-1) (West 2020). Under Article 6 of the Act, it is a civil rights violation to retaliate against a person “because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful harassment in employment” under Article 2. 775 ILCS 5/6-101(A) (West 2020).

¶ 19 Article 7A of the Act describes the procedures for filing claims under Articles 2 and 6: a complainant must file a charge with the IDHR within 300 days of the alleged violation. See 775 ILCS 5/7A-102(A)(1) (West 2020).⁶ The IDHR shall then conduct its investigation to determine whether substantial evidence exists to sustain the claim. 775 ILCS 5/7A-102(D)(2) (West 2020). If the IDHR determines that no substantial evidence exists, a plaintiff may either seek review with the IHRC or commence a civil action in the appropriate circuit court within 90 days after receipt

⁵ An exception to this rule applies to claims brought under section 7B-102(F), which relate to civil rights violations in real estate transactions (775 ILCS 5/3-101 *et seq.* (West 2020)), where an aggrieved party may elect to have the claims decided in a civil action in the circuit court. 775 ILCS 5/8B-102(A) (West 2020). The exception is not applicable here.

⁶ Prior to August 2007, the Act provided the IHRC with exclusive jurisdiction to adjudicate claims regarding civil rights violations. See *Saunders v. Orbitz Worldwide, LLC*, 2023 IL App (1st) 221018, ¶ 33. The statute now establishes that after filing a charge under the Act, the plaintiff may submit a written request to the Director of the IDHR to opt out of the investigation and commence a civil suit in the circuit court. See *id.*; 775 ILCS 5/7A-102(C-1) (West 2020). The record contains no evidence that plaintiff submitted any such request nor does he claim such.

of the notice of dismissal. 775 ILCS 5/7A-102(D)(3) (West 2020). Similar procedures exist if the Department determines substantial evidence exists to sustain the claim. 775 ILCS 5/7A-102(D)(4) (West 2020).

¶ 20 A court only exercises subject-matter jurisdiction over a civil rights claim that arises under the Act if the aggrieved party has first exhausted his or her available administrative remedies. *Black v. Jeevanandam*, 2022 IL App (1st) 210694-U; ¶ 37 (citing *Castaneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304, 308 (1989)). The doctrine of exhaustion allows an administrative agency to utilize its expertise, fully develop and consider the facts presented to it, and allow the complainant the opportunity to succeed before the agency, promoting judicial efficiency and conserving judicial resources. *Castaneda*, 132 Ill. 2d at 308. Thus, administrative remedies must be exhausted before equitable relief can be sought before the circuit court. See *Cook County Department of Corrections v. Illinois Human Rights Commission*, 2022 IL App (1st) 210174, ¶ 23.

¶ 21 If a plaintiff fails to adhere to the procedural requirements of the Act, the circuit court lacks jurisdiction over the plaintiff's complaint. See 775 ILCS 5/8-111(D) (West 2022) ("Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act."); *Catledge v. Dowling*, 2017 IL App (1st) 162033, ¶¶ 14-15 (the circuit court lacks jurisdiction to review an administrative decision if it is not "final," and so correctly dismissed complaint for lack of jurisdiction).

¶ 22 At the outset, we observe that plaintiff does not challenge the circuit court's dismissal of his complaint for failure to exhaust administrative remedies and, therefore, has waived that issue for review. See *Fink v. Banks*, 2013 IL App (1st) 122177, ¶¶ 14-15 (points not argued on appeal

are waived). Notwithstanding, that ruling was proper. Plaintiff voluntarily withdrew his charge before the IDHR because he reached a settlement with the City. The Department did not dismiss his charge or determine that substantial evidence sustained his claims of discrimination and retaliation such that, under the Act, plaintiff could commence a civil action in the circuit court.

¶ 23 Further, even if we were to consider the IDHR's August 28, 2020, notice of closure of plaintiff's charge as a final IDHR determination, plaintiff did not file his initial complaint in the circuit court until well past the 90-day deadline for commencement of a civil action seeking review of that determination in the circuit court. See 775 ILCS 5/7A-102(D)(3)-(4) (West 2020). The circuit court's dismissal for lack of jurisdiction was, therefore, appropriate under section 2-619(a)(1) of the Code. See *Catledge*, 2017 IL App (1st) 162033, ¶¶ 14-15.

¶ 24 Plaintiff instead challenges the circuit court's failure to "honor" our order remanding the case to the circuit court. See *Delaney v. City of Chicago*, No. 1-21-1582 (July 18, 2022) (disposition order). Plaintiff argues that the court "disregard[ed]" our order because it dismissed his amended complaint without ruling on the pending "pivotal" motions, specifically the motions for a substitution of judge and to consolidate. We disagree.

¶ 25 Plaintiff misconstrues our reasons for ordering the remand in appellate case number 1-21-1582. We did not remand the case merely because the circuit court did not rule on "pivotal" motions before it dismissed plaintiff's first amended complaint without prejudice. We remanded to the circuit court because the appealed order was not final and we therefore lacked appellate jurisdiction to consider the appeal. See *id.* Not only were two motions pending at the time the court entered the dismissal order, the order itself was "without prejudice." See *City of Naperville v. Fraternal Order of Police*, 2013 IL App (2d) 121071, ¶ 13 ("Dismissals that are entered without

prejudice are not final and appealable orders.”). Further, plaintiff timely filed four motions directed at the dismissal order within 30 days of its entry. “When a timely postjudgment motion has been filed by any party *** a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion *** becomes effective when the order disposing of said motion or claim is entered.” Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017). As noted in our remand order, the circuit court had not yet decided any of the pending postjudgment motions. Nothing in the remand order indicated we remanded specifically for entry of orders deciding the two motions pending at the time the court entered the dismissal order.

¶ 26 Further, the appellate record does not contain transcripts for any proceedings, let alone the proceedings on remand relevant here. See *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984) (the appellant must present a sufficient record to support a claim of error). Absent such record, we will presume “that the order entered by the trial court was in conformity with law and had a sufficient factual basis,” and will resolve “[a]ny doubts which may arise from the incompleteness of the record *** against the appellant,” here plaintiff. *Id.* We merely note that, given the circuit court’s correct conclusion that it lacked jurisdiction to consider plaintiff’s second amended complaint, it had no need to address any motions regarding substitution of judge or consolidation. The deficiencies in the record similarly preclude this court from considering whether, as plaintiff claims, the City falsified records and the court erroneously altered the case number. The record contains no evidence substantiating either issue.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.