



1-09-3065

¶ 2 Plaintiff, Jane Doe<sup>1</sup>, appeals from an order of an administrative law judge, which denied her motion to vacate the dismissal of her appeal before the Illinois Department of Children and Family Services Administrative Hearing Unit. The dismissal order found Jane Doe abandoned her appeal by failing to appear for a scheduled telephonic pre-hearing conference. For the reasons set forth below, we reverse the decision of the administrative law judge and remand this matter for further proceedings.<sup>2</sup>

¶ 3 BACKGROUND

¶ 4 Jane Doe, age 18 and the mother of a child, was the subject of a DCFS investigation to determine whether she had abused or neglected her child.

¶ 5 The record shows that the Probate Division of the Circuit Court of Cook County ordered the appointment of a temporary guardian for Jane Doe's child on September 11, 2008. The order found that Jane Doe was in a hospital for psychiatric treatment and the father was unfit to care for the child. No visitation by either parent was allowed. The record shows the child was placed in the care of Jane Doe's mother.

¶ 6 DCFS conducted an investigation for alleged child abuse involving Jane Doe. In a letter from DCFS to Jane Doe, dated September 26, 2008, DCFS stated it found credible evidence of child abuse:

“Credible evidence means that the facts gathered during the investigation would lead a reasonable person to believe that a child was abused or neglected.”

---

<sup>1</sup> Plaintiff in this matter is referred to as Jane Doe pursuant to our supreme court's supervisory order issued September 27, 2016.

<sup>2</sup> Justice Joseph Gordon participated in this appeal and is no longer with this court. Justice Cobbs has substituted Justice Gordon on this appeal.

1-09-3065

¶ 7 DCFS labeled Jane Doe “indicated” in their report because she placed her daughter in substantial risk of physical injury. Reports of child abuse and neglect are maintained on a central register by DCFS and the results of the findings are classified as “indicated,” “unfounded” or “undetermined” in accordance with the Abused and Neglected Child Reporting Act (Act) (325 ILCS 5 *et seq.* (West 2008)). Under section 7.14 of the Act, a finding of “indicated” child abuse can remain in the registry for 5 years. 325 ILCS 5/7.14 (West 2008).

¶ 8 The subject of a DCFS report may appeal the finding and is entitled to a hearing to seek an amendment or removal of the report from the central registry within 60 days of notification of the completion of an investigation. 325 ILCS 5/7.16 (West 2008).

¶ 9 On November 6, 2008, Jane Doe appealed the indicated report with DCFS. Agency hearings are often conducted by telephone. Jane Doe provided two different phone numbers where she could be reached. Jane Doe requested a continuance because she claimed she had not received adequate notice of her rights. On December 2, 2008, Administrative Law Judge (ALJ) Dussman granted Jane Doe’s request for a continuance of the telephone pre-hearing until 10 a.m. on December 12, 2008.

¶ 10 In planning the date for the continuance, ALJ Dussman stated:

“Now turning again to the date and time that we will speak. Ms. [Jane Doe] we had previously decided at 3:30 on Tuesday the 9[th] however, that is not convenient for you because you will be in probate court.

\*\*\*

1-09-3065

Could we do this by telephone at 10 o'clock. Ms. [Jane Doe],  
would that work for you?

\*\*\*

Alright. Wonderful. I will put it down for 10 in the morning by  
telephone only for the telephone re-hearing.

\*\*\*

I look forward to speaking with you by telephone only at 10 in the  
morning on Friday, December 12, 2008 \*\*\* .”

¶ 11 Jane Doe alleges that on Friday, December 12, 2008, she waited from 10 to 11 a.m. by her telephone for a call from ALJ Dussman but did not receive one and had to leave home for work. Jane Doe alleges she assumed the pre-conference hearing had been rescheduled or cancelled.

¶ 12 On January 6, 2009, Jane Doe received a DCFS order from Chief ALJ Dalmage, dated December 17, 2009, finding that she failed to appear for a telephonic hearing and dismissing her appeal. The order stated: “telephoned the number appellant provided” and “neither the appellant, [Jane Doe], nor anyone on the appellant’s behalf appeared at the scheduled time.”

¶ 13 A copy of the order was mailed to Jane Doe. DCFS did not provide a proof of mailing, but the certified mail receipt for the order shows Jane Doe received it on January 6, 2009.

¶ 14 Jane Doe filed a request to vacate the abandonment order on January 7, 2009, the day after she allegedly received the notice. In her request, Jane Doe alleged she waited by her telephone at 10 a.m. on December 12, 2008, but did not receive a telephone call from ALJ Dussman. On February 2, 2009, Chief ALJ Dalmage issued an order denying Jane Doe’s request

1-09-3065

to vacate the earlier abandonment order, finding Jane Doe failed to show good cause for failing to appear at the December 12, 2008, pre-hearing conference.

¶ 15 On March 9, 2009, Jane Doe filed a complaint for administrative review in the circuit court, alleging: (1) her request to vacate the abandonment order was timely; (2) she appeared, was ready for the pre-hearing conference but did not receive a phone call or a message from ALJ Dussman; and (3) DCFS violated her 14th Amendment right to due process by failing to give her notice of the first pre-conference hearing. She requested that her case be remanded and that she be afforded an opportunity to present her case to DCFS in a hearing.

¶ 16 The trial court affirmed DCFS' decision. The court found Jane Doe's appeal was timely because the record did not support a conclusion that it was untimely. The court noted notice was sent to Jane Doe by certified mail, but the certified mail receipt addressed to Jane Doe was not postmarked and no other proof of service was contained in the record. Jane Doe filed her appeal the day after she received a copy of the dismissal order as evidenced by the return receipt for certified mail she signed. The trial court, however, also found the DCFS order denying Jane Doe's request to vacate the abandonment order was not contrary to the manifest weight of the evidence. Jane Doe appeals.

¶ 17 ANALYSIS

¶ 18 Three issues are presented in this appeal: (1) whether Jane Doe's appeal was timely filed; (2) whether Jane Doe's appeal stated reasonable grounds for not attending the December 12, 2008, pre-hearing conference; and (3) whether the record supports DCFS' finding that she abandoned her appeal by failing to appear at the telephonic hearing.

1-09-3065

¶ 19 DCFS' administrative decisions under section 7.16 of the Abused and Neglected Child Reporting Act (325 ILCS 5/7.16 (West 2008)) are subject to judicial review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2008).

¶ 20 The Administrative Review Law provides that our review extends to all questions of law and fact presented by the entire record; that we may not hear new or additional evidence; and that the "findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." *Morgan v. The Department of Financial and Professional Regulation*, 374 Ill. App. 3d 275, 286 (2007)(quoting 735 ILCS 5/3-110 (West 2004)).

¶ 21 In reviewing a final decision under the Administrative Review Law, we review the administrative agency's decision and not the circuit court's determination. *Bolger v. Department of Children and Family Services*, 399 Ill. App. 3d 437, 448 (2010). Since we are making a determination of the meaning of "good cause" under the act, we will review this question of law *de novo*. *Comprehensive Comm. Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 471 (2005).

¶ 22 Because review of purely factual findings made by an administrative agency is conducted under a manifest weight of the evidence standard, we review the issue of whether the record supports the denial of Jane Doe's request to vacate the DCFS finding that she abandoned her appeal under the manifest weight of the evidence standard. *Walk v. Illinois Department of Children and Family Services*, 399 Ill. App. 3d 1174, 1186 (2010). We will find an administrative agency's decision is against the manifest weight of the evidence "only if the opposite conclusion is clearly evident." *Bolger*, 399 Ill. App. 3d at 448 (citing *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)). If there is evidence in

1-09-3065

the record supporting the administrative agency's decision, it should be affirmed. *Walk*, 399 Ill. App. 3d at 1187.

¶ 23 DCFS may amend or remove from the central register reports of child abuse upon a showing of good cause. 325 ILCS 5/7.15 (West 2008). The subject of a DCFS report may appeal the finding and is entitled to a hearing to seek an amendment or removal of the report from the central registry within 60 days of notification of the completion of an investigation. 325 ILCS 5/7.16 (West 2008).

¶ 24 I. Timeliness of Jane Doe's Request to Vacate Dismissal

¶ 25 Jane Doe sought removal of her file from the central registry by timely filing an appeal within 60 days of notification of completion of the investigation. On December 17, 2008, DCFS dismissed Jane Doe's appeal for failure to appear at a telephonic hearing. The record reflects that on January 6, 2009, Jane Doe received a copy of the dismissal order. She filed her request to vacate the order on January 7, 2009.

¶ 26 DCFS claims Jane Doe's request to vacate the dismissal of her administrative appeal was properly denied because the request was untimely under the Code. On appeal, DCFS contends the dismissal order was entered December 17, 2008, and Jane Doe lost her appeal rights when she filed her appeal from the dismissal on January 7, 2009, because more than 14 days had elapsed. Jane Doe counters that her appeal is timely because she filed her appeal within ten days of her actual receipt of the notice.

¶ 27 Under section 336.200(d) of the Illinois Administrative Code (Code), a party may appeal from an order finding abandonment by filing a motion within 14 days after notice:

1-09-3065

“Any party seeking to vacate an order of abandonment shall file a motion within 14 days after notice of the entry of an order of abandonment or default, showing good cause why the party failed to appear or participate.” 89 Ill. Adm. Code 336.200(d) (West 2008).

¶ 28 The Code also provides notices of dismissal shall be hand delivered with proof of service or mailed by certified mail with return receipt requested:

“The following notices shall be hand-delivered with a certificate of delivery or sent by certified mail, return receipt requested, to ‘the addressee only’:

- 1) notice of pre-hearing conference and administrative hearing dates; and
- 2) notice of final administrative decision.” 89 Ill. Adm. Code 336.40(g) (West 2008).

¶ 29 The finding of abandonment and dismissal entered on December 17, 2008, by its own terms, was a final administrative decision. Therefore, notice was effective upon it being personally served or mailed by certified mail, return receipt requested.

¶ 30 The circuit court properly held that it could not determine when the DCFS notice was mailed to Jane Doe. Likewise, we are unwilling to rely, as the agency suggests, on an unverified notation in pen on the return receipt listing the date of December 22, 2008, to establish when notice was provided.



¶ 31 DCFS also requests we review the United States Post Office website for tracking evidence of when Jane Doe received the notice, which is also included in the agency’s appendix to its appellate brief. However, this evidence is not properly included in the record before us. As noted earlier, the Administrative Review Law limits review to evidence in the record. See 735 ILCS 5/3-110 (West 2008). Since the tracking evidence is not properly in the record, we may not rely on it here.

¶ 32 Even if we could rely on the tracking evidence, however, we find it still does not prove Jane Doe’s request to vacate the order finding her appeal abandoned was untimely. We agree the record reflects Jane Doe’s request to vacate was timely filed.

¶ 33 II. Good Cause

¶ 34 DCFS claims Jane Doe abandoned her appeal because she failed to show good cause for not appearing at the pre-hearing conference.

¶ 35 Section 336.200(a)(1) of the Code provides:

“The Administrative Hearings Unit will declare that the Department or appellant has abandoned the appeal when:

- 1) the Department representative, the appellant or the appellant’s authorized representative, without good cause, fails to appear at a hearing or pre-hearing conference without having received a continuance[.]” 89 Ill. Adm. Code 336.200(a)(1) (West 2008).

¶ 36 Section 336.200(b) lists three situations that constitute good cause, but the rule expressly states that good cause for failure to appear is not limited to those three situations.

¶ 37 Under section 336.200(b) of the Code:

“Good cause for failure to appear includes, but is not limited to:

- 1) death or serious illness in the immediate family of the appellant or the appellant’s representative;
- 2) failure of the Administrative Hearings Unit to give notice of the proceeding to the appellant or the appellant’s representative at the last known address available to the Administrative Hearings Unit; or
- 3) failure of the Administrative Hearings Unit to give notice by fax, inter-office mail or electronic mail, to the Department representative or the present supervisor of the child protection team with primary case responsibility for the investigation.” 89 Ill.

Adm. Code 336.200(b) (West 2008).

¶ 38 We cannot say Jane Doe’s request to vacate is insufficient in this case. There is no evidence that she actually received a phone call from ALJ Dussman on the date and time she was expecting to receive a call.

¶ 39 The agency claims Jane Doe is required to present evidence of her reasonable diligence to show good cause for not attending the hearing. The agency claims this standard is consistent with those applied in other contexts citing, among others, *Board of Trustees of the University of Illinois v. Illinois Educational Labor Relations Board*, 274 Ill. App. 3d 145 (1995).

¶ 40 In *University of Illinois*, the university's attorney failed to answer a complaint filed by its labor union alleging discriminatory and unfair labor practices. *Id.* at 147. The attorney claimed he misrecorded the date of the complaint and as a result was late in filing an answer. *Id.* at 148. A hearing officer for the Illinois Educational Labor Relations Board concluded that the university did not have good cause for filing a late answer and granted the union's motion to deem the allegations of the complaint admitted. *Id.* We affirmed the decision by the labor board, finding the university failed to show good cause for not filing a timely response to the union's complaint. *Id.* at 152.

¶ 41 The instant case is distinguishable from *University of Illinois*. In *University of Illinois*, the court found the university's failure to file its answer to the union's complaint was a result of their attorney misdocketing the date. Here, unlike *University of Illinois*, Jane Doe is not alleging her negligence was the reason the hearing did not take place; rather, Jane Doe alleges the ALJ simply never called her phone while she waited there for over an hour at the appointed time. If true, her request to vacate stated adequate grounds for not appearing at the hearing.

¶ 42 In addition, the attorney in *University of Illinois* claimed he made a mistake by misrecording the date of the complaint. Jane Doe, unlike the attorney in *University of Illinois*, is not claiming she made a mistake; rather, she claims she was a ready, willing and able participant but that she never received a call from ALJ Dussman as had been agreed upon during the December 2, 2008, conversation where ALJ Dussman expressly stated she would telephone at 10 a.m.

¶ 43 DCFS claims Jane Doe did not offer any testimony, affidavit or other evidence in support of her request to vacate the dismissal order. However, section 336.200 of the Code does not require an appellant to submit proofs; rather, the appellant is only required to show "good

cause.” We cannot say that an appellant who alleges she waited by the telephone at the appointed time and did not receive a call from the ALJ has not shown good cause for failing to appear at the pre-conference hearing. Furthermore, we note Jane Doe’s due process rights, which are guaranteed by the United States Constitution, require DCFS to ensure an appellant is afforded a fair and impartial hearing. *Ellison v. Illinois Racing Board*, 377 Ill. App. 3d 433, 444-45 (2007).

¶ 44

### III. Merits

¶ 45 Moreover, we find the evidence here does not clearly demonstrate a phone call was ever made to Jane Doe.

¶ 46 Jane Doe alleged she waited at the designated time required by ALJ Dussman. The record shows ALJ Dussman told Jane Doe: “I look forward to speaking with you by telephone only at 10 in the morning on Friday, December 12, 2008 \*\*\*.” Jane Doe claims she was at her phone at 10 a.m. on December 12, 2008, waiting for ALJ Dussman to call. Jane Doe claims she never received a call from ALJ Dussman. A few weeks later, she received an order from the chief administrative law judge, not ALJ Dussman, stating that her appeal was abandoned due to her failure to appear at the telephone conference. The order noted:

“The Administrative Law Judge telephoned the number appellant provided; neither the appellant, [Jane Doe], nor anyone on the appellant’s behalf, appeared at the scheduled time.”

¶ 47 There is no specific evidence in the record, however, to dispute Jane Doe’s claim that she was waiting by her phone at 10 a.m. for ALJ Dussman’s phone call, as she had been instructed to do. There is also no evidence in the record that a call from ALJ Dussman was ever placed to Jane Doe. The order itself does not indicate who called Jane Doe, and does not specifically

indicate which number was called or whether a message was left for Jane Doe. Although we recognize Chief ALJ Dalmage's order suggests a call was made, we note ALJ Dalmage was not the person tasked with making the call. ALJ Dussman was scheduled to call Jane Doe, and nothing in the record besides the unsupported finding suggests he did so. We will not presume ALJ Dussman called Jane Doe without any evidence to support such a presumption.

¶ 48 Furthermore, we note the agency apparently failed to keep a recording or a transcript of its alleged attempt to telephone Jane Doe.

¶ 49 Under section 336.210 of the Code, the Chief Administrative Law Judge is required to maintain the record of the administrative hearing. 89 Ill. Adm. Code 336.210 (West 2008). We find that in order to comport with constitutional due process requirements, the reasonable starting point in telephonic hearing begins when the ALJ dials the telephone number of the parties. In this case, there is no record of ALJ Dussman dialing the telephone and attempting to reach the parties for the telephonic hearing. All that we have in the record is an abandonment order drafted by chief ALJ Dalmage, not ALJ Dussman-- the ALJ responsible for conducting the hearing with Jane Doe.

¶ 50 In sum, the record does not support the agency's contention that a call was made to Jane Doe at 10 a.m. on December 12, 2008. Therefore, we reverse DCFS' dismissal order and order the agency to grant Jane Doe a hearing on her appeal of the "indicated" finding.

¶ 51 **CONCLUSION**

¶ 52 We reverse the agency's decision and remand the cause with instructions.

¶ 53 Reversed and remanded.