2016 IL App (1st) 150689-U

FIFTH DIVISION
June 10, 2016

No. 1-15-0689

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARK THOMPSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 14 CH 15697
	)	
THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, and BARBARA BYRD-BENNETT,	)	Honorable
	)	Neil H. Cohen,
Defendants-Appellees.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The circuit court did not err in dismissing the plaintiff's declaratory judgment action where he failed to exhaust all of his administrative remedies prior to filing the instant cause of action.

¶ 2 Plaintiff Mark Thompson filed a complaint against the Board of Education of the City of Chicago and Barbara Byrd-Bennett (defendants) for a declaratory judgment and permanent injunctive relief in the circuit court of Cook County. Plaintiff's complaint requested the circuit

court dismiss an administrative action brought by the Illinois State Board of Education (ISBE) to terminate his employment as a tenured teacher with Chicago public schools (CPS).[1] The circuit court dismissed plaintiff's action, finding he failed to exhaust his administrative remedies before the ISBE and failed to state a claim. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 29, 2014, plaintiff filed a *pro se*, four-count complaint seeking a declaratory judgment and permanent injunctive relief. Plaintiff alleged that on August 16, 2013, he was dismissed from his position pursuant to section 34-85 of the Illinois School Code (School Code) (105 ILCS 5/34-85 (West 2012)) for budgetary reasons. According to plaintiff's allegations, on December 9, 2013, defendants then proceeded to a dismissal hearing despite knowing that plaintiff had already been dismissed. Plaintiff alleged that based on this fact, "[d]efendants declared the ISBE hearing was no longer a dismissal hearing but rather a hearing to determine [p]laintiff's entitlement to 'back pay.' " Therefore, plaintiff maintains the ISBE lacked subject matter jurisdiction over the dismissal hearing and, thus, should be enjoined from continuing the dismissal proceedings against him.

¶ 5 In count one, plaintiff asserted that the misuse of the dismissal hearing by defendants was a violation of the equal protection clause of the Illinois Constitution. In count two, plaintiff alleged that the misuse of the dismissal hearing by defendants was an abuse of process. In count three, plaintiff sought a declaratory judgment because defendants' use of the dismissal hearing was being utilized for another reason other than for its intended purpose. In count four, plaintiff further sought a permanent injunction enjoining defendants from using the dismissal hearing

[1] The dismissal hearing was stayed as of December 12, 2013, pending a ruling from this court in a separate but related case. We subsequently issued an opinion in that matter, *Thompson v. N.J.*, 2016 IL App (1st) 142918.

process for an improper purpose.

¶ 6 On December 12, 2014, defendants filed a motion to dismiss pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)) on the grounds that plaintiff failed to exhaust his administrative remedies and could not succeed on the merits of his pleading. On February 25, 2015, after the matter was fully briefed, the circuit court issued a written order setting forth the basis for dismissing plaintiff's complaint. First, the circuit court found plaintiff failed to exhaust all of his administrative remedies and, thus, dismissed the complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)).[2] Second, the circuit court determined that none of the counts contained within the complaint sufficiently stated a cause of action and dismissed the complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)).[3] This appeal was timely filed on March 5, 2015.

¶ 7 ANALYSIS

¶ 8 Standard of Review

¶ 9 In this case, the circuit court dismissed plaintiff's complaint pursuant to both sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2014)). We, however, may affirm on any basis that appears in the record. *Gunthorp v. Golan*, 184 Ill. 2d 432, 438 (1998). Under either section 2-615 or 2-619, our review is *de novo*. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 64. *De novo* consideration means we perform the same analysis that a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 10 Subject Matter Jurisdiction

¶ 11 On appeal, plaintiff has withdrawn count two of the complaint which alleged abuse of

[2] The circuit court did not specify under which subsection of section 2-619 of the Code it relied on when dismissing the complaint.

[3] Only count two was dismissed with prejudice.

process. Plaintiff now argues that the remaining three counts "were adequately pled, assuming defendants lack subject matter jurisdiction or statutory authority to convene an ISBE dismissal hearing or alter its statutory scope against someone they do not employ." Plaintiff maintains that as of August 16, 2013, he was no longer employed by defendants, but despite that fact defendants convened a dismissal hearing against him on December 9, 2013. Plaintiff, however, does not dispute that he was employed by CPS when the dismissal charges were initially filed and that he had been suspended without pay pending the ISBE dismissal hearing on September 13, 2012. We further observe that plaintiff failed to provide this court with the record from the dismissal hearing. With this in mind, we first turn to examine whether the ISBE had subject matter jurisdiction over the charges against plaintiff.

¶ 12 "Subject matter jurisdiction" is a court's power "to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). "The absence or presence of jurisdiction is a purely legal question, and our review therefore is *de novo*." *In re Luis R.*, 239 Ill. 2d 295, 299 (2010). Under the Illinois Constitution of 1970, the circuit courts have original jurisdiction of all justiciable matters. Ill. Const. 1970, art. VI, § 9; *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 15. The legislature, however, "may divest the circuit courts of their original jurisdiction through a comprehensive statutory administrative scheme, but it must do so explicitly." *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27. In an administrative proceeding, jurisdiction of the administrative body is conferred by statute. See *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547, 553 (2005) (An administrative agency's powers are limited to those granted by the legislature and any action taken by an agency must be authorized specifically by statute). "When an agency acts outside its specific statutory authority,

it is said to have acted without 'jurisdiction.' " *Ferris, Thompson & Zweig, Ltd.*, 2015 IL 117443, ¶ 16.

¶ 13 Plaintiff contends that the circuit court erred when it dismissed his complaint without considering whether the ISBE had subject matter jurisdiction. In response, defendants assert plaintiff failed to raise this jurisdictional question in the administrative hearing and improperly waited to file this suit before raising the issue. In reply, plaintiff maintains that he may raise the issue of subject matter jurisdiction at any time.

¶ 14 Section 34-85 of the School Code grants the ISBE the authority and jurisdiction to remove a permanently appointed teacher from his or her employment. 105 ILCS 5/34-85 (West 2012). No permanently appointed teacher in the CPS system is to be removed except for cause. *Id.* The local board must first approve a motion containing written charges presented by the general superintendent of schools, and written notice of the approved charges is to be served on the teacher. *Id.* If requested by the teacher, a hearing is then to be held before a disinterested hearing officer paid by the board and selected by the parties from a list furnished by the board. *Id.* At the dismissal hearing, the teacher may appear with counsel, cross-examine witnesses, and present evidence and defenses. *Id.* Afterward, the hearing officer is to make a final decision on whether the teacher is to be dismissed. *Id.* The hearing officer's decision is subject to the Administrative Review Law (735 ILCS 5/3-301 *et seq*. (West 2012)). *Id.*

¶ 15 We find the ISBE has subject matter jurisdiction. While we agree with plaintiff that arguments concerning subject matter jurisdiction may be raised at any time (see *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 215 (1985)), we find that the remainder of plaintiff's argument is flawed. Plaintiff's argument is essentially that defendants' failure to sufficiently allege that he is an employee deprives the ISBE of jurisdiction to hear the

matter. Our supreme court has previously stated, however, that subject matter jurisdiction does not depend on the legal sufficiency of a complaint. *Dubin v. Personnel Board of City of Chicago*, 128 Ill. 2d 490, 496-97 (1989) (collecting cases). "To hold otherwise would create the paradoxical situation that a court, by deciding that the allegations in a complaint were insufficient to state a cause of action, would divest itself of having had jurisdiction to make the decision that the complaint was insufficient." *Id.* At the time the charges against plaintiff were filed, plaintiff was a tenured teacher employed by CPS. Accordingly, pursuant to section 34-85 of the School Code (105 ILCS 5/34-85 (West 2012)), once plaintiff elected to proceed with a discharge hearing, the ISBE had subject matter jurisdiction over the matter. See *Newkirk v. Bigard*, 109 Ill. 2d 28, 36-7 (1985) (finding the mining board had subject matter jurisdiction where the matter fell within the "general class of cases to which the particular case belongs"); 105 ILCS 5/34-85(a)(2) (West 2012) (no hearing upon the charges unless requested by the teacher). Therefore, plaintiff's claim that the ISBE lacked subject matter jurisdiction fails.

¶ 16 Exhaustion

¶ 17 Although plaintiff concedes in his brief that if there is subject matter jurisdiction over him the complaint must be dismissed, we decline to uphold the dismissal of his complaint solely on that basis. While we have determined that the ISBE has subject matter jurisdiction over plaintiff's dismissal hearing, we have yet to determine whether the circuit court's determination to dismiss plaintiff's complaint was appropriate. In this regard, we find application of the exhaustion doctrine to be dispositive.

¶ 18 The doctrine of exhaustion helps establish a proper relationship between the court system and administrative bodies. *Northern Trust Co. v. County of Lake*, 353 Ill. App. 3d 268, 276 (2004). The exhaustion doctrine generally provides "that a party that disagrees with an agency's

administrative action cannot seek judicial review, including through actions for injunctive and declaratory relief, without first pursuing all of the administrative remedies available to him or her." *Gallaher v. Hasbrouk*, 2013 IL App (1st) 122969, ¶ 18. The purpose of the exhaustion doctrine is to allow administrative bodies to develop a factual record and to permit them to apply the special expertise they possess. *Canel v. Topinka*, 212 Ill. 2d 311, 320-21 (2004). Exhaustion also minimizes interruption of the administrative process. *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 935 (2004). Moreover, the aggrieved party might succeed before the administrative body, obviating the need for judicial involvement, thereby conserving judicial resources. *Canel*, 212 Ill. 2d at 320-21. If a challenging party alleges that a facially valid statute has been applied in an arbitrary or discriminatory manner, " 'the rule generally prevails that recourse must be had in the first instance to the appropriate administrative board.' " *Beahringer v. Page,* 204 Ill. 2d 363, 374 (2003) (quoting *Bank of Lyons v. County of Cook*, 13 Ill. 2d 493, 495 (1958). It is in this way that the exhaustion doctrine is similar to the ripeness doctrine, in that it "prevents courts from entangling themselves in abstract disagreements over administrative policies and protect[s] the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." (Internal quotation marks omitted.) *Poindexter v. State, ex rel. Dept. of Human Services*, 229 Ill. 2d 194, 208-9 (2008). In addition, our supreme court has held that "where a final agency decision has been rendered and the circuit court may grant the relief which a party seeks within the context of reviewing that decision, a circuit court has no authority to entertain independent actions regarding the actions of an administrative agency." *Dubin*, 128 Ill. 2d at 499. The court reasoned that, "[a]ny other conclusion would enable a party to litigate separately every alleged error committed by an agency in the course of the administrative

proceedings." *Id.*

¶ 19 We conclude plaintiff has not exhausted his administrative remedies. Plaintiff's argument that his current employment status prohibits defendants from proceeding with the dismissal charges against him is a matter best left to the ISBE. See *id.* While there is an exception to the exhaustion doctrine where a party challenges the agency's authority to proceed under a statute or administrative rule (see *Gallaher*, 2013 IL App (1st) 122969, ¶ 19), as previously discussed, we find plaintiff's argument in this regard to be without merit as the ISBE has subject matter jurisdiction over the dismissal charges (see 105 ILCS 5/34-85 (West 2012)). Plaintiff's failure to exhaust his administrative remedies is an affirmative matter (see *Village of South Elgin*, 348 Ill. App. 3d at 934), and we conclude that it was a proper basis for dismissing the complaint with prejudice pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2014)). Accordingly, we affirm the judgment of circuit court dismissing plaintiff's complaint.

¶ 20 CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the circuit court.

¶ 22 Affirmed.