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FIFTH DIVISION
June 30, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES W. CURLEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CH 16196
)	
ILLINOIS DEPARTMENT OF REVENUE,)	The Honorable
)	Robert Lopez Cepero,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes concurred in the judgment.
Justice Gordon dissented.

ORDER

¶ 1 *HELD:* Under the circumstances, the circuit court lacked the authority to enter a money judgment against the Illinois Department of Revenue and to order it to pay plaintiff’s filing fees.

¶ 2 Defendant, the Illinois Department of Revenue, appeals the circuit court’s order entering a money judgment in favor of plaintiff, James Curley, and awarding plaintiff his court costs.

Defendant contends the circuit court lacked the authority to enter its order. Based on the following, we reverse in part, vacate in part, and remand for further proceedings.

¶ 3

FACTS

¶ 4 On October 7, 2014, plaintiff filed a complaint for administrative review before the circuit court challenging defendant's determination that plaintiff owed taxes. Plaintiff requested a refund in the amount of \$252.87 plus interest. In addition, plaintiff requested that the circuit court order defendant to pay plaintiff's filing fees and costs. Plaintiff's complaint initially was filed with the chancery division, but was transferred to the tax section of the law division in April 2015. On May 26, 2015, at a scheduled status hearing, the circuit court ordered defendant to prepare the administrative record without charging plaintiff a fee. In a written order, the court advised that it would address the matter of fees at a later date. On June 16, 2015, during the next status hearing, the circuit court entered judgment in favor of plaintiff "based upon [defendant's] failure to compile the record for filing in this matter." In its June 16, 2015, order, the circuit court ordered defendant to pay plaintiff \$252.87 in damages, plus \$306.81 in filing fees.

¶ 5 Defendant filed a motion to reconsider the circuit court's June 16, 2015, order. In the motion, defendant challenged the court's authority to enter its judgment. On July 30, 2015, the circuit court denied defendant's motion to reconsider. This appeal followed.

¶ 6

ANALYSIS

¶ 7 We first note that plaintiff did not file an appellee brief. We, however, may consider the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 In general, the Administrative Review Law governs our review of an agency's administrative decision. See 735 ILCS 5/3-101 *et seq.* (West 2014). When reviewing an administrative decision, this court considers all questions of law and fact presented by the record. 735 ILCS 5/3-110 (West 2014). Typically, a reviewing court's role is to review the

administrative agency's decision and not that of the circuit court. *AT&T Teleholdings, Inc. v. Department of Revenue*, 2012 IL App (1st) 113053, ¶ 26. The issue in this case, however, is unique, in that we have been asked to consider whether the circuit court exceeded the bounds of its authority on administrative review by entering a money judgment against defendant. The resolution of that issue involves a question of law requiring the interpretation of section 3-111(a) of the Administrative Review Law (735 ILCS 5/3-111(a) (West 2014)), which we review *de novo*. *AT&T Teleholdings, Inc.*, 2012 IL App (1st) 113053, ¶ 28 (citing *Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011)).

¶ 9 Section 3-111(a) of the Administrative Review Law, in relevant part, provides the circuit court with the power to:

“(5) to affirm or reverse the decision in whole or in part;

(6) where a hearing has been held by the agency, to reverse and remand the decision in whole or in part, and, in that case, to state the questions requiring further hearing or proceedings and to give such other instructions as may be proper;

(7) where a hearing has been held by the agency, to remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it shall appear that such action is just. ***.

(8) in the case of affirmance, or partial affirmance of an administrative decision which requires the payment of money, to enter judgment for the amount justified by the record and for costs, which judgment may be enforced as other judgments for the recovery of money.” 735 ILCS 5/3-111(a) (West 2014).

¶ 10 In this case, the circuit court reversed the agency's decision and entered a money judgment. Although the circuit court had the authority to affirm or reverse the decision in whole

or in part pursuant to section 3-111(a)(5), the circuit court did not have the authority to reverse *and* enter a money judgment. Section 3-111(a)(8) of the Administrative Review Law limits a circuit court's authority to "enter judgment for the amount justified by the record and for costs" only when the decision is *affirmed* in whole or in part. See *AT&T Teleholdings, Inc.*, 2012 IL App (1st) 113053, ¶ 72; *Boffa v. Illinois Dep't of Public Aid*, 168 Ill. App. 3d 139, 147 (1988). Section 3-111(a)(8) did not apply here. We, therefore, find the circuit court improperly entered a money judgment against the State. See *Campbell v. Department of Public Aid*, 61 Ill. 2d 1, 5-6 (1975).

¶ 11 Moreover, a circuit court's power in administrative review actions generally does "not extend to granting or denying relief but [is] essentially limited to reviewing the decision of the administrative agency." *Id.* at ¶ 73 (quoting *American National Bank & Trust Co. v. Dep't of Revenue*, 242 Ill. App. 3d 716, 719 (1993)). In this case, the circuit court did not review the agency's decision; instead, the money judgment was entered because defendant failed to provide the administrative record for review. As a result, the circuit court failed to review the agency's decision, yet improperly granted relief. Additionally, where the administrative record was never considered by the circuit court and does not appear in the record on appeal, we have no basis upon which to review the agency's decision.

¶ 12 We further find the circuit court improperly ordered defendant to pay plaintiff's filing fees. The supreme court has instructed that a party may not recover attorney fees or other litigation costs from a state agency without affirmative statutory language reflecting the State's consent to the imposition of costs. *Dep't of Revenue v. Appellate Court*, 67 Ill. 2d 392, 396 (1977). We find no statutory provision authorizing the imposition of costs under these circumstances. *Cf.* 735 ILCS 5/5-120.5 (West 2014) (reasonable costs, including court costs and

attorney's fees, in the context of a decision wherein a code hearing officer imposes a fine or penalty against a homeowner for a violation related to the use or condition of the property); 20 ILCS 2520/7 (West 2014) (allowing the recovery of attorney or accountant fees, not filing fees, against the Department of Revenue in favor of the taxpayer from an administrative hearing relating to tax liability if the taxpayer prevails and the Department of Revenue has made an assessment or denied a claim without reasonable cause). We, therefore, vacate that part of the June 16, 2015, order requiring defendant to pay plaintiff's filing fees.

¶ 13

CONCLUSION

¶ 14 In sum, we reverse the circuit court's June 16, 2015, order granting a money judgment in favor of plaintiff and remand this cause for further proceedings in which we encourage the circuit court, in the interest of justice, to allow defendant to file the administrative record. We vacate the remaining part of the court's June 16, 2015, order instructing defendant to pay plaintiff's filing fees.

¶ 15 Reversed in part; vacated in part; remanded with instructions.

¶ 16 JUSTICE GORDON, dissenting.

¶ 17 I must respectfully dissent. In this case, the defendant-appellant failed to file the administrative record in this case before the circuit court of Cook County and before this appellate court. The trial court entered a money judgment against defendant-appellant, plus court costs for defendant-appellant's failure to file the administrative record. The majority vacates the money judgment and court costs, finding that the trial court had no authority to do so. In this appeal, there is no transcript of the proceedings or a bystander's report from the circuit court. "The law is well settled that appellants bear the duty to 'present a record *** which fairly and fully presents all matters necessary and material for a decision of the question raised.' "

Smolinski v. Vojta, 363 Ill. App. 3d 752, 757 (2006) (quoting *LaPlaca v. Gilbert & Wolf, Inc.*, 37 Ill. App. 3d 259, 260-61 (1976); *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 274 (2006); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001)). We must presume in the absence of such a record that the trial court's ruling was in conformity with the law and had a sufficient factual basis. Any doubts resulting from the incompleteness of the record will be resolved against the appellant. *Palmisano v. Connell*, 179 Ill. App. 3d 1089, 1099 (1989).

¶ 18 The majority takes the position that the trial court's order is enough to determine that the trial court exceeded its authority by entering a money judgment against the administrative agency for its failure to file the administrative record in the circuit court. I disagree.

¶ 19 On May 26, 2015, the trial court entered an order requiring defendant-appellant to prepare the record without paying a fee at that time. On June 16, 2015, a money judgment was entered in favor of plaintiff-appellee in the amount of \$252.87, plus \$306.81 in costs for defendant's failure to prepare and file the record.

¶ 20 Unfortunately, we do not know whether the judgment order of June 16, 2015, was a sanction order or not without a report of proceedings or a bystander's report. The majority could be "jumping the gun," and I want to make sure that we have all the facts. I would require defendant-appellant to file a report of proceedings in this matter for May 26, 2015, and for June 16, 2015, and require it to file the record of the administrative proceedings. I do not believe that anything less can result in a just decision. "A party who prosecutes an appeal has the duty of presenting to the court of review everything necessary to decide the issues on appeal." *In re Marriage of Naylor*, 220 Ill. App. 3d 366, 370 (1991) (citing *Village of Lakemoor v. First Bank of Oak Park*, 136 Ill. App. 3d 35, 42 (1985)).

¶ 21 The majority, in vacating the order by assuming it is a void order, and then remanding to the trial court with a *suggestion* to allow the defendant-appellant to file the administrative record, leaves the plaintiff-appellee with no remedy at all. The trial court under these circumstances has no obligation to require the administrative record to be filed, and plaintiff-appellee is left without a remedy.