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2016 IL App (3d) 150494-U

Order filed July 28, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE BOARD OF EDUCATION OF JOLIET)
TOWNSHIP HIGH SCHOOL DISTRICT)
NO. 204 and JOLIET TOWNSHIP HIGH)
SCHOOL DISTRICT NO. 204,)
a body politic,)

Plaintiffs-Appellants,)

v.)

WILL COUNTY REGIONAL BOARD OF)
SCHOOL TRUSTEES, a/k/a Will County)
Regional Office of Education; WILL COUNTY)
EDUCATIONAL SERVICE REGION,)
REGIONAL SCHOOL BOARD;)
WILL COUNTY REGIONAL BOARD OF)
EDUCATION; SHAWN WALSH; MARY)
CARROLL; RICH DOMBROWSKI; NANCY)
TERLEP BARTELS; GARY H. HOFFMAN;)
DENISE RUTTER; VERONICA BOLLERO;)
and COMMITTEE OF TEN, a/k/a petitioners)
DAVID A. KNOTT, JANELLE L. BASTIAN,)
AARON M. ELSTNER, TINA M. LEEN,)
JENNIFER L. LARSON, JOHN A.)
BROSIUS III, THOMAS R. PAJULA,)
SARAH L. PANDOLFI, KELLY A. DUVALL)
and CHRISTINA JOY,)

Defendants)

Appeal from the Circuit Court
of the 12th Judicial Circuit,
Will County, Illinois.

Appeal No. 3-15-0494
Circuit No. 14-MR-2475

(Committee of Ten, a/k/a petitioners David A.))	
Knott, Janelle L. Bastian, Aaron M. Elstner,))	
Tina M. Leen, Jennifer L. Larson, John A.))	
Brosius III, Thomas R. Pajula, Sarah L.))	Honorable
Pandolfi, Kelly A. Duvall and Christina Joy,))	John Anderson,
))	Judge, Presiding.
Defendants-Appellees).))	

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Trial court's dismissal of writ of *certiorari* claim against regional board of school trustees did not impermissibly expand application of Administrative Review Law.
(2) Appellate court lacks jurisdiction to consider argument that trial court erred in denying plaintiff's motion to strike where that portion of the order appealed from was not final.

¶ 2 Residents of Joliet filed a petition with the Will County Regional Board of School Trustees (Board) to detach their property from Joliet Township School District No. 204 (Joliet Township) and annex it to Lincoln-Way Community High School District No. 210 (Lincoln-Way). The Board voted in favor of the petition, and Joliet Township filed a complaint seeking administrative review of the Board's decision and a writ of *certiorari* directing the Board to present the record of proceedings to the trial court. The trial court dismissed the *certiorari* claim with prejudice. Joliet Township appeals, arguing that the trial court's ruling was improper because it impermissibly expands the circuit court's power of administrative review beyond article 7 of the Illinois School Code (105 ILCS 5/7-01 *et seq.* (West 2014)). We affirm.

¶ 3 In July of 2013, several residents of the city of Joliet filed a petition for detachment and annexation with the Board seeking to detach their property from Joliet Township and annex it to Lincoln-Way. Pursuant to section 7-6 of the School Code (105 ILCS 5/7-6 (West 2014)), ten of

the named residents were designated as the "Committee of Ten" to act as attorney in fact for all of the petitioners.

¶ 4 The Board held public hearings on the petition from September 2013 to June 2014. Generally, the Board is a seven-member body, but because of a vacancy, it was only comprised of six elected members during the hearings. On June 9, 2014, it convened a regular meeting and voted on a motion to grant the petition. Of the six serving members, three trustees voted in favor of the petition and two voted against it. Trustee Veronica Bollero was not present and did not vote on the motion.

¶ 5 On June 17, 2014, Shawn Walsh, the regional superintendent and the Board's *ex-officio* secretary, notified the Committee of Ten and Joliet Township by email that the Board would hold its regular meeting on July 7, 2014. Attached to the email was an agenda that included an action item to reconsider the detachment vote held on June 9.

¶ 6 On July 7, 2014, the Board held a regular meeting at which five of the six board members were present. Trustee Bollero did not attend the meeting. Board President Mary Carroll called the meeting to order and immediately informed the members that Bollero had tendered her letter of resignation, dated June 24, 2014. The Board then proceeded with a motion to reconsider the annexation and detachment vote. The motion to reconsider carried, and three trustees again voted in favor of granting the petition, with two opposed.

¶ 7 The Board issued a written order of detachment and annexation on July 18, 2014. The order included findings of fact from the trustees who voted on the petition. In response, Joliet Township filed a motion to reconsider, which the Board denied.

¶ 8 On September 16, 2014, the Board sent a letter to all parties of record stating that the motion to reconsider had been denied and that unless an action for judicial review was

commenced within 35 days, its July 18th order of detachment would become effective on October 21, 2014.

¶ 9 Within 35 days, Joliet Township filed a three-count complaint against the Board, Shawn Walsh and the Committee of Ten, seeking review of the Board's decision and asserting jurisdiction pursuant to the Administrative Review Law and section 7-7 of the School Code (105 ILCS 5/7-7 (West 2014)). The complaint set forth three counts and requested that the Board's decision be reversed under various theories of review. Count I sought administrative review of the Board's decision to grant the petition, asserting that (1) the Board lost jurisdiction by failing to approve the petition within 9 months under section 7-6(1) of the School Code, (2) the Board's vote to reconsider was improper under section 6-2 of the School Code because a majority of the board did not vote on the petition on June 9 or July 7, 2014, (3) the Board's vote to grant the petition on July 7, 2014, was unenforceable because the board was improperly constituted following Bollero's resignation pursuant to sections 6-18 and 6-19 of the School Code, (4) the Board's findings of fact and law granting the petition were arbitrary, capricious, clearly erroneous and against the manifest weight of the evidence, and (5) the Board erred in finding that the petition met the requirements of article 7 of the School Code.

¶ 10 Count II requested a writ of *certiorari* regarding the Board's composition and procedure, alleging that the Board's act of adding the motion to reconsider before Bollero resigned suggested an improper attempt by the Board to void the vote that occurred on June 9, 2014. The prayer for relief at the end of count II stated:

"WHEREFORE, the Plaintiff, District 204, respectfully requests that this Court enter an Order of Certiorari to the Defendant, Board, directing it to present the record of proceedings to this Court, that the Court review the proceedings, that the

Court enter an order denying the Petition, and for any and all further relief that is equitable and just."

¶ 11 Last, count III alleged a violation of the Equal Educational Opportunities Act of 1974 (EEOA) (20 USC §1701 *et seq.* (1974)), asserting that the EEOA prohibited the Board from granting a petition for detachment that would result in a greater degree of segregation among students in the districts.

¶ 12 The Committee of Ten answered the complaint and alleged certain affirmative defenses, arguing in part that a writ of *certiorari* was not appropriate on review of a detachment proceeding under the School Code. The committee also moved to dismiss counts II and III of the complaint. In response, Joliet Township filed a motion to strike defendant's answer and affirmative defenses.

¶ 13 Following a hearing, the trial court granted defendant's motion to dismiss count II, with prejudice, and denied its motion to dismiss count III. In addition, the court denied plaintiff's motion to strike. At the conclusion of its order, the court found there was no just reason to delay enforcement or appeal pursuant to Illinois Supreme Court Rule 304(a). See Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2015).

¶ 14 ANALYSIS

¶ 15 I

¶ 16 Joliet Township argues that the trial court erred in dismissing count II because the ruling impermissibly expands application of the Administrative Review Law beyond article 7 of the School Code to article 6. It maintains that a writ of *certiorari* is the appropriate method of review of the Board's violations of article 6 as alleged in count II because article 6 of the School Code does not expressly adopt the Administrative Review Law.

¶ 17 In Illinois, school district boundaries may be changed by detachment and annexation under the School Code. See 105 ILCS 5/1-1 *et seq.* (West 2014). Article 6 of the School Code outlines the creation of the regional board of school trustees and its voting members (105 ILCS 5/6-1 *et seq.* (West 2014)), and article 7 sets forth the method and procedures for petitioning the regional board for a boundary change (105 ILCS 5/7-01 *et seq.* (West 2014)). The general method for detachment and annexation involves a petition to the regional board of school trustees, board hearings, a decision to grant or deny the petition by the regional board, and the potential for judicial review. See 105 ILCS 5/7-1, 7-6, 7-7 (West 2014). Section 7-7 of the School Code provides that a decision of the regional board of school trustees is an administrative decision and that "any petitioner or board of education of any district affected may *** file a complaint for a judicial review of such decision in accordance with the Administrative Review Law and the rules adopted pursuant thereto." 105 ILCS 5/7-7 (West 2014).

¶ 18 An administrative agency's decision is subject to review under the Administrative Review Law where "the Act creating or conferring power on such agency, by express reference, adopts the provisions of [the Administrative Review Law] or its predecessor, the Administrative Review Act." 735 ILCS 5/3-102 (West 2014). Where the Administrative Review Law has not been expressly adopted, the writ of *certiorari* survives as a means of judicial review. *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427 (1990).

¶ 19 The common law writ was developed to serve as a means for review of actions taken by a court or other tribunal exercising quasi-judicial functions where no other means was available. *Portman v. Department of Human Services*, 393 Ill. App. 3d 1084, 1087 (2009). "The office of the writ is only to bring before the court issuing it the record of the inferior tribunal for review;

and it is elementary that the party suing out the writ shall have no other mode of review." *Barden v. Junior College District No. 520*, 132 Ill. App. 2d 1038, 1038 (1971).

¶ 20 Traditionally, a writ of *certiorari* and administrative review provided two different pathways of reviewing a quasi-judicial decision. However, the differences that once existed between *certiorari* proceedings and administrative review proceedings have been "all but lost." *Dubin v. Personnel Board of the City of Chicago*, 128 Ill. 2d 490, 498 (1989). Today, the nature and extent of judicial review is essentially the same under both methods. *King's Health Spa, Inc. v. Village of Downers Grove*, 2014 IL App (2d) 130825, ¶ 35. Under either method, courts are limited to consideration of the evidence submitted in the administrative hearing and may not hear additional evidence. *Id.* ¶ 32, citing *Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 773 (2001) (administrative review is limited to the administrative hearing), and *Tanner v. Court of Claims*, 256 Ill. App. 3d 1089, 1091 (1994) (noting the same rule in a petition for writ of *certiorari*).

¶ 21 Here, count I of Joliet Township's complaint alleged that the petition for detachment and annexation failed to meet the requirements of the School Code and that the Board erred in granting it. These allegations involve the detachment proceedings conducted under article 7 of the School Code and are reviewable under the Administrative Review Law pursuant to section 7-7. As such, all of the comments at the hearings, the actions taken at the board meetings, and the Board's decision to grant the petition are part of the record of proceedings on review by the circuit court. See 735 ILCS 5/3-110 (West 2014) (scope of review under Administrative Review Law extends to all questions of law and fact presented by the entire record before the court). Similarly, the procedural violations alleged in count II involve actions taken at board meetings that are directly related to the Board's decision to grant the detachment and annexation petition.

For example, whether the Board was properly constituted when it voted on the petition and whether the Board acted illegally in issuing its final order are questions of law and fact that can be resolved by reviewing the record of proceedings before the circuit court on administrative review. Because the entire record of the administrative proceeding is reviewable under count I, a writ of *certiorari* is not required to review the claims in count II.

¶ 22 Nevertheless, Joliet Township claims that a writ of *certiorari* is necessary because the issues raised in count II fall under article 6 of the School Code, which does not expressly reference the Administrative Review Law. It cites several cases in support of its argument that *certiorari* review is appropriate where administrative review is not expressly provided. See *Thomas v. Chicago Transit Authority*, 2014 IL App (1st) 122402; *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324 (2009); *Hanrahan v. Williams*, 174 Ill. 2d 268 (1996); *Smith v. Department of Public Aid*, 67 Ill. 2d 529 (1977). However, in all of those cases, the writ was allowed because no other form of review was available. Those courts permitted the parties to move forward under a writ of *certiorari* because (1) the issues the parties were appealing fell under a section of an act that did not specifically reference the Administrative Review Law, and (2) the appealing party had no other way to bring the record of the administrative proceeding before the circuit court. In this case, the administrative proceedings are reviewable under the article 7 of the School Code, which by express reference adopts the Administrative Review Law. Accordingly, the trial court did not err in dismissing count II.

¶ 23

II

¶ 24 Next, Joliet Township argues that the trial court erred in denying its motion to strike the committee's answer and affirmative defenses.

¶ 25 It is well established that an order denying a motion to strike or dismiss is not final and appealable. *People v. American National Bank & Trust Co.*, 32 Ill. 2d 115, 117 (1965). The appellate court lacks jurisdiction to entertain an appeal from any portion of an order which is not final unless it falls within one of the exceptions contained in Illinois Supreme Court Rules 306 through 308. See Ill. S. Ct. Rs. 306-308 (eff. Feb. 26, 2010) (referencing interlocutory appeals and certified questions). A special finding by the trial court under Illinois Supreme Court Rule 304(a) will not confer appellate jurisdiction of an order that is not final. *Jaffke v. Anderson*, 162 Ill. App. 3d 290, 293 (1987).

¶ 26 In this case, the portion of the order appealed from is a motion to strike. It is not a final order; it did not terminate the litigation or some definite portion of it; and none of the exceptions for interlocutory appeals or certified questions apply. Thus, we lack jurisdiction to review plaintiff's claim of error.

¶ 27 CONCLUSION

¶ 28 The judgment of the circuit court of Will County is affirmed.

¶ 29 Affirmed.