

2018 IL App (1st) 171614-U  
No. 1-17-1614  
Order filed September 14, 2018

Fifth Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS ex rel.	)	Appeal from the
ILLINOIS DEPARTMENT OF LABOR,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	
	)	
TAMMY WILSON and PROFESSIONAL PRIDE	)	No. 16 CH 1795
SECURITY, LLC,	)	
	)	
Respondents,	)	
	)	
	)	
(TAMMY WILSON, Respondent-Appellant).	)	The Honorable
	)	Neil H. Cohen,
	)	Judge, Presiding.
	)	

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JUSTICE HALL delivered the judgment of the court.  
Justices Hoffman and Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court's order granting petitioner's motion for summary judgment reversed where petitioner had no jurisdiction over respondent as she was not properly

served with notice of administrative hearing as a proper party to the case; remanded for further proceedings consistent with this order.

¶ 2 Respondent Tammy Wilson (Tammy) appeals from an order of the circuit court of Cook County granting petitioner Illinois Department of Labor's (the Department) motion for summary judgment to enforce its final administrative decision. On appeal, Tammy contends that: 1) the Department had no authority or jurisdiction to find her liable for wages because the employer, Professional Pride Security, LLC (PPS), was a necessary party to the proceedings but was dismissed for lack of jurisdiction; 2) the Department lacked authority to find her liable in her position as a member<sup>1</sup> of a limited liability company (LLC) when section 13 of the Wage Payment and Collection Act (Act) (820 ILCS 115/13 (West 2014)) refers to corporations and not to LLCs; 3) the Department waited beyond the 35-day time frame required by section 103 of the Illinois Administrative Review Law (Administrative Review Law) (735 ILCS 5/3-103 (West 2014)) to seek a judgment in the circuit court on its final administrative decision; and 4) the Department's service of notice was improper under the Illinois Administrative Procedure Act (Administrative Procedure Act) (5 ILCS 100/1-1 *et seq.* (West 2014)). For the following reasons, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 The following facts are taken from petitioner's complaint and the procedural history of the case as established by the record on appeal.

¶ 5 The Department filed a verified petition to enforce an administrative judgment against respondent Tammy, individually and in her official capacity as sole member of PPS, and PPS, "a

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<sup>1</sup> The Department's order refers to Tammy as PPS's sole "manager" and the Illinois Secretary of State's website lists her as PPS's "member." This order will use the term "member" to describe Tammy's position within PPS.

dissolved Illinois corporation" on behalf of Harold Collins (claimant) in the chancery division of the circuit court on February 8, 2016, pursuant to sections 6, 11, and 14 of the Act. 820 ILCS 115/6, 11, 14 (West 2014). Previously, in February 2013, claimant filed a wage claim with the Department claiming that PPS owed him \$3200 for security services he had performed for the company. On January 29, 2015, the Department sent formal notice to both PPS and Tammy "doing business as PPS," by certified and regular U.S. mail to her personal post office box (p.o. box). The Department held a formal administrative hearing on March 24, 2015, pursuant to "proper" notice under section 300.1050(2)(a) of the Illinois Administrative Code (Administrative Code) (56 Ill. Adm. Code 300.1050(2)(a) (2014)), which provides for service of notice by "[r]egular US mail, postage prepaid, to the parties' addresses." While claimant appeared at the hearing, respondents did not appear and were found in default. The Department found for claimant and assessed compensatory damages of \$3200, additional damages of \$1917.87 (2% statutory damages due to claimant) and a \$500 administrative fee due to the Department against respondents for violations of the Act.

¶ 6 According to the Department's complaint, a copy of the order was "properly served" on the respondents by regular U.S. mail on June 26, 2015, and respondents did not file any action to challenge the Department's order pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)), as required under section 11(d) of the Act (820 ILCS 115/11(d) (West 2014)) and section 300.1160(c) of the Administrative Code (56 Ill. Adm. Code 300.1160(c) (2014)), and the time to do so had expired. Accordingly, the complaint alleged that the administrative order became final and enforceable pursuant to section 300.1160(f) of the Administrative Code. 56 Ill. Adm. Code 300.1160(f) (2014). When respondents did not pay the

amount due within 15 days of the Department's order as required by section 14 of the Act (820 ILCS 115/14 (West 2014)), the Department assessed additional damages, penalties and fees as follows: compensatory damages consisting of unpaid wages, final compensation, and wage supplements (unpaid wages); 2% of the unpaid wages, payable to claimant, for each month following the date that they were not paid; 1% of the unpaid wages, payable to claimant, per calendar day, payable to claimant; 20% of the unpaid wages, payable to the Department; and a non-waivable administrative fee of \$500 payable to the Department.

¶ 7 A copy of the Department's June 26, 2015, administrative order was attached to the complaint. In the order, the hearing officer made the following findings of fact: Claimant was employed by PPS from October 6, 2012, through January 8, 2013, and his rate of pay was \$10 per hour. Claimant worked as a security guard at Woodland Apartments in Chicago pursuant to PPS's contract to provide security. The Illinois Secretary of State (Secretary of State) records revealed that Tammy was the sole member of PPS. Claimant was required to wait two months before he received any wages. He was subsequently paid \$792 on December 4, 2012, and \$792 on December 20, 2012. Those were the only two checks he received during his employment. He was not paid for 320 hours worked, and was owed \$3200 in earned wages/final compensation.

¶ 8 The hearing officer made the following conclusions of law: Tammy was the sole member of PPS and operated the business with her husband, Robert Wilson (Robert). Respondents failed to pay claimant all earned wages/compensation. Tammy was personally liable for claimant's unpaid wages/final compensation of \$3200. Respondents were given notice of the proceedings pursuant to section 10 of the Administrative Procedure Act (5 ILCS 100/10.5-10.70 (West

2014)), and section 300.1050(a)-(c) of the Administrative Code (56 Ill. Adm. Code 300.1050(a)-(c) (2014)), and no appearance, answer or other pleadings were filed.

¶ 9 Respondents were found in default and that they violated the Act by failing to pay claimant's wages/final compensation in accordance with the terms of the Act. Respondents were ordered to jointly and individually pay: 1) claimant \$3200 in unpaid wages/final compensation and the Department \$500 as a non-waivable administrative fee; and 2) additional statutory penalties for failure to pay as ordered.

¶ 10 The Department filed an affidavit of service of its complaint to PPS on February 26, 2016, which indicated that it was served on attorney Alan Rhine (Rhine), as an "authorized person or partner of the company" at 111 W. Washington Street in Chicago. On March 22, 2016, Rhine entered an appearance on behalf of Tammy and PPS.<sup>2</sup> On April 4, 2016, respondents filed a request for a bill of particulars, specifically requesting verification as to the service of the original notice of administrative hearing as respondents had no record or recollection of receiving any notice of the hearing.

¶ 11 The Department filed a bill of particulars on April 29, 2016, in the circuit court, which stated that Tammy's name and p.o. box address were on record with the Secretary of State as the only member of PPS and it provided service of notice of the hearing on March 24, 2015, through certified and regular mail to the p.o. box address on January 29, 2015.

¶ 12 Respondents subsequently filed a section 2-619 motion (735 ILCS 5/2-619 (West 2014)) to dismiss on May 17, 2016, contending that the circuit court did not have jurisdiction over the

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<sup>2</sup> PPS was originally a respondent in this action; it appears as a party in some of the proceedings before the circuit court, but is not a party to this appeal.

subject matter of the action because the underlying administrative decision was void. Respondents contended that they were not properly served and that the address for PPS's registered agent, Rhine, and principal office were different from Tammy's p.o. box. Respondents concluded that the Department's petition to enforce the administrative decision should be dismissed because it failed to establish that it properly served the notice of hearing or amended notice of hearing on respondents.

¶ 13 In response, the Department conceded that PPS was not properly served with notice of hearing and requested that the circuit court enter a voluntary dismissal on its claim against PPS. However, the Department contended that it properly served the notice of hearing on Tammy in accordance with its own regulations and section 10-25 of the Administrative Procedure Act. 5 ILCS 100/10-25 (West 2014).

¶ 14 In their reply, respondents argued that, due to the Department's concession that PPS was not properly served, if the circuit court entered dismissal of its claim against PPS, the Department could not exercise jurisdiction by "vicarious liability" over Tammy as an agent of PPS. Respondents contended that any individual claim against Tammy was a derivative of the claim against the employer, PPS, and PPS was a necessary party in the proceedings before the Department. Further, as a member of an LLC, respondents contended that Tammy was excluded from liability under section 10-10 of the Illinois Limited Liability Company Act (Limited Liability Company Act). 805 ILCS 180/10-10 (West 2014). Respondents concluded that, without a finding against PPS, there could be no finding against Tammy as an agent of PPS, and the case must be dismissed.

¶ 15 In its sur-reply, the Department contended that under section 13 of the Act (820 ILCS 115/13 (West 2014)), Tammy as an individual can be deemed an employer. The Department also maintained that Tammy was foreclosed from challenging the findings of fact and conclusions of law because she did not challenge the decision during the 35-day time period specified by section 3-103 of the Administrative Review Law. 735 ILCS 5/3-103 (West 2014).

¶ 16 The circuit court entered an order on September 15, 2016, finding that: 1) Tammy was served in accordance with law and due process in the administrative proceeding before the Department; 2) respondents' motion to dismiss was denied; 3) PPS was voluntarily dismissed; and 4) Tammy was to file an answer on or before October 14, 2016.

¶ 17 Tammy filed her response to the Department's verified petition on October 13, 2016, in which she responded to the allegations of the petition and raised affirmative defenses. In her affirmative defenses, Tammy contended that any claim against her was derivative of the claim against PPS, who was a necessary party to make a complete determination of the controversy. Tammy maintained that as there was no finding against PPS, there could be no finding against her as an agent of PPS. Tammy further contended that section 13 of the Act (820 ILCS 115/13 (West 2014)) does not specifically mention LLCs, and there was no authority for the Department to impose liability on Tammy due to her role as a member of PPS. Lastly, Tammy contended that the Department's rules for service did not comply with the methods for service set forth in section 10-25 of the Administrative Procedure Act (5 ILCS 100/10-25 (West 2014)) and are void, thus its service of notice to her p.o. box did not provide jurisdiction over her.

¶ 18 Tammy filed a motion for summary judgment on November 17, 2016, in which she contended that PPS was a necessary party in the proceeding before the Department and any and

all judgments against PPS were void because the Department conceded that PPS was not properly served. Tammy maintained that because the claim against her was derivative of the claim against PPS, and there was no jurisdiction over PPS, she could not have personally been found liable for a failure to pay claimant's wages. Tammy further asserted that there was no finding in the Department's decision that she was personally responsible for PPS's failure to make wage payments or that she knowingly permitted PPS to violate the provisions of section 13 of the Act (820 ILCS 115/13 (West 2014)), so she could not be held personally liable to claimant as an employer or agent of the employer. Tammy concluded that because there was no finding that PPS violated the Act, there was no basis to find she was an agent of PPS who knowingly helped PPS violate the Act. Tammy maintained that because Department lacked jurisdiction over PPS, it could not have found that PPS was claimant's employer who failed to pay his salary. Without authority to issue a finding against PPS, Tammy contended that the Department was without authority to enter a finding against an agent of the employer. She further contended that without jurisdiction over PPS, the Department's finding that PPS was an employer that violated the Act was void because the Department acted outside of its statutory authority.

¶ 19 Tammy next contended that PPS was an LLC and not subject to section 13 of the Act (820 ILCS 115/13 (West 2014)), because it only applies to corporations and not to LLCs. That section states, in pertinent part:

"[A]ny officers of a corporation or agents of an employer who knowingly permit the employer to violate provisions of th[e] [A]ct shall be deemed to be the employers of the employees of the corporation."

820 ILCS 115/13 (West 2014).

Tammy maintained that the Department could not hold her liable as an employer because she was an agent of PPS under that provision. Further, Tammy contended that there was no finding by the Department that she personally employed claimant, therefore section 2 of the Act (820 ILCS 115/2 (West 2014)) did not apply to her in her individual capacity.

¶ 20 On November 18, 2016, the Department filed its response to Tammy's affirmative defenses. In response, the Department admitted that PPS was not properly served with notice of the administrative hearing and that it moved to voluntarily dismiss its claim against PPS. The Department also asserted that PPS was an LLC with Tammy as its sole member, and denied that Tammy was not found to personally employ the claimant, that there was no basis to show Tammy was not an agent who knowingly permitted PPS to violate the Act, or that Tammy was not found to knowingly permit the violation. The Department concluded that Tammy was not entitled to any relief.

¶ 21 On December 22, 2016, the Department filed its response to Tammy's motion for summary judgment. In its response, the Department contended that Tammy was properly served with notice, yet failed to appear at the administrative hearing. The Department further contended that because Tammy was found liable at the administrative level, she forfeited all arguments not raised before the agency other than personal and subject matter jurisdiction. Finally, the Department conceded that section 13 of the Act (820 ILCS 115/13 (West 2014)) was applicable to LLCs, but Tammy's personal liability was not dependent upon jurisdiction over PPS.

¶ 22 In her reply filed on January 13, 2017, Tammy reiterated that section 13 of the Act did not apply to PPS because the language of the statute only applies to corporations, and that

section 10-10 of the Limited Liability Corporation Act (805 ILCS 180/10-10 (West 2014)) stated that a member of a LLC was not personally liable for debt except in limited circumstances, which did not apply in this case. Tammy also contended that if she lacked standing to challenge the Department's lack of jurisdiction over PPS, it was unfair to hold her personally liable for the failure of PPS to pay its employee and to find that she knowingly permitted PPS to violate the Act.

¶ 23 On January 26, 2017, the circuit court entered a written order denying Tammy's motion for summary judgment, finding that: 1) it already found that the Department had personal jurisdiction over Tammy, so the administrative decision could be enforced against her; and 2) Tammy was outside of the 35-day time period for seeking review of the Department's decision under section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2014)) and section 300.1160(f) of the Administrative Code (56 Ill. Adm. Code 300.1160(f) (2014)), so the order was final and binding on Tammy, even if factually or legally erroneous. On February 23, 2017, the court entered an order granting the Department leave to file a motion for summary judgment.

¶ 24 On March 31, 2017, the Department filed its motion for summary judgment, in which it contended that after 35 days, the Department's order became final, and by failing to seek review in the circuit court within those 35 days, Tammy waived all rights to challenge any portion of the decision other than the Department's jurisdiction over her. The Department further contended that because Tammy did not participate in the administrative hearing and the circuit court had already found that she received adequate notice of the hearing there was no genuine issue of

material fact, and the Department was entitled to have its administrative order entered as a court order.

¶ 25 Tammy filed her response to the Department's summary judgment motion on April 25, 2017, in which she argued that she did not waive her previous arguments from her summary judgment motion, but would only address whether the circuit court had authority to enter a judgment against her based on the administrative decision. Tammy contended that while a circuit court generally had the power to enter judgment "as part of an affirmance or partial affirmance" of an administrative decision under section 3-111(a)(8) of the Administrative Review Law (735 ILCS 5/3-111(a)(8) (West 2014)), the Department did not file an action for review of its administrative decision within the 35-day limit imposed by section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2014)), thus the circuit court no longer had the jurisdiction to enter a judgment. Tammy also argued there was no statutory authorization for the circuit court to bypass the limitations in section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2014)), which imposed a 35-day limit to file.

¶ 26 The Department responded that it was not required to seek administrative review of its own decision because sections 3-102 and 3-107 of the Administrative Review Law (735 ILCS 5/3-102, 5/3-107 (West 2014)) did not contemplate an agency seeking review of its own administrative decision, and to do so was contrary to the plain language of the statute. Further, the Department contended that it could seek the circuit court's enforcement of its decision at any time because sections 11 and 14(b-5) of the Act (820 ILCS 115/11, 14(b-5) (West 2014)) allowed the Department to recover any fees and penalties assessed by it in a civil action.

¶ 27 On May 25, 2017, the circuit court entered a written order granting the Department's motion for summary judgment, finding that: 1) Tammy had no valid defense to the Department's complaint; and 2) as section 14(b-5) of the Act (820 ILCS 115/14(b-5) (West 2014)) expressly authorized the Department to file a civil action to recover fees assessed by the Department against employers found in violation of the Act, the Department was entitled to seek judgment to enforce its June 26, 2015, administrative decision.

¶ 28 On June 12, 2017, the circuit court entered its final written order, finding that: 1) the Department's June 26, 2015, decision and order was an enforceable judgment and Tammy failed to comply with it; 2) judgment was entered against Tammy for \$29,611.57; 3) the current penalties assessed would continue to accrue against Tammy if she failed to comply with the circuit court's order; and 4) the order was final.

¶ 29 On June 30, 2017, Tammy filed a timely notice of appeal.

¶ 30 ANALYSIS

¶ 31 On appeal, Tammy contends that: 1) there was no authority or jurisdiction to find her liable for wages when the employer, PPS, was dismissed from the case for lack of jurisdiction and it was a necessary party to the proceedings; 2) the Department lacked authority to find her liable in her position as a member of an LLC when section 13 of the Act (820 ILCS 115/13 (West 2014)) refers to corporations and not to LLCs; 3) the Department waited beyond the 35-day time frame of section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2014)) to seek a judgment in the circuit court on its final administrative decision; and 4) the service of notice of the administrative hearing was improper under the Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (West 2014)).

¶ 32 As a procedural matter, we will first address whether the service of notice to Tammy was proper.

¶ 33 A. Service

¶ 34 Lack of jurisdiction may be raised at any time. *Robinson v. Human Rights Comm'n*, 201 Ill. App. 3d 722, 726 (1990). If the Department had no jurisdiction at the time its administrative decision was entered, then its order is void and must be vacated. *Sarkissian v. Chicago Board Of Education*, 201 Ill. 2d 95, 103 (2002). Judicial review of the Department's orders is governed by the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014). Section 3-103 of the Administrative Review Law governs the time frame for reviewing an order. That section states, in pertinent part:

"Every action to review a final administrative decision shall be commenced \*\*\* within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision \*\*\*."

735 ILCS 5/3-103 (West 2014).

Generally, the circuit court loses jurisdiction to review the merits of the Department's administrative decisions if a party fails to challenge it within 35 days. *Hwang v. Illinois Department of Public Aid*, 333 Ill. App. 3d 698, 709 (2002). However, a party's attack on an agency's jurisdiction over the person or subject matter may be reviewed after expiration of the 35-day challenge period. *Bell v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago*, 398 Ill. App. 3d 758, 763 (2010).

¶ 35 Whether Tammy received proper notice is a question of law, which we review *de novo*. *Segal v. Department of Insurance*, 404 Ill. App. 3d 998, 1002 (2010).

¶ 36 "Notice and an opportunity to be heard are necessary principles of procedural due process." *Segal*, 404 Ill. App. 3d at 1002 (citing *People ex. rel. Illinois Commerce Comm'n v. Operator Communication, Inc.*, 281 Ill. App. 3d 297, 302 (1996)). Administrative proceedings must conform to the requirements of due process of law. *People ex rel. Illinois Commerce Comm'n*, 281 Ill. App. 3d at 303.

¶ 37 Tammy contends that she was not properly served with notice of the administrative hearing because: 1) the address for PPS's registered agent was different from her p.o. box where the Department sent the notice thus leaving the Department without jurisdiction over her; and 2) sending the notice by regular U.S. mail violated the required service methods specified by section 10-25 of the Administrative Procedure Act (5 ILCS 100/10-25 (West 2014)).

¶ 38 Conversely, the Department contends that service of the notice was proper because it was sent in accordance with Administrative Review Law mailing rules, which requires the Department to send notice of the hearing "not less than 21 days prior to [the hearing]" through methods which include regular U.S. mail or certified U.S. mail. 56 Ill. Adm. Code 300.1050(a)(2), (a)(2)(a)-(b) (2014). The Department maintains that it sent the notice of hearing to Tammy's p.o. box address and had personal jurisdiction over her because she was listed in the Secretary of State's records as the sole member of PPS, a dissolved LLC.

¶ 39 Neither party addresses whether the Department's sending of notice of the administrative hearing to Tammy at her personal p.o. box was proper service to Tammy as the sole member of an LLC.

¶ 40 PPS was an LLC. Consequently, service of process upon it is governed by the service of process section of the Limited Liability Company Act (805 ILCS 180/1-50 (West 2014)). Section 50 provides in pertinent part:

"(a) [A]ny process, notice, or demand required or permitted by law to be served upon either a limited liability company or foreign limited liability company shall be served either upon the registered agent appointed by the limited liability company or upon the Secretary of State as provided in this Section.

(b) The Secretary of State shall be irrevocably appointed as an agent of a limited liability company upon whom any process, notice, or demand may be served under any of the following circumstances:

(1) Whenever the limited liability company shall fail to appoint or maintain a registered agent in this State.

(2) Whenever the limited liability company's registered agent cannot with reasonable diligence be found at the registered office in this State or at the principal place of business stated in the articles of organization.

(3) When a limited liability company has dissolved, the conditions of paragraph (1) and paragraph (2) exist, and a civil action, suit or proceeding is instituted against or affecting the limited liability company within 5 years after the issuance of a certificate of dissolution or the filing of a judgment of dissolution.\*\*\*."

805 ILCS 180/1-50(a), (b)(1-3) (West 2014).

¶ 41 A review of the record reveals that when the Department mailed the administrative hearing notice to Tammy's p.o. box, there were other addresses on file with the Secretary of State for PPS's registered agent and its primary place of business. As stated previously, sections 50(a) and (b) of the Limited Liability Company Act (805 ILCS 180/1-50(a), (b) (West 2014)) indicate that there are only two ways to effectuate service on an LLC: 1) the party must serve notice to its registered agent at its registered office; or 2) if the LLC is dissolved and the registered agent cannot be found with "reasonable diligence" at either the registered office or the LLC's principle place of business, then the litigant may serve the LLC through the Secretary of State.

¶ 42 Here, while the Department's method of service, regular and certified mail, was proper, the party to whom the Department mailed the notice was not proper. The Department failed to follow the requirements of sections 1-50(a) and (b) of the Limited Liability Company Act (805 ILCS 180/1-50(a), (b) (West 2014)) for service on an LLC. As the claimant's cause of action was against the LLC for non-payment of wages, proper service and notice could have only been to the registered agent or, if service to the registered agent was unsuccessful, then to the Secretary

of State. See *John Isfan Construction, Inc. v. Longwood Towers, LLC*, 2016 IL App (1st) 143211, ¶ 1 (substantial justice required vacating a default judgment in contractor's action seeking payment from members of dissolved LLC when the contractor sent notice solely to registered agent's surviving spouse at her home address because there was no indication that members had actual notice of default before its entry).

¶ 43 Accordingly, we find that as a member of an LLC, Tammy was not a proper party to be served notice of the administrative hearing since she was not the registered agent.

¶ 44 B. Proper Party as Employer

¶ 45 The Department nevertheless contends that Tammy is a proper party in her individual capacity as PPS's member, even though PPS was not properly served, because under sections 2 and 13 of the Act (820 ILCS 115/2, 13 (West 2014)), agents of an employing entity can be deemed employers of the claimant.

¶ 46 Tammy maintains that the administrative decision made no findings that she personally employed the claimant or that she was an officer who knowingly permitted the employer corporation to violate the provisions of section 13 of the Act (820 ILCS 115/13 (West 2014)), therefore the Department cannot hold her personally liable for the company's debt.

¶ 47 Whether Tammy was a proper party as an employer within the meaning of section 13 of the Act (820 ILCS 115/13 (West 2014)), is a question of law, which we will review *de novo*. *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 106 (2005). The primary objective when interpreting a statute is to ascertain and give effect to the intent of the legislature by applying the plain and ordinary meaning of its language. *Andrews*, 217 Ill. 2d at 106. "Where the language of the statute is clear and unambiguous, we must apply the statute" as written, considering all

provisions of the statute as a whole and keeping in mind the subject and the legislature's objective. *Andrews*, 217 Ill. 2d at 106. We must presume the legislature did not intend to produce absurdity or injustice. *Andrews*, 217 Ill. 2d at 107.

¶ 48 The Act defines "employer" twice, in section 2 and section 13. 820 ILCS 115/2, 13 (West 2014). Section 2 states, in pertinent part:

"[T]he term 'employer' shall include any individual, partnership, association, corporation, limited liability company, business trust, \* \* \* or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed."

820 ILCS 115/2 (West 2014).

Section 13 states, in pertinent part:

"[A]ny officers of a corporation or agents of an employer who knowingly permit the employer to violate provisions of th[e] [A]ct shall be deemed to be the employers of the employees of the corporation."

820 ILCS 115/13 (West 2014).

¶ 49 Sections 2 and 13 of the Act present two ways a company and its agents could be held liable as "employers" for violations of the Act: 1) the employer is liable for its own violations and for any violations its agents commit; and 2) personal liability can be imposed on officers or

agents who "knowingly permit" the employer to withhold the compensation. *Elsener v. Brown*, 2013 IL App (2d) 120209, ¶ 66. "A corporate officer with operational control of a corporation [is] treated, along with the corporation itself, as an 'employer.'" *Andrews*, 217 Ill. 2d at 110. An individual agent may not be held personally liable as an "employer" under the Act due solely to his position as a sole member of the company, unless there is evidence he knowingly permitted the corporate employer to violate the Act by not paying the compensation due. *Andrews*, 217 Ill. 2d at 109.

¶ 50 In *Andrews*, our supreme court held that if section 2 of the Act was reviewed in isolation, then every company employee in a supervisory position would be "strictly and personally liable for payment of [her] subordinates' wages." *Andrews*, 217 Ill. 2d at 107-108. It clarified that section 13 of the Act narrowed personal liability for a corporate officer; a corporate officer could not be held personally liable for a violation of the Act just by virtue of being the sole officer, unless he had "operational control" of the company. *Andrews*, 217 Ill. 2d at 110.

¶ 51 Upon review of the record, the Department's administrative decision only found that Tammy was properly served, she was the sole member of PPS and she operated PPS with her husband, Robert. Because neither Tammy nor PPS appeared at the hearing, the Department entered a default order finding PPS and Tammy liable. The administrative order, however, did not make any findings as to whether Tammy knowingly permitted PPS to violate the provisions of the Act, as required by section 13, in order to find her liable as an employer. See 820 ILCS 115/13 (West 2014). The Department's order did not state why it held Tammy personally liable; it only appears to hold her liable because she is the sole member of the LLC. There is no evidence in the record or in the findings of the administrative order that conclude on the merits

that Tammy knowingly allowed PPS to violate the Act and was thus individually responsible as an employer under the Act. See *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 250 (2004) (president and chief financial officer of a corporation were held personally liable as employers under the Act when trial testimony established that the plaintiff was hired by the defendants, the defendants negotiated the terms of the plaintiff's bonus and salary and the defendants knowingly refused to pay the plaintiff's first quarter bonus).

¶ 52 Therefore, we find that Tammy was not a proper party to receive notice of the March 24, 2015, administrative hearing and that the Department's service of notice to her at her personal p.o. box was improper. Accordingly, the Department's administrative decision order against Tammy was void and must be vacated. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 45 (a judgment entered without personal jurisdiction is void and must be vacated).

¶ 53 C. Respondent's Other Claims

¶ 54 As this court has found that the Department's decision is void as to Tammy for lack of jurisdiction, we will not address the other issues raised by Tammy's appeal.

¶ 55 CONCLUSION

¶ 56 For the foregoing reasons, we reverse the judgment of the circuit court and remand for proceedings consistent with this order.

¶ 57 Reversed and Remanded.