

2018 IL App (1st) 180311-U  
Order filed: August 31, 2018

FIRST DISTRICT  
FIFTH DIVISION

No. 1-18-0311

**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

---

MARLON CONWAY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CH 15358
	)	
THE BOARD OF EDUCATION OF HARVEY SCHOOL	)	
DISTRICT NO. 152,	)	Honorable
	)	Anna H. Demacopoulos,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We dismissed the appeal in this administrative review case for a lack of appellate jurisdiction, where pursuant to its statutory authority the circuit court remanded this matter to the agency for a determination of the amount of back-pay relief sought by plaintiff-appellee.
- ¶ 2 In this administrative review action, defendant-appellant, the Board of Education (Board) of Harvey School District No. 152 (District), appeals from an order of the circuit court which

No. 1-18-0311

vacated its decision to terminate plaintiff-appellee, Marlon Conway, from his employment as a tenured teacher for the District. The circuit court, upon vacating the Board's decision to terminate plaintiff, ordered the Board to reinstate him, remanded the matter to the Board "with directions to enter an order setting the amount of back pay, lost benefits, and costs, less mitigation," and retained jurisdiction "of the back pay issue." We dismiss the appeal for lack of appellate jurisdiction.<sup>1</sup>

¶ 3 Plaintiff had been a tenured teacher at Gwendolyn Brooks Middle School in the District since the fall of 2011. On October 27, 2015, plaintiff was given written notice that he was being placed on administrative leave, without pay. After a meeting with the superintendant, plaintiff, on October 29, 2015, requested a hearing before the Board. Plaintiff met with the Board on November 9, 2015. On that date, the Board adopted a resolution, with a bill of particulars, terminating plaintiff from his position with the District. Plaintiff then requested a hearing to challenge the Board's resolution before a hearing officer pursuant to section 24-12 of the Illinois School Code (105 ILCS 5/24-12 (West 2016)) (School Code). A hearing on eight charges was held on June 15 and 16, 2016. The hearing officer, on October 4, 2016, made a recommendation that plaintiff be reinstated to his position with the District and be "made whole." The Board, on October 31, 2016, issued a final decision rejecting the hearing officer's recommendation of reinstatement and, instead, found that plaintiff should be terminated.

¶ 4 Thereafter, plaintiff filed a complaint in the circuit court for administrative review of the

---

<sup>1</sup> In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written

No. 1-18-0311

Board's final decision, pursuant to section 24-16 of the School Code (105 ILCS 5/24-16 (West 2016)) as well as the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)) (Review Law). Plaintiff's complaint sought as relief that: (1) the Board's decision to terminate his employment be vacated; (2) he be reinstated as a tenured teacher; and (3) he be made "whole."

¶ 5 Plaintiff subsequently filed a motion to vacate the Board's decision, which sought the relief requested in his complaint. After the parties briefed the motion, the circuit court granted plaintiff's motion to vacate in a written order entered on August 22, 2017. On September 1, 2017, the court entered an order amending its August 22, 2017, order, which stated:

"[I]t is hereby ordered that to accord the Court's order of August 22 [2017] (including the reasons stated on the record) and Section 24-12(d)(10) of the School Code, the Court's order of August 22 [2017] is amended to provide that (1) [plaintiff's] motion to vacate [the Board's] decision of October 31, 2016 is granted for the reasons stated on the record on August 22 [2017]; (2) [the Board] is ordered to reinstate [plaintiff] forthwith; (3) the matter is remanded to [the Board] with directions to enter an order setting the amount of back pay, lost benefits, and costs, less mitigation; (4) upon entry of this order, the Court will retain jurisdiction of the back pay issue; (5) no further status hearing will be necessary; (6) judgment is to be entered in accordance with this order; and (7) this order is a final and appealable order."

¶ 6 After the court denied its motion to reconsider, the Board appealed.

---

order stating the specific reason why oral arguments were not heard.

No. 1-18-0311

¶ 7 On appeal, the Board argues that the circuit court erred in vacating its final administrative decision to dismiss plaintiff from his position pursuant to section 24-12 of the School Code.

¶ 8 Neither party has questioned this court's appellate jurisdiction. However, we have a duty to *sua sponte* determine whether we have jurisdiction to decide the issues presented. *Cangemi v. South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006).

¶ 9 The case was before the circuit court on plaintiff's complaint for administrative review. Section 24-16 of the School Code specifically adopts the Review Law for judicial review of final administrative decisions of the Board under section 24-12 of the School Code. 105 ILCS 5/24-16 (West 2016). Section 3-104 of the Review Law vests the circuit court with jurisdiction to review the Board's decision to dismiss plaintiff from his employment. 735 ILCS 5/3-104 (West 2016). "Once a circuit court obtains jurisdiction of an action in administrative review, it retains jurisdiction of the action 'until final disposition thereof.'" *Lippert v. Property Tax Appeal Board*, 273 Ill. App. 3d 150, 153 (1993) (quoting Ill. Rev. Stat. 1991, ch. 110, par. 3-104).

¶ 10 In its jurisdictional statement, the Board asserts that we have jurisdiction over its appeal from the circuit court's orders of August 22 and September 1, 2017, "vacating the Board's final administrative order," under Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017). Rule 303(a) allows appeals from final judgments, orders, or decrees. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 201 (1994). Generally, " '[a]n order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.'" *Ikpoh v. Zollar*, 321 Ill. App. 3d 41, 44-45 (2001) (quoting *R.W. Dunteman Company v. C/G Enterprises, Inc.*, 181

No. 1-18-0311

Ill. 2d 153, 159 (1998)). “ ‘The ultimate question to be decided in each case is whether the [judgment] fully and finally disposes of the rights of the parties to the cause so that no material controverted issue remains to be determined.’ ” *Id.* at 45. (quoting *Wilkey v. Illinois Racing Board*, 96 Ill. 2d 245, 249 (1983)). These standards of finality are applicable in the context of an administrative review. *Id.*

¶ 11 In its August 22 and September 1, 2017, orders, the circuit court not only vacated the Board’s decision to terminate plaintiff’s employment. It also remanded the matter to the Board for a determination of the back pay issues. The circuit court ordered the remand to the Board pursuant to section 24-12(d)(10) of the School Code, which in relevant part provides:

“If a decision of the hearing officer for dismissal pursuant to Article 24A of this Code or of the school board for dismissal for cause is adjudicated upon review or appeal in favor of the teacher, then the trial court shall order reinstatement and shall remand the matter to the school board with direction for entry of an order setting the amount of back pay, lost benefits, and costs, less mitigation. The teacher may challenge the school board's order setting the amount of back pay, lost benefits, and costs, less mitigation, through an expedited arbitration procedure, with the costs of the arbitrator borne by the school board.” 105 ILCS 5/24-12(d)(10) (West 2016).

Thus, the circuit court had the statutory authority to remand this case to the Board after it vacated plaintiff’s dismissal, for further proceedings to determine the amount of “back pay, lost benefits and costs, less mitigation” owed to plaintiff.

¶ 12 Where the circuit court exercises its power to remand an agency’s decision for further

No. 1-18-0311

hearings or proceedings, “jurisdiction must necessarily remain with the circuit court until after disposition of these further matters. Only after the circuit court has examined the results of these additional proceedings will we recognize its subsequent order as being final and appealable.” *Ikpoh*, 321 Ill. App. 3d at 45 (quoting *Mitrenga v. Martin*, 110 Ill. App. 3d 1006, 1008 (1982)). See also 735 ILCS 5/3-104 (West 2016) (providing that “[t]he court first acquiring jurisdiction of any action to review a final administrative decision shall have and retain jurisdiction of the action until final disposition of the action”). Because the circuit court orders challenged here require the Board to conduct additional proceedings upon remand, and the Board “ ‘must do more than enter a judgment or decree in accordance with the court’s directions’ ” (*Hooker v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago*, 391 Ill. App. 3d 129, 136 (2009) (quoting *Lippert*, 273 Ill. App. 3d at 153)), the circuit court’s orders are not final and appealable (*Id.*; *Cunningham v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago*, 389 Ill. App. 3d 1065, 1070-71 (2009)).

¶ 13 For these reasons, we dismiss the appeal for lack of appellate jurisdiction.

¶ 14 Dismissed.