

**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).

2019 IL App (4th) 150872-U

NO. 4-15-0872

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

August 2, 2019

Carla Bender

4<sup>th</sup> District Appellate Court, IL

CUNNINGHAM TOWNSHIP, a/k/a The Town of	)	Appeal from the
Cunningham,	)	Circuit Court of
Plaintiff-Appellant,	)	Champaign County
v.	)	No. 14MR1047
BRIAN HAMER, in His Official Capacity as Director	)	
of the Department of Revenue; THE DEPARTMENT OF	)	
REVENUE; and PRESENCE COVENANT MEDICAL	)	Honorable
CENTER,	)	Thomas J. Difanis,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Holder White and Justice Knecht concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Affirmation of the circuit court’s dismissal of plaintiff’s complaint for administrative review is warranted where plaintiff only raises arguments addressing the agency’s decision.
- ¶ 2 In December 2014, plaintiff, Cunningham Township (Township), also known as the Town of Cunningham, filed a timely complaint for administrative review against defendants, Brian Hamer, in his official capacity as Director of the Department of Revenue (Director); the Department of Revenue; and Presence Covenant Medical Center (Presence). The Township sought review of the Director’s November 25, 2014, order, dismissing the Township’s request for a formal hearing on the Department of Revenue’s granting of property tax exemptions to property owned by Presence. In its complaint for administrative review, the Township also asserted the statute under which the Department of Revenue granted the tax exemption was

unconstitutional on its face. Presence filed a motion to dismiss the Township's complaint under section 2-619(a)(9) of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619(a)(9) (West 2014)), contending the Township could not pursue an administrative review action because it was not a party to the administrative review proceedings. After a September 2015 hearing, the Champaign County circuit court granted the motion and dismissed the Township's complaint with prejudice. The Township appeals the dismissal, and we affirm.

¶ 3

## I. BACKGROUND

¶ 4

### A. Board of Review and Department of Revenue Proceedings

¶ 5

On December 20, 2013, Presence sent notice to five taxing districts of its intent to file an application for a property tax exemption for 68 parcels of property. The Township was not one of the taxing districts that received a letter. Six days later, Presence filed 28 applications with the Champaign County Board of Review, seeking property tax exemptions for the 2013 tax year under section 15-86 of the Property Tax Code (35 ILCS 200/15-86 (West 2012)). The applications sought exemptions for 68 parcels of land located in Champaign County that were occupied by Presence's hospital facility with some of the parcels located in the Township. After reviewing the applications, the Champaign County Board of Review recommended the Department of Revenue grant the exemptions. On February 6, 2014, the Department of Revenue issued 28 documents granting the tax exemptions for nearly all of the parcels (a portion of two parcels were taxable).

¶ 6

On April 4, 2014, the Township's assessor sent a letter to the Department of Revenue requesting a hearing on all 28 of the applications. In July 2014, Presence filed a motion to dismiss the Township's request for a hearing because it was untimely filed. It noted the Township did not intervene in the Board of Review or the Department of Revenue proceedings

before the Department of Revenue issued its decision approving the 28 applications. The Township filed a response, asserting Presence was required to deliver to the Township a copy of Presence's applications for the property tax exemption under section 16-70 of the Property Tax Code (35 ILCS 200/16-70 (West 2012)) and failed to do so. The Township learned of the proceedings when it received a notice of the Department of Revenue's approval of the property tax exemptions. The Township argued it could not have intervened in the proceedings until it had notice of the existence of the proceedings. Presence filed a reply, contending the Township was not a municipality and thus was not entitled to a copy of the application under section 16-70. Presence also argued the Township received constructive notice of the applications because it shared some of the same officials as the City of Urbana, which was one of the taxing districts that received a letter from Presence.

¶ 7 In October 2014, the administrative law judge entered a written recommendation for disposition, which recommended Presence's motion to dismiss be granted. The administrative law judge explained the Township did not intervene in writing at either the Board of Review level or the Department of Revenue level prior to their decisions. Since the Township was not a party to the proceedings, it did not have a right to file an application for a hearing under section 8-35(b) of the Property Tax Code (35 ILCS 200/8-35(b) (West 2012)). On November 25, 2014, the Director accepted the administrative law judge's recommendation, resulting in a final administrative decision.

¶ 8 B. Circuit Court Proceedings

¶ 9 On December 29, 2014, the Township filed its timely complaint for administrative review pursuant to section 8-40 of the Property Tax Code (35 ILCS 200/8-40 (West 2014)). In its complaint, the Township requested (1) the reversal of the Department of

Revenue's decision, (2) a finding the Township is entitled to notice and an opportunity to be heard and to participate in proceedings, and (3) a declaration section 15-86 of the Property Tax Code is unconstitutional on its face.

¶ 10 In March 2015, Presence filed a motion to dismiss the Township's complaint pursuant to section 2-619(a)(9) of the Procedure Code (735 ILCS 5/2-619(a)(9) (West 2014)). The motion contended the Township was not a party to the Department of Revenue proceedings and thus was precluded from pursuing its administrative review action. The Department of Revenue joined in the motion to dismiss. The Township filed a response asserting Presence had no right to file a motion to dismiss. Moreover, the Township argued it did not receive notice of the proceedings on the property tax exemption until the Department of Revenue had granted the proceedings and thus could not seek to intervene in the proceedings any earlier.

¶ 11 On September 14, 2015, the circuit court heard arguments on Presence and the Department of Revenue's motion to dismiss. The court found the Township was not entitled to notice under section 16-70 of the Property Tax Code and granted the motion to dismiss. On October 2, 2015, the court entered a written order dismissing the Township's complaint for administrative review.

¶ 12 On October 9, 2018, the Township filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). Accordingly, this court has jurisdiction of this appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 13 C. Appellate Proceedings

¶ 14 In January 2016, the Township filed its appellant brief, asserting (1) the property tax exemptions were invalid because Presence failed to provide notice of its application for the exemptions and (2) it should be allowed to oppose the property tax exemptions because section

15-86 of the Property Tax Code had been held unconstitutional in *Carle Foundation v. Cunningham Township*, 2016 IL App (4th) 140795, 45 N.E.3d 1173. In February 2016, the Department of Revenue and Presence filed a joint motion to stay the briefing schedule pending the outcome of the petition for leave to appeal filed in *Carle Foundation*. This court granted the motion to stay.

¶ 15 In March 2017, the Illinois Supreme Court vacated the *Carle Foundation* decision in its entirety for lack of jurisdiction. *Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 36, 89 N.E.3d 341. In a May 2017 status report, the Department of Revenue and Presence notified this court of the supreme court’s decision in *Carle Foundation* and the First District’s decision in *Oswald v. Hamer*, 2016 IL App (1st) 152691, 73 N.E.3d 536, which held section 15-86 was constitutional. On September 20, 2018, our supreme court held section 15-86 of the Property Tax Code was constitutional on its face. *Oswald v. Hamer*, 2018 IL 122203, ¶ 43, 115 N.E.3d 181.

¶ 16 Presence filed a November 2018 motion to dismiss the appeal based on the supreme court’s decision in *Oswald*. The Department of Revenue joined in Presence’s motion to dismiss. The Township objected to the dismissal, arguing the constitutionality of section 15-86 was never the main issue in this appeal. On December 10, 2018, this court denied the motion to dismiss.

¶ 17 **II. ANALYSIS**

¶ 18 Here, the Township appeals the circuit court’s judgment granting the Department of Revenue and Presence’s motion to dismiss brought under section 2-619(a)(9) of the Procedure Code. That section allows the dismissal of an action where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735

ILCS 5/2-619(a)(9) (West 2014). “The phrase ‘affirmative matter’ refers to a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint.” *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 16. A section 2-619 motion to dismiss “admits well-pleaded facts but does not admit conclusions of law and conclusory factual allegations unsupported by allegations of specific facts alleged in the complaint.” *McIntosh*, 2019 IL 123626, ¶ 16. Moreover, the motion does not admit the truth of any allegations in the complaint that may touch on the affirmative matter the motion raises. *McIntosh*, 2019 IL 123626, ¶ 16. When the movant presents affidavits or other evidentiary matter supporting the asserted defense, the burden then shifts to the plaintiff to establish the defense is unfounded or requires the resolution of an essential element of material fact before it is proven. *McIntosh*, 2019 IL 123626, ¶ 16.

¶ 19 In reviewing a dismissal pursuant to section 2-619(a)(9), this court determines whether a genuine issue of material fact exists that would have precluded the dismissal or, absent such an issue of fact, whether dismissal was proper as a matter of law. *McIntosh*, 2019 IL 123626, ¶ 17. We review *de novo* a dismissal under section 2-619(a)(9). *McIntosh*, 2019 IL 123626, ¶ 17.

¶ 20 The Township initially raised two issues on appeal from the dismissal of its complaint for administrative review. The first issue was whether the Department of Revenue’s granting of the property tax exemptions was invalid because Presence did not provide the notice required by law. The second argument was the Township should be allowed to oppose the property tax exemption because section 15-86 of the Property Tax Code (35 ILCS 200/15-86 (West 2012)) had been held unconstitutional. After the *Oswald* decision, the Township filed a supplemental brief, contending it should be allowed to oppose the property tax exemptions

because the Department of Revenue did not apply the constitutional standard for charitable use when applying section 15-86 to Presence's applications. Essentially, the Township is just setting forth reasons why it should be allowed to proceed on its April 2014 application for a section 8-35(b) hearing. In the conclusion of both its initial and supplement appellant brief, the Township seeks reversal of the administrative decision and requests remand to the Department of Revenue.

¶ 21 With administrative review cases, this court generally reviews the decision of the agency, rather than that of the circuit court. *E-Z Movers, Inc. v. Rowell*, 2016 IL App (1st) 150435, ¶ 15, 61 N.E.3d 955. However, in this case, the circuit court dismissed the Township's complaint for administrative review. It did not enter an order affirming or reversing the Director's decision. When the circuit court dismisses an administrative review action, this court reviews the propriety of the dismissal and, if the dismissal was improper, reverses the circuit court's judgment and remands the case for further proceedings in the circuit court. See *Burgess v. Board of Fire & Police Commissioners of City of Quincy*, 209 Ill. App. 3d 821, 829, 568 N.E.2d 430, 435 (1991). Here, the Township fails to address the circuit court's dismissal of its administrative review action. We note its briefs neither mention section 2-619(a)(9) of the Procedure Code nor argue why the circuit court erred in granting the motion to dismiss the complaint for administrative review.

¶ 22 Illinois law is "well established that, on appeal, the party claiming error has the burden of showing any irregularities that would justify reversal." *In re Linda B.*, 2017 IL 119392, ¶ 43, 91 N.E.3d 813. A reviewing court never presumes error. *Linda B.*, 2017 IL 119392, ¶ 43. Here, the circuit court dismissed the Township's petition for administrative review, and the Township does not argue any basis for reversing the circuit court's dismissal. Thus, the Township has failed to establish any basis for reversal and affirmation of the circuit

court's dismissal is warranted.

¶ 23 Last, this court declines to apply the mootness doctrine as urged by the Department of Revenue because the Department's argument is also based on this court reviewing the Director's decision and not the circuit court's dismissal of the Township's complaint for administrative review.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 26 Affirmed.