

No. 1-16-2030WC

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 DISTRICT

THE FINAL CALL, INC. a/k/a FCN PUBLISHING,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County
)	
v.)	No. 15 L 50713
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and KENNETH WRIGHT,)	
)	
Appellees,)	
)	Honorable
(Illinois State Treasurer, as <i>ex-officio</i> Custodian of the)	Kay Marie Hanlon,
Injured Workers' Benefit Fund, Appellee).)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* We vacated the judgment of the circuit court and remanded the matter with directions to conduct an evidentiary hearing to determine whether the appellant filed its petition for judicial review within 20 days of receiving notice of the decision of the Illinois Workers' Compensation Commission.

¶ 2 The Final Call, Inc., a/k/a FCN Publishing (FCN) appeals from the June 24, 2016, judgment entered by the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding the claimant, Kenneth Wright, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), for a January 7, 2009, accident that resulted in an injury to his knee. The Illinois State Treasurer (Treasurer), as *ex-officio* custodian of the Injured Workers' Benefit Fund (Fund), who was made a party due to FNC's failure to have workers' compensation insurance, contends that the circuit court lacked subject matter jurisdiction to enter its judgment confirming the Commission's decision because FCN, in seeking judicial review of the Commission's decision, failed to comply with section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2014)). Specifically, the Treasurer argues that FCN: (1) did not establish that it timely commenced proceedings for judicial review by filing a request for summons within 20 days of receiving notice of the Commission's decision; and (2) did not name the Treasurer as an interested party in its request for summons. The Treasurer contends that FCN's failure to comply with the Act deprived the circuit court of subject matter jurisdiction and, therefore, its order confirming the Commission's decision is void.

¶ 3 Illinois courts are courts of general jurisdiction and, therefore, "enjoy a presumption of subject matter jurisdiction." *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 14. When, as in this case, a review of an administrative proceeding is sought, the Illinois Constitution provides that the circuit courts may review an agency's action only "as provided by law." Ill. Const. 1970, art. VI, § 9. In these cases, the circuit court's jurisdiction "is limited by the language of the act conferring it," and a party seeking to invoke the circuit court's jurisdiction must "comply strictly with the procedures prescribed by the statute." *Illinois State*

Treasurer, 2015 IL 117418, ¶ 14. If the mode of procedure set forth in the statute is not strictly pursued, no jurisdiction is conferred on the court. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2014 IL 116642, ¶ 10. The circuit court, therefore, “has only the subject matter jurisdiction accorded to it by the statute, and ‘[a]ny action taken by the circuit court that exceeds its jurisdiction is void and may be attacked at any time.’” *In re A.H.*, 195 Ill. 2d 408, 416 (2001) (quoting *In re Estate of Gebis*, 186 Ill. 2d 188, 193 (1999)).

¶ 4 Section 19(f)(1)) of the Act provides, in relevant part, that:

“A proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of such court upon written request returnable on a designated return day, not less than 10 or more than 60 days from the date of issuance thereof, and the written request shall contain the last known address of other parties in interest and their attorneys of record who are to be served by summons. Service upon any member of the Commission or the Secretary or the Assistant Secretary thereof shall be service upon the Commission, and service upon other parties in interest and their attorneys of record shall be by summons, and such service shall be made upon the Commission and other parties in interest by mailing notices of the commencement of the proceedings and the return day of the summons to the office of the Commission and to the last known place of residence of other parties in interest or their attorney or attorneys of record. The clerk of the court issuing the summons shall on the day of issue mail notice of the commencement of the proceedings which shall be done by mailing a copy of the summons to the office of the Commission, and a copy of the summons to the other parties in interest or

their attorney or attorneys of record and the clerk of the court shall make certificate that he has so sent said notices in pursuance of this Section, which shall be evidence of service on the Commission and other parties in interest.” 820 ILCS 305/19(f)(1) (West 2014).

¶ 5 The record in this case reflects that FCN’s request for summons omitted the name of the Treasurer, a party in interest, but did list both the name and address of the Treasurer’s attorney, the Illinois Attorney General, and the assistant attorney general who had appeared on behalf of the Treasurer before the arbitrator. Although the copies of the summons contained in the record are directed to the Commission and the claimant, the clerk’s certificate of mailing states that a copy of the summons was sent to the named assistant attorney general at the address set forth in the request for summons.

¶ 6 We address first the argument that the circuit court lacked subject matter jurisdiction in this matter by reason of FCN’s failure to include the Treasurer as an interested party in its request for summons. Relying upon the supreme court’s decision in *Daugherty v. Industrial Comm’n*, 99 Ill. 2d 1 (1983), the Treasurer contends that FCN’s failure to name it in either the caption or the body of its request for summons deprived the circuit court of subject matter jurisdiction to review the Commission’s decision. We believe, however, that the facts in *Daugherty* are sufficiently dissimilar to those present in this case to render the decision distinguishable.

¶ 7 In *Daugherty*, the praecipe for a writ of *certiorari* failed to list either the Treasurer, a party in interest, or the Treasurer’s attorney, and as a consequence, the supreme court held that the circuit court lacked subject-matter jurisdiction to review the Commission’s decision. *Id.* at 4-6. In this case, although the Treasurer was not listed in the caption or in the body of FCN’s

request for summons, the request for summons did list both the name and address of the Treasurer's attorney, the Illinois Attorney General, and the assistant attorney general who had appeared on behalf of the Treasurer before the arbitrator. In the case of *Old Ben Coal Co. v. Industrial Comm'n*, 217 Ill. App. 3d 70, 73 (1991), the employer sought the review of a decision of the Commission and submitted to the clerk of the court, a request for the issuance of summons, summons, and a certificate of mailing. The request for the issuance of summons did not name the claimant as a party in interest or include the claimant's last known address. *Id.* It did, however, list the names and addresses of the claimant's attorneys of record. *Id.* In *Old Ben Coal Co.*, this court found that the employer's request for summons contained sufficient information for the clerk of the court to properly notify the claimant and his attorneys of the pending appeal, and as a consequence, the requirements of section 19(f)(1) were substantially satisfied and the circuit court possessed the subject matter jurisdiction necessary to review the Commission's decision. *Id.* at 73-76. The Treasurer acknowledges that, in this case, it suffered no prejudice as his attorney received copies of FCN's filings and was able to participate in the proceedings before the circuit court. See *id.* at 76. This case is factually analogous to *Old Ben Coal Co.*, and based upon the reasoning in that case, we conclude that FCN's request for summons was in substantial compliance with the requirements of section 19(f)(1) of the Act.

¶ 8 In addition to its challenge to the circuit court's jurisdiction based on the alleged deficiencies in FCN's request for summons, the Treasurer also argues that the circuit court lacked subject matter jurisdiction to review the Commission's decision because the record does not reflect that FCN filed its request for summons within 20 days of receiving notice of the Commission's decision. The Treasurer readily admits that it has raised the issue for the first time on appeal, but argues that the failure of a party to object to a lack of subject matter jurisdiction

cannot confer jurisdiction upon the circuit court. See *Supreme Catering v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC ¶ 7.

¶ 9 The Commission issued its decision in this case on August 27, 2015. According to assertions in its reply brief, FCN's attorneys received the Commission's decision on September 23, 2015, and filed the request for summons on October 13, 2015, a date within the 20 day period specified in section 19(f)(1) of the Act. The Treasurer, however, contends that the date upon which FCN's attorneys received the decision does not affirmatively appear in the record, and as a consequence, FCN failed to establish that the filing of its request for summons was timely.

¶ 10 The filing of a request for summons within the 20 day period set forth in section 19(f)(1) of the Act is a jurisdictional requirement which must be complied with in order to vest the circuit court with jurisdiction to review a decision of the Commission. *Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 320 (1999); *Boalbey v. Industrial Comm'n*, 66 Ill. 2d 217, 219 (1977). And the Treasurer is correct in its assertion that compliance with the jurisdictional requirements of section 19(f)(1) must affirmatively appear in the record. *Illinois State Treasurer*, 2015 IL 117418, ¶ 15. However, the issue of whether FCN filed its request for summons within 20 days of its receipt of a notice of the Commission's decision, is a question of fact. By waiting until it filed its brief on appeal to assert a challenge to the circuit court's jurisdiction based upon the record's failure to affirmatively show that FCN filed its request for summons within the requisite 20 day period, the Treasurer has effectively prevented FCN from introducing evidence on the issue. Although FCN attached a copy of an envelope from the Commission addressed to its attorneys with a postage meter date of September 21, 2015, and asserted that its attorneys received the Commission's decision in that envelope on September 23, 2015, neither the envelope nor any evidence as to the date that the decision was received appear in the record.

This court is constrained by the record, and we cannot consider exhibits or information supplied by counsel which find no support in the record. See *Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009) (“A party may generally not rely on matters outside the record to support its position on appeal.”); *Oruta v. B.E.W. & Continental*, 2016 IL App (1st) 152735, ¶ 32 (materials not appearing in the record “may not generally be placed before the appellate court in an appendix and will be disregarded.”).

¶ 11 Clearly, it is FCN’s burden to establish that it complied with the timeliness requirement of section 19(f)(1) of the Act. However, we believe that it should be afforded an opportunity to establish compliance after the issue has been raised. Consequently, we vacate the circuit court’s order of June 26, 2016, confirming the Commission’s decision and remand the matter back to the circuit court for a hearing on the issue of whether FCN filed its request for summons within 20 days of its receipt of a notice of the Commission’s decision. In the event that FCN fails to carry its burden on the issue, the circuit court is directed to dismiss FCN’s action for judicial review. In the event that FCN proves that it complied with the 20 day requirement, the circuit court is to reinstate its order confirming the Commission’s decision of August 27, 2015.

¶ 12 Having vacated the circuit court’s judgment of June 24, 2016, which confirmed the Commission’s decision and remanded the matter back to the circuit court for a hearing on a jurisdictional matter raised by the Treasurer, we have not addressed the merits of the issues raised in FCN’s appeal.

¶ 13 Vacated and remanded with directions.