2016 IL App (1st) 150270-U

FIRST DIVISION
September 12, 2016

No. 1-15-0270

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRENDA PARKER, Plaintiff-Appellant, v. THE ILLINOIS DEPARTMENT OF LABOR; JOE COSTIGAN, Director of Labor; TYMECA TAYLOR, employee of the Illinois Department of Labor; DEBORAH MOLTMANN, employee of the Illinois Department of Labor; ACHIEVEMENT UNLIMITED, INC. d/b/a Holiday CILA; MICHAEL BIBO, Registered Agent of Achievement Unlimited; FRANCES MICHELLE MILLER a/k/a Missy Miller, employee at Holiday CILA (THE ILLINOIS DEPARTMENT OF LABOR; JOE COSTIGAN, Director of Labor; ACHIEVEMENT UNLIMITED, INC. d/b/a Holiday CILA; MICHAEL BIBO, Registered Agent of Achievement Unlimited; FRANCES MICHELLE MILLER a/k/a Missy Miller, employee at Holiday CILA, Defendants-Appellants), Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 14 CH 2810 Honorable Moshe Jacobius, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

O R D E R

¶ 1 *Held:* (1) The Illinois Department of Labor's dismissal of plaintiff's wage claim was not against the manifest weight of the evidence where no evidence showed that plaintiff had not been paid for all hours worked, and (2) the administrative proceedings comported with due process. Circuit court judgment affirmed.

¶ 2 *Pro se* plaintiff Brenda Parker appeals from an order of the circuit court of Cook County affirming the decision of the Illinois Department of Labor (Department) to dismiss her claim for unpaid wages under the Illinois Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et seq.*) (West 2012) because she failed to establish that her employer, Achievement Unlimited, Inc. (Achievement), did not pay her for hours that she had worked. On appeal, plaintiff contends that the Department's decision was against the manifest weight of the evidence and that she was denied due process. We affirm.

¶ 3 We set forth only the facts necessary to understand the issues on appeal. Plaintiff was employed as a caregiver by Achievement, a not-for-profit corporation that provides residential programs for individuals with developmental disabilities, from September 5, 2012, to December 6, 2012, at an hourly rate of $9.20. Plaintiff worked at multiple residences operated by Achievement, including Schultz House and Holiday House, located in the area of Danville, Illinois. On December 7, 2012, she filed a wage claim application with the Department, seeking $147.20 in regular and overtime pay. She alleged that her time records were "altered" to omit at least 15 hours worked. Achievement submitted a response denying the allegations.

¶ 4 A telephone hearing before an administrative law judge (ALJ) occurred on August 26, 2013, and September 23, 2013. Plaintiff appeared on her own behalf. John Michael Bibo, Achievement's registered agent, and Michelle Miller, manager of Holiday House, testified on behalf of Achievement. Neither Bibo nor Miller was an attorney.

¶ 5 During the hearing, the ALJ confirmed with plaintiff that she had asserted two issues in her wage claim: first, that there were unpaid wages, and second, that Achievement had altered her time records to omit hours worked. The ALJ indicated that plaintiff's file contained several documents submitted by Achievement, including a time card report listing the time and locations where plaintiff "punched" in and out during each workday, a report listing her hours and pay for each pay period, pay stubs, and her W-2 form. These documents were entered into evidence without objection from either party, and appear in the administrative record.

¶ 6 At the hearing, plaintiff testified that Achievement did not compensate her for all the hours she had worked on 19 dates during the course of her employment, including orientations, staff meetings, and training sessions. According to plaintiff, she received her schedule on "sticky notes" until mid-October. Therefore, she could not determine the exact number of hours omitted from the time report, but estimated that more than 15 hours, mostly overtime, were missing. She stated that the record of her "punch[ing] in and out" was "the only actual evidence" of the hours she had worked, but that Achievement "deleted a lot of entries" and "took the hours out because they didn't wanna [*sic*] pay me overtime."

¶ 7 At the ALJ's request, plaintiff chose three dates and discussed her allegations in detail. First, plaintiff stated that she had not been paid for five hours of work on September 5, 2012. She noted that the time card report showed that she had punched in and out at Schultz House that morning, but stated that the report had been "doctored" to omit hours she had worked later that day at Holiday House. Second, she stated that she had not been paid for two hours of CPR training on September 8, 2012, and that the time card report also omitted time that she had worked at the beginning and end of the day. She noted that the report showed that she had punched-in at Schultz House, where the training was held, and punched-out at Holiday House,

but did not show when she had punched-in at Holiday House. Finally, she stated that she had not been paid for half an hour of work during an overnight shift that began on September 25, 2012, and ended on September 26, 2012. She stated that the record was "doctored" because the time card report showed that she punched-in at Holiday House and "clock[ed] out early" at Schultz House, although she "never" left early and "never" worked at Schultz House. Additionally, she stated that she had complained to Miller since receiving her first pay check, and that Miller told her to write down her complaints but did not respond or permit her to speak about the issue with another person.

¶ 8 Bibo testified that plaintiff received an electronic timecard that allowed her to "punch in or out at any of the homes in the area," and that each "punch" was recorded on the time card report. He denied that plaintiff "went over to any other home" after working at Schultz House on September 5, 2012, and stated that she "probably is talking about the 6th," when the time card report indicated that she worked at Holiday House in the evening. Bibo stated that plaintiff had been paid for all "punched" hours on September 8, 2012, and denied that any hours were deleted from her time card report for September 25 or 26, 2012.

¶ 9 Miller denied that plaintiff had worked during the evening of September 5, 2012. She stated that, according to the time card report, plaintiff had "left Holiday early" on the morning of September 25, 2012, in order to "finish orientation" at Schultz House. Miller stated that she had met with plaintiff, "went through her hours with her," and believed that she did not understand when her pay periods began and ended.

¶ 10 The ALJ dismissed plaintiff's wage claim in a written order, finding that she "offered not a single example of an instance where [Achievement] failed to pay her in accordance with the hours reflected by her recorded time swipes," and "offered no proof that the time records were

altered." The ALJ stated that the dismissal was a "final administrative decision," and informed plaintiff of her right to file a motion to reconsider for procedural reasons. Plaintiff did not file a motion to reconsider. Subsequently, she filed a complaint for administrative review, and the circuit court affirmed the Department's decision. Plaintiff appealed, naming as defendants the Department, Joe Costigan, director of the Department, Department employees Tymeca Taylor and Deborah Moltmann, Achievement, Bibo, and Miller.[1] The Department and Achievement each filed response briefs.

¶ 11 As a preliminary matter, the Department asks this court to "strike [plaintiff's] opening brief, or portions of it, or deem her arguments forfeited" due to noncompliance with Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). The Department argues that, in contravention to the rule, plaintiff's brief lacks an introductory paragraph and proper jurisdictional statement, contains minimal citations to the record, and asserts facts and arguments unsupported or unrelated to her claim. We note that plaintiff's brief contains numerous, unsupported allegations of "fraud" committed by the Department, Achievement, the circuit court, and the office of the Illinois Attorney General. These vague, conclusory allegations are not argument, do not satisfy the requirements of Rule 341(h), and, therefore, are forfeited. *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010).

[1] The Department's brief identifies Moltmann and Taylor as Department employees. Summons for both individuals are included in the record on appeal, but the record does not indicate that either individual was served or appeared in the case. The State argues, correctly, that the circuit court's judgment is nonetheless final and appealable under Supreme Court Rule 301 (eff. Feb. 1, 1994). As the only issue before the court concerned plaintiff's wage claim and review was limited to the administrative record, the court's ruling "disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). Consequently, this court has jurisdiction over the matter. *Id.* at 506.

¶ 12 Nonetheless, although plaintiff's *pro se* status does not excuse her noncompliance with the supreme court rules, "our jurisdiction to entertain the appeal of a *pro se* plaintiff is unaffected by the insufficiency of [her] brief, so long as we understand the issue plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party." (Internal quotation marks omitted.) *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). Consequently, we consider the following issues that plaintiff has raised on appeal.

¶ 13 First, plaintiff contends that the Department's decision to dismiss her wage claim was against the manifest weight of the evidence. In response, the Department and Achievement assert that dismissal was proper where plaintiff produced no evidence that her records had been altered or that she had not been paid for all the hours she had worked.

¶ 14 In an appeal from an administrative decision, this court reviews the decision rendered by the agency and not the determination of the circuit court that reviewed the decision. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). The plaintiff in the administrative proceeding bears the burden of proof. *Kouzakas v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 464 (2009). The agency's findings on questions of fact "shall be held to be prima facie true and correct" (735 ILCS 5/3-110 (West 2012)), and when the findings are contested, "the court will only ascertain whether such findings of fact are against the manifest weight of the evidence." *Provena*, 236 Ill. 2d at 386-87. An agency's decision "is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). However, "it is not a court's function on administrative review to

reweigh evidence or to make an independent determination of the facts." *Kouzakas*, 234 Ill. 2d at 463.

¶ 15 The Wage Act provides employees with "a cause of action for the timely and complete payment of earned wages." *Majmudar v. House of Spices (India), Inc.*, 2013 IL App (1st) 130292, ¶ 11. "To establish a claim under the [Wage] Act, a plaintiff must demonstrate that 'wages or final compensation is due to him or her as an employee from an employer under an employment contract or agreement.' " *Id*. (quoting *Landers-Scelfo v. Corporate Office Systems, Inc.*, 356 Ill. App. 3d 1060, 1067 (2005); 820 ILCS 115/1 *et seq.* (West 2012). Here, the parties only dispute whether plaintiff established that Achievement did not compensate her for all the hours she had worked between September 5, 2012, and December 6, 2012.

¶ 16 The Department's decision to dismiss plaintiff's wage claim was not against the manifest weight of the evidence. Achievement produced several documents regarding plaintiff's hours and compensation, including a time card report listing the time and locations where she "punched" in and out each workday. The report was entered into evidence without objection from plaintiff, who acknowledged that it was "the only actual evidence" of the hours she had worked. Although plaintiff testified that she had been undercompensated and that Achievement had altered her records, each allegation she raised was addressed and denied by Bibo and Miller. The ALJ was charged with hearing the testimony, determining the witnesses' credibility, and drawing reasonable inferences from all the evidence, and found that plaintiff had not proven her wage claim. *Jackson v. Board of Education of the City of Chicago*, 2016 IL App (1st) 141388, ¶ 26 (setting forth hearing officer's role as finder of fact in administrative cases). Based on this record, it is not clearly evident that plaintiff had proved her allegations. Consequently, the ALJ's

decision to dismiss her wage claim was not against the manifest weight of the evidence. *Abrahamson*, 153 Ill. 2d at 88.

¶ 17 Next, plaintiff contends that the Department violated the Administrative Procedure Act (5 ILCS 100/1 *et seq.* (West 2012)) because the ALJ did not enter a "proposed order." This argument lacks merit. Under the Administrative Procedure Act, an agency must issue a proposed decision only where "a majority of the officials of the agency who are to render the final decision has not heard the case or read the record[.]" 5 ILCS 100/10-45 (West 2012). As our supreme court explained in *Donnelly v. Edgar*, 117 Ill. 2d 59, 66 (1987), this provision does not apply if "there is only one agency official who is to render the final decision." Hearings under the Wage Act, such as the hearing in the present case, are decided by a single ALJ, defined as "an individual authorized by the Department to determine the merits of claims alleging violations of the Act." 56 Ill. Adm. Code 300.450 (eff. Dec. 27, 2013).[2] Here, the ALJ conducted a hearing, heard evidence from both parties regarding plaintiff's wage claim, and rendered a disposition. The ALJ's decision was, therefore, final. *Pinkerton Security and Investigation Services v. Illinois Department of Human Rights*, 309 Ill. App. 3d 48, 55 (1998) ("Generally, a final agency determination follows some sort of adversarial process involving the parties affected, a hearing on controverted facts, and ultimately a disposition rendered by an impartial fact finder."). Consequently, no proposed order was required and no violation of the Administrative Procedure Act occurred.

¶ 18 Plaintiff further argues that the Administrative Procedure Act mandates review of an ALJ's decision before a "Board of Review," and that she was denied due process because no such

[2] The relevant provision of the Administrative Code in effect at the time of the hearing in this case used the term "hearing officer" rather than ALJ. 56 Ill. Adm. Code 300.450 (eff. July 20, 2011). Presently, the Administrative Code uses the term ALJ but adopts the same definition given for "hearing officer." See 56 Ill. Adm. Code 300.450 (eff. Aug. 22, 2014).

review occurred in her case. However, no statute or rule requires an administrative appeals process for departmental decisions regarding wage claims. To the contrary, while parties may file a motion to reconsider for procedural reasons with the Department within 15 days of an order dismissing a wage claim, the Department's rules specify that "[n]o further appeal process or administrative remedies may be sought at the Department level." 56 Ill. Adm. Code § 300.1160(b) (eff. July 20, 2011). Moreover, due process in administrative hearings only requires "the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence" (*Abrahamson*, 153 Ill. 2d at 95), and courts will find a violation of due process "only where there has been a showing of prejudice." *Shachter v. City of Chicago*, 2016 IL App (1st) 150442, ¶ 27. As plaintiff has not established that she was denied due process or incurred prejudice, no error occurred.

¶ 19 Plaintiff next argues that Miller and Bibo, who are not attorneys, improperly "acted as legal counsel" for Achievement at the Department hearing, and that Achievement was represented in the circuit court by an attorney not of record. As plaintiff did not raise either claim before the Department or the circuit court, both are forfeited. See *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 408 (2001) (declining to review an issue that was "never argued before the Department or the circuit court"). We note, however, that counsel's appearance is included in the record on appeal.

¶ 20 Finally, plaintiff alleges that Achievement did not file a timely answer to her complaint in the circuit court and, therefore, was in "default." This claim lacks merit. Although all named defendants wanting to appear in an administrative review action may do so by filing a timely motion to appear, "the only answer that is required in an administrative review proceeding is the administrative agency's record." *Biscan v. Village of Melrose Park Board of Fire & Police*

Commissioners, 277 Ill. App. 3d 844, 847 (1996). Here, plaintiff filed her complaint for administrative review on February 18, 2014. Achievement timely filed its appearance within 35 days, on March 4, 2014. Ill. S. Ct. R. 291(c) (eff. May 30, 2008) (in administrative review proceedings, "[t]he defendant shall appear not later than 35 days after the date the summons bears"). Subsequently, the circuit court granted the Department's motion for an extension of time to file its answer, which the Department filed on May 12, 2014, along with a copy of the administrative record. Although Achievement did not file its answer until May 14, 2014, its appearance was timely and no answer was required. *Biscan*, 277 Ill. App. 3d at 847. In view of Achievement's timely appearance and the filing of the administrative record, Achievement was not in default and plaintiff's argument fails.

¶ 21 For all the foregoing reasons, we affirm the judgment of the circuit court of Cook County and uphold the Department's decision dismissing plaintiff's wage claim.

¶ 22 Affirmed.