

NOTICE
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2011 IL App (4th) 100810-U

Filed 10/18/11

NO. 4-10-0810

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

LATOYA BROWN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
THE DEPARTMENT OF EMPLOYMENT)	No. 09MR918
SECURITY; THE DIRECTOR OF THE)	
DEPARTMENT OF EMPLOYMENT SECURITY;)	
THE DEPARTMENT OF EMPLOYMENT SECURITY)	
BOARD OF REVIEW; and CHAMPAIGN)	Honorable
COMMUNITY SCHOOLS,)	Thomas J. Difanis,
Defendants-Appellees.)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* (1) Where plaintiff's postjudgment letter to the circuit court did not specifically request reconsideration of the court's dismissal or another one of the statutorily authorized types of relief, the letter was not a postjudgment motion requiring resolution before the dismissal could be appealed.
- ¶ 2 (2) Where plaintiff did not present any evidence she made a good-faith effort to secure issuance of the summons within the statutory period, the circuit court properly dismissed her administrative-review action.
- ¶ 3 Plaintiff, Latoya Brown, appeals *pro se* the Champaign County circuit court's dismissal of her administrative-review action against defendants, the Department of Employment Security (Department), the director of the Department, the Department's Board of Review (Board), and the Champaign Community Schools (plaintiff's former employer and hereinafter referred to as Employer). We affirm.

¶ 4

I. BACKGROUND

¶ 5 In a June 13, 2009, letter, the Department notified plaintiff she was ineligible for benefits for the period of November 1, 2008, to May 23, 2009, due to her failure to submit a job search showing she was available and seeking employment. Plaintiff appealed that decision, and a hearings referee affirmed the denial of her benefits. Plaintiff then appealed to the Board. On November 12, 2009, the Board entered an order, affirming the referee's decision. The order noted it was mailed the same day.

¶ 6 On December 17, 2009, plaintiff filed her *pro se* complaint for administrative review, seeking review of the Board's November 12, 2009, decision. Plaintiff also filed an application for a fee waiver, which was granted on December 22, 2009. On February 23, 2010, the Champaign County circuit clerk signed a summons in this case, which listed the defendants as (1) the Board, (2) the director of the Department, and (3) the Employer. The Champaign County sheriff's office served the Employer on February 26, 2010. On June 21, 2010, the Champaign County circuit clerk signed another summons, again listing the same three defendants. A photocopy of a certified-mail envelope suggests the summons was received by the Director of the Department on June 28, 2010.

¶ 7 On July 19, 2010, the Department, the director of the Department, and the Board filed a motion to dismiss plaintiff's complaint for lack of subject-matter jurisdiction, asserting plaintiff had failed to have summonses issued to any of the four named defendants within the 35-day period required by section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2008)). Plaintiff filed a response, indicating, *inter alia*, she was erroneously told she did not need to submit the summons form at the time she filed her complaint. On September 9,

2010, the circuit court held a hearing on the motion to dismiss. Plaintiff stated she requested the summons be served when she filed her complaint. While the clerk told her she did not need to request a summons, that information did not stop her from making the request. It was just the summons did not get served. The court asked plaintiff if she had some documentation indicating she had requested in writing to the circuit clerk that summons be served. Plaintiff was unable to produce such documentation and stated it should be "in the file there." At the conclusion of the hearing, the court granted the motion to dismiss. Thereafter, plaintiff wrote the court a letter that was file-stamped September 22, 2010. Plaintiff attached to her letter (1) a September 21, 2010, receipt for copies from the Champaign County circuit clerk's office, (2) her December 17, 2009, complaint, and (3) three undated and unsigned summonses. On October 8, 2010, plaintiff filed her notice of appeal.

¶ 8

II. ANALYSIS

¶ 9

A. Appellate Jurisdiction

¶ 10 Plaintiff appears to question our jurisdiction of the appeal, noting she made a posttrial request seeking reconsideration and posttrial review in September 2010. Our supreme court has emphasized a reviewing court's duty to ascertain its jurisdiction before considering the appeal's merits. See *People v. Lewis*, 234 Ill. 2d 32, 36-37, 912 N.E.2d 1220, 1223 (2009); *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009); *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). Thus, we first address our jurisdiction of this matter. See *Lewis*, 234 Ill. 2d at 37, 912 N.E.2d at 1223.

¶ 11

Under Illinois Supreme Court Rule 274 (eff. Jan. 1, 2006), a party may file one postjudgment motion directed at a judgment that is otherwise final. A postjudgment motion

must be filed within 30 days of the date of the judgment's entry. *Protein Partners, LLP v. Lincoln Provision, Inc.*, 407 Ill. App. 3d 709, 714, 941 N.E.2d 308, 313 (2010). Until decided, a timely postjudgment motion tolls the finality and appealability of the judgment at which it is directed. Ill. S. Ct. R. 274 (eff. Jan. 1, 2006). To qualify as a postjudgment motion for the purposes of tolling appealability, the motion must *specifically* request one or more of the statutorily authorized types of relief, consisting of rehearing, retrial, modification, or vacation of the judgment. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 461, 563 N.E.2d 459, 461 (1990).

¶ 12 Here, plaintiff sent the circuit court a *pro se* letter that was filed on September 22, 2010, which was within the 30-day period after the court's dismissal of her complaint. In the letter, plaintiff states she sent the letter "to try and get clarification on [the court's] judgment." Plaintiff stated that, at the hearing, she had hoped to be asked to approach the bench to submit proof, which included a receipt from the Champaign County sheriff's department showing it had possession of her summons request and complaint but had not served the parties. Plaintiff also stated she had included copies of her "supporting paperwork, submitted on November 17, 2009, as well as ones of the corrected forms submitted." Plaintiff closed her letter by asking the court to contact her if it could provide "anything further concerning [her] attempt to present sufficient subject matter."

¶ 13 Nowhere in the letter did plaintiff expressly request the circuit court to reconsider, retry, modify, or vacate its September 9, 2010, dismissal. See *R&G, Inc. v. Midwest Region Foundation for Fair Contracting, Inc.*, 351 Ill. App. 3d 318, 323-24, 812 N.E.2d 1044, 1048 (2004) (finding a motion to clarify was not a postjudgment motion where the motion did not

explicitly request a rehearing, a retrial, an order vacating the judgment, or other form of similar relief); see also *Affordable Housing Preservation Foundation v. Williams*, 375 Ill. App. 3d 305, 307, 872 N.E.2d 562, 563 (2007) (concluding the motion was a postjudgment motion since it expressly asked the trial court to vacate its order). To the contrary, plaintiff expressly sought clarification of the court's judgment. Since plaintiff did not specifically request reconsideration or another one of the statutorily authorized types of relief, plaintiff's postjudgment letter does not constitute a postjudgment motion. Thus, this cause was appealable when plaintiff timely filed her October 8, 2010, notice of appeal, which sufficiently complies with Illinois Supreme Court Rule 303 (eff. May 30, 2008). Accordingly, we have jurisdiction of this case under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 14

B. Dismissal

¶ 15 In this case, the motion to dismiss asserted an affirmative matter outside the complaint that would defeat the cause of action, and thus the motion was brought under section 2-619(a) of the Code of Civil Procedure (735 ILCS 5/2-619(a) (West 2010)). Generally, with administrative-review cases, we review the administrative agency's decision, not the circuit court's. *Williams v. Board of Trustees of Morton Grove Firefighters' Pension Fund*, 398 Ill. App. 3d 680, 687, 924 N.E.2d 38, 45 (2010). However, when the circuit court has granted a section 2-619 motion to dismiss an administrative-review action, this court reviews *de novo* the circuit court's dismissal order. See *Coleman v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 392 Ill. App. 3d 380, 385, 911 N.E.2d 493, 498 (2009); *Catamount Cargo Services, LLC v. Illinois Department of Employment Security*, 366 Ill. App. 3d 1039, 1041, 853 N.E.2d 85, 87 (2006).

¶ 16 Under section 1100 of the Illinois Unemployment Insurance Act (820 ILCS 405/1100 (West 2008)), judicial review of a Board's decision is conducted in accordance with the Administrative Review Law (735 ILCS 5/art. 3 (West 2008)). Section 3-102 of the Administrative Review Law provides that, "[u]nless review is sought of an administrative decision within the time and in the *manner* herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision." (Emphasis added.) 735 ILCS 5/3-102 (West 2008). Section 3-103 of the Administrative Review Law states "[e]very action to review a final administrative decision shall be commenced by the filing of a complaint and *the issuance of summons* 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 ***." (Emphasis added.) 735 ILCS 5/3-103 (West 2008). "Since the Administrative Review Law is a departure from common law, the procedures it establishes must be strictly adhered to in order to justify its application." *Lockett v. Chicago Police Board*, 133 Ill. 2d 349, 353, 549 N.E.2d 1266, 1267 (1990), *overruled on other grounds by Nudell v. Forest Preserve District of Cook County*, 207 Ill. 2d 409, 424, 799 N.E.2d 260, 268 (2003). Moreover, in civil cases, the circuit court clerk "shall issue summons upon request of the plaintiff." 735 ILCS 5/2-201 (West 2008).

¶ 17 In this case, the Board's decision was served upon plaintiff on November 12, 2009, the date it was mailed to her. See 735 ILCS 5/3-103 (West 2008) (deeming a decision served when a copy of the decision is deposited in the United States mail). Plaintiff does not challenge the date of service. Thus, plaintiff had to file her complaint and have the summonses issue on or before December 17, 2009. The Champaign County circuit clerk signed the first summons in this case on February 23, 2010, more than two months after the expiration of the 35-

day period. Accordingly, plaintiff failed to have the summons issued within the 35-day period.

¶ 18 While the 35-day period for the issuance of a summons is not jurisdictional, a plaintiff must show a good-faith effort to file the complaint and secure issuance of the summons within the 35 days to avoid dismissal of the administrative-review action. *Carver v. Nall*, 186 Ill. 2d 554, 559, 714 N.E.2d 486, 489 (1999), *overruled on other grounds by Nudell*, 207 Ill. 2d at 424, 799 N.E.2d at 268. The good-faith-effort exception to the requirement that the summons timely issue is a narrow one. *Carver*, 186 Ill. 2d at 559, 714 N.E.2d at 488-89. Our supreme court has explained the exception as follows:

"In cases where the 35-day requirement has been relaxed, the plaintiffs had made a good-faith effort to issue summons within the statutory period. Nevertheless, due to some circumstance beyond their control, summons was not issued within the statutory period. See *City National Bank & Trust Co. [v. Property Tax Appeal Board]*, 97 Ill. 2d 378, 382, 454 N.E.2d 652, 655 (1983)]; *Cox [v. Board of Fire & Police Commissioners]*, 96 Ill. 2d 399, 404, 451 N.E.2d 842, 844 (1983)] (cases in which the plaintiffs had filed their complaints for administrative review and summons with the clerk of the circuit court within the 35-day period but, due to problems at the clerk's office which were beyond the plaintiff's control, the summonses were not issued until after the 35-day period)." *Lockett*, 133 Ill. 2d at 355, 549 N.E.2d at 1268-69.

¶ 19 While plaintiff insists she requested the issuance of a summons when she filed her

complaint on the last day of the 35-day period, the record on appeal does not contain evidence of such a request. The docket entry for December 17, 2009, indicates the filing of the complaint and a request for a fee waiver. In the record on appeal, the complaint file-stamped December 17, 2009, is only followed by a "notice of motion and status call." Even the postjudgment documents that were improperly submitted to the circuit court do not show a timely request for issuance of the summons. Those documents are preceded by a copy receipt from the Champaign County circuit clerk's office and include the file-stamped complaint and three summonses. The three summonses all lack a date indicating when they were presented to the clerk's office. The first one lacks plaintiff's name and information and refers defendants to the Cook County circuit clerk's office. The second one has plaintiff's name and information and has the address of the Champaign County circuit clerk's office typed on the form. The third summons appears to be the same as the second but the clerk's office address is handwritten. While the complaint and the first summons appear to have some of the same marks in the upper left-hand corner, those marks do not indicate they were initially presented to the Champaign County circuit clerk together. Those documents have been photocopied numerous times, and it is unclear what all of those marks represent. Assuming *arguendo*, the complaint and first summons were presented together on December 17, 2009, the first summons was incomplete and for the wrong county. Thus, a lack of issuance of a summons on December 17, 2009, would have been plaintiff's fault and not the circuit clerk's office as plaintiff had not properly completed the summons.

¶ 20 Accordingly, we find the circuit court properly dismissed plaintiff's administrative review complaint for failure to have the summons issue within the 35-day period mandated by section 3-103 of the Administrative Review Law.

¶ 21

C. Other Issues

¶ 22 Plaintiff raises two other issues regarding the merits of her cause of action. Since we have found the circuit court properly dismissed her action, we do not address those remaining issues.

¶ 23

III. CONCLUSION

¶ 24 For the reasons stated, we affirm the Champaign County circuit court's dismissal of plaintiff's administrative-review complaint.

¶ 25

Affirmed.