2022 IL App (2d) 220016-U
No. 2-22-0016
Order filed August 4, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BRIAN BACARDI and JEAN BACARDI,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 21-MR-547
	)	
THE VILLAGE OF HAWTHORN WOODS	)	
and JENNIFER PAULUS, as Chief of Police	)	
of Hawthorn Woods,	)	Honorable
	)	Charles William Smith,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting defendants' motion to dismiss on the basis of collateral estoppel. Therefore, we affirm.

¶ 2 Plaintiffs, Brian and Jean Bacardi, appeal from the trial court's grant of a motion to dismiss in favor of defendants, the Village of Hawthorn Woods (Village) and Jennifer Paulus, as Chief of Police of Hawthorn Woods. Paulus had made a finding that plaintiffs' three dogs were vicious and could not reside in the Village, and plaintiffs sought to overturn the finding in administrative hearings and in the trial court. On appeal, plaintiffs argue that the Village and its administrative

bodies lacked jurisdiction to continue proceedings because they initially proceeded under an outdated ordinance. Defendants argue that the trial court properly granted the motion to dismiss because the issue had already been addressed and ruled upon when plaintiffs previously sought administrative review in the trial court. We agree with defendants and affirm.

¶ 3 I. BACKGROUND

¶ 4 Paulus sent plaintiffs a letter dated September 16, 2019, notifying them of her finding that plaintiffs' three dogs were vicious and could no longer live in the Village. The finding was based on an incident that occurred on September 13, 2019, in which the dogs attacked a man and caused serious injury, as well as a "July bite incident and numerous other complaints against [them] regarding [their] dogs leaving [their] property." The letter stated that plaintiffs could make a written request within seven days of the letter to the Village's Chief Operating Officer, Pamela Newton, for a review of the finding. Plaintiffs requested a review on September 20, 2019. Paulus sent plaintiffs a letter dated September 24, 2019, stating that the review was scheduled for September 27, 2019. Plaintiffs' attorney faxed a letter dated September 25, 2019, requesting that the hearing be continued for 30 days.

¶ 5 At the September 27, 2019, hearing, plaintiffs appeared and requested a 30-day continuance. Newton denied their request on the basis that she did not have discretion to continue the hearing, per a version of the ordinance that stated that the hearing had to be conducted within seven days of the request for a hearing. Plaintiffs left the hearing, which proceeded without them.

¶ 6 Newton issued her decision on October 1, 2019, sustaining the vicious dog determination. She found as follows. On September 13, 2019, Jose Gutierrez arrived at the plaintiffs' property to conduct a tree estimate, as previously arranged with Jean. He knocked on plaintiffs' door, and the three dogs ran out of the partially opened garage door and attacked him. Jean came running out

after the dogs. Gutierrez suffered severe injuries, including significant blood loss and deep wounds which required surgery and several days of hospitalization. Several witnesses who were across the street stated that the dogs attacked unprovoked. Exhibits included "additional bite reports." Newton ordered that the dogs be immediately and permanently removed from the Village.

¶ 7 Plaintiffs appealed the administrative decision to the trial court, with Judge Berrones presiding over the case. On December 23, 2020, he reversed Newton's ruling and remanded the case for a hearing at a date and time to be agreed to by the parties. According to defendants, the basis for Judge Berrones' decision was that Newton wrongly believed that she did not have discretion in determining whether to grant a continuance.

¶ 8 According to plaintiffs, following the December 23, 2020, order of remand they were told by a Village attorney that the Village had amended its ordinance and that the new hearing would be held before an administrative hearing officer. The prior ordinance in title 4, chapter 2, section 4-2-3-2(Q) stated, in relevant part:

> "The owner of a dog found to be dangerous or vicious may, within seven (7) days of the mailing or service of notice by the police department, *make a written request to the chief operating officer for a review of such finding. Such review shall be made by the chief operating officer within seven (7) days of such request* and shall be based upon the police report and any statements or evidence presented by the owner, witnesses to the incident, police department personnel or any other person possessing information relevant to such finding. The chief operating officer shall issue the written findings within five (5) days after the review, sustaining or overruling the finding made by the police department." (Emphasis added.) Hawthorne Woods Village Code § 4-2-3-2(Q) (amended Aug. 17, 2009).

¶ 9 Section 4-2-3-2(Q) was amended by Hawthorn Woods Village Ordinance 1869-18 (eff. July 23, 2018), which changed the language to the following, as pertinent here:

> "The owner of a dog found to be dangerous or vicious may, within seven (7) days of the mailing or service of notice by the police department, *make a written request to the chief of police for a review of such finding. Such review shall be made through the administrative process pursuant to Village Code Title I, Chapter 11, Administrative Adjudication, within thirty (30) days of such request* and shall be based upon the police report and any statements or evidence presented by the owner, witnesses to the incident, police department personnel or any other person possessing information relevant to such finding. The administrative hearing officer's findings, decision and order shall sustain or overrule the finding made by the police department." (Emphasis added.) Hawthorne Woods Village Code § 4-2-3-2(Q) (amended July 23, 2018).

Ordinance 1869-18 (eff. July 23, 2018) stated that "all ordinance and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, superseded by this Ordinance." The ordinance stated that it would be in full force and effect 10 days "from and after its passage, approval and publication in pamphlet form as provided by law." *Id.*

¶ 10 According to defendants, following the remand order, plaintiff filed a motion to reconsider in the trial court before Judge Berrones, arguing that the ordinance under which the parties had proceeded for the review hearing was not the operative version, such that the trial court should not remand the matter because the Village did not have jurisdiction. Defendants state that Judge Berrones denied the motion to reconsider.

¶ 11 At the remanded hearing before the administrative hearing officer, plaintiffs filed a motion to dismiss, arguing that they had been prosecuted under a prior version of the ordinance that was

no longer in effect. Plaintiffs argued that the first hearing had to be held within 30 days, rather than seven days, and that the failure to follow the 30-day requirement was a jurisdictional defect. They also argued that prosecuting them under the prior ordinance denied them due process. The administrative hearing officer denied the motion to dismiss on June 15, 2021. The parties set a hearing date for the review of the vicious dog determination, but in the interim, on July 14, 2021, plaintiffs filed another complaint for administrative review in the trial court. They reasserted their jurisdictional and due process arguments.

¶ 12 Judge Smith presided over the second complaint for administrative review in the trial court. On October 27, 2021, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2020)). They argued that plaintiffs had failed to exhaust their administrative remedies in that they had not obtained a final order from the administrative hearing officer. Defendants also argued that plaintiffs' claims about jurisdiction lacked merit. Defendants further stated that plaintiffs argued before Judge Berrones in a posttrial motion that the case should be dismissed in its entirety rather than remanded because the administrative body had no jurisdiction based on applying the wrong ordinance, and that Judge Berrones denied the motion and remanded the case.

¶ 13 In plaintiffs' response to the motion to dismiss, they argued, among other things, that "[c]ontrary to the statements made in the Motion to Dismiss, Judge Berrones did not retain jurisdiction over this matter." Defendants again raised the issue of the posttrial motion in their reply in support of their motion to dismiss the complaint.

¶ 14 Following a hearing on December 14, 2021, Judge Smith granted defendants' motion to dismiss, finding that "[p]laintiffs' complaint seeks a ruling on an issue that had already been

addressed and ruled on by Judge Berrones on March 23, 2021, in Bacardi v. Village of Hawthorn Woods, Case No. 19-MR-1036 (Lake County)."

¶ 15 Plaintiffs timely appealed.

¶ 16 II. ANALYSIS

¶ 17 Plaintiffs challenge Judge Smith's grant of defendants' motion to dismiss. They argue that although a party may not seek judicial review in the trial court without first pursuing all available administrative remedies (*Wright v. Pucinski*, 352 Ill. App. 3d 769, 773 (2004)), which plaintiffs did not do here because they did not obtain a ruling on the merits before the administrative hearing officer, one exception to this rule is where the agency's jurisdiction is attacked because it is not authorized by statute. *Rockford Memorial Hospital v. Department of Human Rights*, 272 Ill. App. 3d 751, 758 (1995); see also *Goral v. Dart*, 2019 IL App (1st) 181646, ¶ 32 (if a municipal agency acts beyond its statutory authority, it is said to act without jurisdiction). Plaintiffs argue that this exception applies because they are challenging the jurisdiction of the administrative hearing officer and the jurisdiction of the Village to continue, as they had proceeded under a superseded ordinance. Plaintiffs assert that a municipality must follow its own ordinances, and that its actions are illegal if it fails to do so. *Paul v. County of Ogle*, 2018 IL App (2d) 170696, ¶ 38.[1]

¶ 18 Plaintiffs argue that the Village failed to follow its own ordinances in that the notice of violation was sent pursuant to section 4-2-3-2(Q), but the Village applied the older version of the

[1]Plaintiffs also cite *Castenda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308 (1989), for the proposition that another exception to the exhaustion of administrative remedies requirement is if the party is challenging the agency's authority to proceed, but *Castenda* lists the same exceptions as *Rockford Memorial Hospital*.

ordinance by directing plaintiffs to file their request for a hearing with the chief operating officer, rather than the police chief. See *supra* ¶¶ 8-9. Plaintiffs contend that the Village was likewise under the mistaken impression that the hearing had to take place within 7 days of the request rather than 30 days. Plaintiffs also note that the first hearing took place in front of the chief operating officer rather than an administrative hearing officer. Plaintiffs argue that, therefore, the Village ultimately failed to provide a hearing before an administrative hearing officer within 30 days after plaintiffs' written request, which was a jurisdictional requirement, such that the Village lacks the authority to hold the hearing over two years later. See *Mercury Sight Seeing Boats, Inc. v. County of Cook*, 2019 IL App (1st) 180439 ¶ 56 (time limitation for bringing actions before administrative agencies are matters of jurisdiction which cannot be tolled).

¶ 19 Plaintiffs cite *Modrytzkji v. City of Chicago*, 2015 IL App (1st) 141874, ¶ 14, as an analogous case. There, a city of Chicago commission declared that two dogs owned by the plaintiff were dangerous animals under the city's municipal code. *Id.* ¶ 1. The plaintiff filed an untimely request for a review of the determination, and the administrative law judge affirmed the determination. *Id.* ¶¶ 1, 14. The appellate court held that because plaintiff's request for a hearing was not timely, the administrative department did not have the authority to review the dangerous animals determination, making the department's decision affirming the determination void. *Id.* ¶ 14.

¶ 20 Last, plaintiffs argue that it was improper for the trial court to consider the prior ruling of Judge Berrones, because defendants' motion to dismiss was made pursuant to section 2-615, under which only the facts apparent from the face of the pleading may be considered (see 735 ILCS 5/2-615 (West 2020)), and the prior order was not made part of the motion to dismiss. Plaintiffs maintain that the "trial court erred in considering a post judgment ruling by Judge Berrones."

¶ 21 Defendants respond that, contrary to Illinois Supreme Court Rule 341(h)(6) (eff. Oct. 1, 2020), plaintiffs have failed to present an adequate record by not filing a bystander's report of the trial court proceedings, leading to the presumption that Judge Smith had a sufficient factual basis and that his ruling conformed with the law. Defendants contend that plaintiffs also leave out key facts by failing to mention in their statement of facts their postjudgment motion before Judge Berrones and his ruling on the motion, which involved the same arguments that were raised before Judge Smith. Defendants argue that Judge Smith correctly found that plaintiffs were attempting to relitigate the same issues that were before Judge Berrones, and that collateral estoppel applied.

¶ 22 Defendants further argue that Judge Smith's review of their motion as either a section 2-615 motion or a motion under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2020) (allowing for dismissals based on an affirmative matter)) was appropriate. Defendants argue that a dismissal under section 2-615 was proper because it was clear from the face of the pleadings that plaintiffs failed to exhaust their administrative remedies. Defendants assert that the trial court could take judicial notice of the prior court case, and was especially correct in doing so because plaintiffs omitted key facts about that case in their complaint for administrative review. Defendants argue that, for these same reasons, dismissal under section 2-619 was also correct.

¶ 23 Defendants further argue that the Village had jurisdiction to review the vicious dog determination because, contrary to plaintiffs' argument, the initial hearing was held within 30 days, so it was compliant with both versions of the ordinance. Defendants maintain that even if there was a procedural error resulting in a due process violation because the chief operating officer presided over the first hearing rather than an administrative hearing officer, the remedy for the error would be to remand the case for a new administrative hearing, which was exactly what Judge

Berrones ordered. Defendants argue that none of the cases that plaintiffs cite held that administrative charges can be dismissed for a purported due process violation.

¶ 24 Last, defendants argue that should plaintiffs prevail in arguing that the administrative court lacks jurisdiction to conduct a review of the vicious dog determination, the ironic result would be that the initial vicious dog determination would stand undisturbed, which was the ultimate outcome in *Modrytzkji*. See *Modrytzkji*, 2015 IL App (1st) 141874, ¶ 14 ("Therefore, the Department's decision is void and the Executive Director's determinations which were mailed on September 24, 2012, stand.").

¶ 25 In general, a party must first pursue all available administrative remedies before it may seek judicial review of an administrative decision. *Champaign-Urbana Public Health District v. Illinois Human Rights Comm'n*, 2022 IL App (4th) 200357, ¶ 155. Here, plaintiffs did not finish the administrative process because they appealed from the denial of their motion to dismiss, without participating in an administrative hearing on the underlying merits of the case. However, as plaintiffs point out, there are exceptions to the exhaustion doctrine, one of which is if the agency's jurisdiction is attacked because it is not authorized by statute. *Pinkston v. City of Chicago*, 2022 IL App (1st) 200957, ¶ 21. For administrative agencies, the agency's "jurisdiction" refers to its authority to act. *Goral v. Dart*, 2019 IL App (1st) 181646, ¶ 32. An agency's power is limited to that given by the legislative body that created it, so if an agency acts without "jurisdiction" in that it acts beyond its statutory authority, its actions are invalid and void. *Id.* ¶ 32. In this case, plaintiffs are challenging the administrative agency's authority to conduct the hearing, so plaintiffs were not required to exhaust their administrative remedies before seeking review in the trial court.

¶ 26 However, defendants claim that plaintiffs previously raised this issue in their posttrial motion to reconsider before Judge Berrones, who denied their motion, and plaintiffs did not appeal

Judge Berrones' ruling. Defendants note it was on this basis that Judge Smith granted defendants' motion to dismiss on December 14, 2021, because "[p]laintiffs' complaint [sought] a ruling on an issue that had already been addressed and ruled on by Judge Berrones on March 23, 2021, in Bacardi v. Village of Hawthorn Woods, Case No. 19-MR-1036 (Lake County)." Plaintiffs argue that Judge Smith should not have considered the prior order because defendants brought their motion to dismiss under section 2-615, but "the character of the pleading should be determined from its content, not its label." *In re Haley D.*, 2011 IL 110886, ¶ 67. Defendants raised the issue of Judge Berrones' ruling in their motion to dismiss and in their reply in support of their motion to dismiss, so Judge Smith could consider the motion to dismiss as brought under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2020)), which allows for a combined motion to dismiss under sections 2-615 and 2-619. Although defendants did not attach a copy of Judge Berrones' posttrial order to their motion to dismiss, Judge Smith clearly had the authority to take judicial notice of the order. See *In re M.S.*, 2015 IL App (4th) 140857, ¶ 26 ("A court may take judicial notice of its own records.").

¶ 27 Plaintiffs had a chance to respond to the issue of the prior ruling in their response to the motion to dismiss and in argument at the hearing on the motion. Yet plaintiffs failed to provide us with a report of proceedings or certified bystander's report from that hearing, which is an additional reason to conclude that defendants properly raised the issue of the prior ruling. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (the appellant has the burden to provide a sufficiently complete record of the trial proceedings to support his claims of error, and we must resolve any doubts arising from the lack of a complete record against the appellant, including presuming that the trial court's order was entered in conformity with the law and had a sufficient factual basis).

¶ 28 In relying on Judge Berrones' order, Judge Smith essentially applied the doctrine of collateral estoppel. The equitable doctrine of collateral estoppel precludes a party from relitigating an issue decided in a prior proceeding. *Davis v. Pace Suburban Bus Division of the Regional Transportation Authority*, 2021 IL App (1st) 200519, ¶ 85. The party asserting collateral estoppel must show that the issue decided in the prior proceeding is identical to the current issue; there was a final judgment on the merits in the prior proceeding; and the party against whom estoppel is asserted was a party or was in privity with a party in the prior adjudication. *Id.* If the trial court determines that these elements have been met, it must then exercise its discretion as to whether to invoke it. *Id.* ¶ Still, where the exercise of the trial court's discretion results in the termination of litigation, we review the ruling *de novo*. *Seymour v. Collins*, 2015 IL 118432, ¶ 49 (*de novo* review applies where application of collateral estoppel resulted in the grant of summary judgment); see also *Illinois Road & Transportation Builders Ass'n v. County of Cook*, 2022 IL 127126, ¶ 11 (dismissal under either section 2-615 or section 2-619 is reviewed *de novo*).

¶ 29 Here, Judge Smith's order stated that the issue that plaintiffs raised in the proceedings before him had already been ruled upon by Judge Berrones. There are references in various pleadings and the briefs to plaintiffs' posttrial motion before Judge Berrones, and without plaintiffs providing a transcript or bystander's report from the hearing on the motion to dismiss, we must presume that Judge Smith's application of collateral estoppel is correct. We note that plaintiffs chose not to appeal Judge Berrones' orders, nor do they directly address the issue of collateral estoppel in their brief. See *In re H.B.*, 2022 IL App (2d) 210404, ¶ 41 (failure to adequately develop an argument results in forfeiture).

¶ 30 As a result of the application of collateral estoppel, plaintiffs may not challenge the jurisdiction of the Village or its administrative review body in conjunction with the vicious dog

determination. As plaintiffs may not relitigate this issue, and they have therefore failed to exhaust their administrative remedies, the trial court correctly granted the motion to dismiss.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 33 Affirmed.