

2024 IL App (3d) 230263WC-U
No. 3-23-0263WC
Order filed May 23, 2024

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

JULIO SAUCEDO-DIAZ,) Appeal from the
) Circuit Court
Appellant,) of Du Page County
) No. 22MR544
v.)
)
THE ILLINOIS WORKERS' COMPENSATION)
COMMISSION, <i>et al.</i> ,)
) Honorable
(Diversify Labeling Solutions, Appellee).) Craig R. Belford,
) Judge, Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Mullen, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* As the circuit court correctly held, it lacked subject matter jurisdiction over petitioner's untimely action for judicial review of a decision by the Illinois Workers' Compensation Commission.

¶ 2 After entering into a workers' compensation settlement agreement with respondent, Diversify Labeling Solutions, petitioner, Julio Saucedo-Diaz, moved that the Illinois Workers' Compensation Commission (Commission) rescind the agreement on the ground of fraudulent

inducement. The Commission struck petitioner's motion because of a lack of subject matter jurisdiction. Petitioner then appealed to the Du Page County circuit court, seeking a remand to the Commission for a hearing on the merits of his motion. The court granted respondent's motion to dismiss the case, likewise because of a lack of subject matter jurisdiction. Petitioner moved for reconsideration, and the court denied the motion. Petitioner now appeals to the appellate court. We affirm the circuit court's judgment.

¶ 3

I. BACKGROUND

¶ 4 Petitioner entered into a workers' compensation settlement with respondent for work-related injuries he sustained in October 2017.

¶ 5 On January 31, 2020, Arbitrator Soto approved the settlement agreement.

¶ 6 On December 23, 2021, petitioner filed with the Commission a motion to rescind the settlement agreement on the ground of fraudulent inducement.

¶ 7 On August 9, 2022, Commissioner Tyrrell granted a motion by respondent to strike petitioner's motion because of a lack of subject matter jurisdiction.

¶ 8 On September 9, 2022, petitioner filed with the circuit court a request for a summons.

¶ 9 Pursuant to section 2-619(a)(1) and (5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1), (5) (West 2022)), respondent moved for a dismissal of petitioner's action, again because of a lack of subject matter jurisdiction. On January 23, 2023, the circuit court granted respondent's motion, dismissing the case. The court's stated reason for the dismissal was that petitioner had filed his action "11 days past the jurisdictional deadline."

¶ 10 This appeal followed.

¶ 11

II. ANALYSIS

¶ 12 Respondent’s motion for dismissal in the circuit court invoked section 2-619(a)(1) and (5) of the Code of Civil Procedure, a section that provides as follows:

“(a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

(1) That the court does not have jurisdiction of the subject matter of the action, provided that the defect cannot be removed by a transfer of the case to a court having jurisdiction.

* * *

(5) That the action was not commenced within the time limited by law.” *Id.*

Thus, the asserted grounds for the proposed dismissal of petitioner’s action were the untimeliness of the action and the court’s lack of jurisdiction. Agreeing with those grounds, the court granted the motion for dismissal.

¶ 13 We review *de novo* a circuit court’s ruling on a motion for dismissal pursuant to section 2-619. *South Berwyn School District #100 v. Illinois Workers’ Compensation Comm’n*, 2024 IL App (1st) 230273WC-U, ¶ 3. In a section 2-619 proceeding, the movant has the initial burden of coming forward with evidence. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). If the grounds of dismissal do not appear on the face of “the pleading attacked” (735 ILCS 5/2-619(a) (West 2022)), the movant can carry its burden by presenting “materials of the same nature as are used to support motions for summary judgment,” including, but not limited to, an affidavit (internal quotation marks omitted) (*Kedzie*, 156 Ill. 2d at 116).

¶ 14 In this case, “the pleading attacked”—or the document analogous to “the pleading attacked”—is petitioner’s request to the circuit clerk to issue a summons. 735 ILCS 5/2-619(a) (West 2022). On its “face,” this request bears the circuit clerk’s file stamp of September 9, 2022. *Id.*

¶ 15 In addition to pointing out the file stamp on that request, the motion for dismissal presented, as exhibit No. 6, a “CompFile” notice indicating that both parties “received electronic notice of the [Commission’s decision] on August 9, 2022” (to quote the motion). Because CompFile is “the Commission’s electronic filing program” (*South Berwyn School District #100 v. Illinois Workers’ Compensation Comm’n*, 2024 IL App (1st) 230722WC-U, ¶ 8), the CompFile notification attached to the motion as exhibit No. 6 would appear to qualify as a record of the Commission—a public record. In ruling on a motion for dismissal pursuant to section 2-619, a court may “take judicial notice of facts contained in public records where such notice will aid in the efficient disposition of the case.” *Advocate Health & Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004); see *People v. Grau*, 263 Ill. App. 3d 874, 876 (1994) (“Generally, courts may take judicial notice of public documents which are included in the records of *** administrative tribunals.”).

¶ 16 So, respondent carried its burden of initially coming forward with evidence to support the motion for dismissal. See *Kedzie*, 156 Ill. 2d at 116. Respondent presented evidence that although petitioner received notice of the Commission’s decision on August 9, 2022, it was not until September 9, 2022, that petitioner requested the circuit court to issue a summons to the Commission. “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 ***.” 820 ILCS 310/19(f)(1) (West 2022). “Thus, in order to perfect jurisdiction

in the circuit court, the appellant must file a written request for summons within 20 days after receiving the Commission’s decision.” *Springfield Coal Co. v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (4th) 150564WC, ¶ 14. In this case, that deadline was August 29, 2022—a deadline that petitioner missed, judging by the evidence in respondent’s motion for dismissal.

¶ 17 Therefore, respondent satisfied its burden of coming forward with evidence that, if not countered, would require the dismissal of the case. Consequently, the burden shifted to petitioner to “establish” either that “the defense [was] unfounded” or that the defense “require[d] the resolution of an essential element of material fact before it [was] proven.” *Kedzie*, 156 Ill. 2d at 116. In his memorandum in opposition to respondent’s motion for dismissal, petitioner failed to so establish. He did not object to any of respondent’s evidence. Nor did he dispute respondent’s positions on when the 20-day period started and ended and when he filed his action. He admitted that the “final deadline” for appealing to the circuit court “was August 29, 2022,” and that it was not until September 12, 2022—more than 20 days later—that he perfected his appeal.

¶ 18 In his memorandum, petitioner offered the following unsworn explanation for this delay:

“A scrivener’s error with the system and a fee not taken from the firm’s account with the County Clerk’s office, prevented Petitioner from perfecting his appeal on August 29, 2022[.]

On August 29, 2022, Petitioner attempted to perfect his appeal of the Commission decision through the Odyssey system.

The firm maintains an account with the County Clerk’s Office for payment of any filing or service fees.

On September 12, 2022. the attorney was notified that the filing from

August 29, 2022 had been rejected by the County. Upon prompt investigation, it was learned that a signature had been missed on one page of the original filing. Further, the firm was advised for the first time that the service fee would not be taken from the existing account but required a separate payment.

On September 12, 2022, Petitioner promptly perfected his appeal as soon as it [sic] was able. Because the Petitioner missed the deadline as the result of scrivener's error and the separate fee, and not due to any other reason, he has not forfeited his appellate rights."

¶ 19 This unsworn statement by petitioner's attorney was inadmissible. To carry his burden of going forward with evidence, petitioner had to "present[] affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of defect." 735 ILCS 5/2-619(c) (West 2022). If the other proof could be an unsworn statement by petitioner's attorney, the word "affidavit" would be superfluous. See *Ravenswood Disposal Services v. Illinois Workers' Compensation Comm'n*, 2019 IL App (1st) 181449WC, ¶ 22 ("In giving meaning to the words and clauses of a statute, no part should be rendered superfluous."). Moreover, under the interpretive principle of *ejusdem generis*, "other proof" means proof similar to "affidavits." See *West Bend Mutual Insurance Co. v. Krishna Schaumburg Tan, Inc.*, 2021 IL 125978, ¶ 57. To be similar to an affidavit, the other proof would have to be comparable in reliability to an affidavit—or at least, like an affidavit, the other proof would have to be admissible in a summary judgment proceeding. When the burden of going forward shifted to petitioner, he "[had to] submit *similar material* in an attempt to establish that the asserted defense [was] unfounded or require[d] resolution of an essential element of material fact before it [was] proven"—in other words, material similar to that which respondent presented: material admissible in a summary judgment proceeding. (Emphasis

added.) 4 Richard A. Michael, Ill. Practice, Civil Procedure Before Trial § 41:8 (2d ed.); see *John Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 396 (2009) (“When reviewing an order granting a motion to dismiss under section 2-619, we may consider all facts presented in the pleadings, affidavits, and depositions found in the record,” “interpret[ing]” these materials “in the light most favorable to the nonmoving party.”). Because “[u]nsworn, unverified statements may not be considered in ruling on a motion for summary judgment,” they may not be considered in ruling on a section 2-619 motion. *In re Marriage of Colangelo*, 355 Ill. App. 3d 383, 393 (2005).

¶ 20 Even if the unsworn explanation in the memorandum were admissible, it is unclear that the explanation would merit relief under the rule that petitioner invokes on appeal, Illinois Supreme Court Rule 9(d)(2) (eff. Feb. 4, 2022). Rule 9(d)(2) provides that if an electronically submitted document “is rejected by the clerk and is therefore untimely, the filing party may seek appropriate relief from the court, upon good cause shown.” *Id.* Instead of deciding for ourselves whether good cause was shown, we review the circuit court’s finding for an abuse of discretion. See *Davis v. Village of Maywood*, 2020 IL App (1st) 191011, ¶ 13. Under this deferential standard of review, it is beside the point whether we ourselves think there was good cause. If the circuit court considered petitioner’s unsworn explanation and found a lack of good cause, the question for us would be whether this finding was outside the range of reasonableness. The answer would be no. Petitioner does not claim that the Du Page County circuit court’s filing software is new. Also, arguably, by waiting until the final day of the deadline to initiate a new case, one invites trouble by leaving no room for a “scrivener’s error,” as petitioner puts it.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the circuit court’s judgment.

¶ 23 Affirmed.