

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

2026 IL App (4th) 250502-U

NO. 4-25-0502

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 10, 2026
Carla Bender
4th District Appellate
Court, IL

PETER CRANE, Trustee of the Peter S. Crane Living Trust Dated August 21, 2017,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Winnebago County
THE CITY OF ROCKFORD, a Municipal Corporation;)	No. 24MR251
and TIMOTHY F. HORNING, in His Official Capacity)	Honorable
as Administrative Hearing Officer,)	Ronald A. Barch,
Defendants-Appellees.)	Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.
Justices DeArmond and Vancil concurred in the judgment.

ORDER

Held: The appellate court affirmed, concluding the circuit court (1) had jurisdiction in this case as the decision of the City of Rockford’s code hearing division was final and appealable and (2) did not err in granting defendants’ section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2024)).

¶ 1 Plaintiff, Peter Crane, as trustee of the Peter S. Crane Living Trust Dated August 21, 2017, sought administrative review of the decision of defendant administrative hearing officer Timothy F. Horning (AHO Horning), for defendant the City of Rockford (City) code hearing division, finding him in violation of various building code provisions and issuing a \$64,000 fine. Defendants filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619 (West 2024)), arguing plaintiff failing to strictly comply with the requirements of section 3-103 of the Administrative Review Law (*id.* § 3-103) (requiring the filing of a complaint and issuance of summons within 35 days from the date the

administrative decision is served on the complaining party). We affirm.

¶ 2

I. BACKGROUND

¶ 3

Plaintiff is the owner of the Midway Theater, an historic theater building located in Rockford, Illinois. The property was the subject of a code hearing division proceeding for various building code violations due to the property's condition (Rockford building code case No. PST20211418). On May 14, 2024, AHO Horning issued a written decision (AHO decision), finding plaintiff's property in violation of provisions of the 2015 International Property Maintenance Code, as adopted by section 105-197 of the Rockford Code of Ordinances (Rockford Code of Ordinances § 105-197 (approved Nov. 2, 2015)), and assessed a \$64,000 fine, with a 30-day remuneration period. The documents filed and the record of the proceedings of the code hearing division are not a part of the record on appeal. Plaintiff's attorney received a copy of the AHO decision on May 14, 2024. On June 13, 2024, which was 30 days after plaintiff received the AHO decision, plaintiff filed a motion to reconsider and a motion for new trial in the code hearing division.

¶ 4

On June 18, 2024, which was 35 days after plaintiff's receipt of the AHO decision, plaintiff filed a complaint for administrative review in the circuit court. Plaintiff argued defendants' failure to act on his motions in the code hearing division was in derogation of the applicable procedural rules and his right to due process. Plaintiff filed the complaint for review due to "strict construction of the 35 day time limit" on his right to administrative review. He sought a dismissal of the code enforcement case, a finding that no code violations were proven, a remand to the code hearing division with directions to hear plaintiff's posttrial motions, or a new trial in the code hearing division. Plaintiff filed an affidavit for service listing AHO Horning and John McNamara, mayor of the City, as the service list for summonses to issue in the case.

Plaintiff paid the \$342 filing fee. Plaintiff did not pay any fee for certified mailing of the summonses. As a result, summonses were not issued.

¶ 5 On September 16, 2024, defendants filed a motion to dismiss pursuant to section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2024)). Defendants argued dismissal was warranted because although plaintiff filed a complaint for administrative review, no summonses were issued within 35 days after the date plaintiff received the final administrative decision, as required by section 3-103 of the Administrative Review Law (*id.* § 3-103). The parties appeared in court for the first time in this case on September 26, 2024, on defendants' motion to dismiss. Plaintiff's counsel indicated he was not aware that the motion had been filed, and a briefing schedule was set.

¶ 6 On September 30, 2024, plaintiff filed a second affidavit for service of summonses, again listing AHO Horning and Mayor McNamara as the parties to be served. Plaintiff paid the certified mailing fee for each named defendant, as well as a convenience fee. On October 1, 2024, the clerk of the circuit court of Winnebago County (circuit court clerk) filed a certificate of mailing, certifying administrative review summonses were issued to AHO Horning and Mayor McNamara on that date. The signed certified mail signature receipts were filed on October 7 and 11, 2024.

¶ 7 On October 31, 2024, plaintiff filed a response to defendants' motion to dismiss. Plaintiff averred (1) he complied with the service procedures followed in Winnebago County, the circuit court clerk was responsible for service on defendants, and he did not know service had not been completed until he received defendants' motion to dismiss at the first scheduled court appearance in this case; (2) service of summons was subsequently made, and the good faith exception should excuse his late service; (3) he questioned whether administrative review was

necessary because a timely motion to reconsider had previously been filed in the code hearing division; and (4) although the administrative record was completed before final arguments in the code hearing division, it was “spotty and incomplete” due to the use of an artificial intelligence program, and in his experience, it often takes months to file the administrative record, so it did not occur to him to check on service, as he would not have been opposed to them seeking additional time to complete the record. He argued, therefore, he should be allowed to proceed under the good faith exception.

¶ 8 Plaintiff presented the affidavit of Judy Rupprecht, the legal assistant to plaintiff’s attorney, John M. Nelson. She attested the law office was very familiar with the correct procedures for bringing administrative review cases to hearing. The office followed its standard protocol for drafting the complaint and preparing it for filing. She attested payment of the \$342.25 filing fee was made electronically through the e-file system at the time of filing, on June 18, 2024. Rupprecht attested the fee schedule stated there was no fee for certified mailing for administrative review cases. Their office received no rejection of the filing of the affidavit of service on June 18, 2024, for nonpayment of a fee. She stated:

“Nonetheless, when it was discovered by our office that the Winnebago County Clerk’s Office had not issued the proper paperwork, we filed on September 30, 2024 the *same* Affidavit of Service that was filed on *June 18, 2024* and were told to pay an additional \$18.50 for each defendant to be served by certified mail for a total of \$37.00 plus convenience fee of \$.25.” (Emphases in original.)

We note, at a subsequent hearing, plaintiff’s attorney corrected that the certified mailing fee for both defendants was \$34.76. Rupprecht reiterated their “office was never notified nor was the affidavit of service rejected for nonpayment of the filing fee.” She further attested:

“Failure to pay the fee causes any legal complaint to be rejected in the e-filing system to ensure fees are paid by all litigants when filed. If the correct fee is not paid, the envelope is rejected and you are notified by email it was rejected with a note stating the reason why it was rejected.”

Rupprecht declared it was her “considered opinion that the Winnebago County Clerk’s Office dropped the ball here.” Furthermore, she prepared copies of the filed complaint for delivery both to the City’s legal department and AHO Horning.

¶ 9 A hearing was held, and the parties presented their arguments regarding defendants’ motion to dismiss. The circuit court also addressed plaintiff’s position that “there’s not clarity when it comes to whether a motion to reconsider stays the time by which a person that wishes to appeal administrative decision must file the petition.” Citing *Reiter v. Neilis*, 125 Ill. App. 3d 774, 778 (1894), the court noted an agency, being a creature of statute, has only those powers specifically conferred upon it and has no inherent power to amend or change a decision that it has made. The court inquired whether the Rockford Code of Ordinances included a provision for reconsideration or rehearing. Plaintiff’s attorney stated he had “always been admonished in the Administrative Code Court for building code violations that the rules of Civil Procedure do apply, that’s why [he] filed the motion to reconsider.” Defendants’ attorney stated to his recollection that “there’s nothing within our ordinance that allows for a motion to reconsider. What all our FDO’s, or finding, decisions, and orders, state, the very bottom says that *** this is a final order and it is now subject to appeal through the Administrative Review Act.”

The court concluded as follows:

“I will be granting the motion to dismiss unless there is a mechanism in the City of Rockford Code of Ordinances that allows for reconsideration of the

administrative law judge's hearing. If that—if there is such a component, the case law allows that that should have stayed—the administrative law judge should have reached that decision which would have made the—I would remand to have the administrative law judge consider. Of if there is no mechanism, there's plenty of cases that say, unless the agency has a vehicle for rehearing or reconsideration, the 35-day time frame applies.”

¶ 10 Plaintiff's attorney informed the circuit court that the case “did come up on the motion for reconsideration” and AHO Horning denied it because he did not have jurisdiction, and he found jurisdiction over the case was in the circuit court. The court responded, “I might be inclined to disagree with him if there is an agency vehicle for reconsideration.”

¶ 11 On December 5, 2024, the circuit court set a briefing schedule for the parties to provide supplemental information regarding “whether there is an agency rule or statute for the [City's] Code Hearing Division which provides for a rehearing.” Defendants' supplemental brief outlined there was no statute or rule in the Rockford Code of Ordinances that specifically provided for rehearing after a final order of a hearing officer. They argued in the absence of such a statute or rule, a petition for rehearing filed with the administrative agency will not toll the 35-day period in an action for judicial review. Plaintiff argued, however, that the “Illinois Civil Practice Act applies to all administrative hearings” and his timely motion to reconsider stayed the administrative court's final order. As such, he contended the case should be remanded to the code hearing division for consideration of his motion to reconsider.

¶ 12 A hearing was held, after which the circuit court issued its written decision. The court granted defendants' section 2-619 motion to dismiss with prejudice for plaintiff's failure to strictly comply with section 3-103 of the Administrative Review Law. The court noted plaintiff

filed a timely complaint for administrative review, but he did not accomplish the necessary steps for the timely issuance of summonses for service upon AHO Horning or Mayor McNamara. Plaintiff failed to file the proposed summonses and pay the fees required for the certified mailing of those summonses when he filed the complaint. The court further declined to excuse plaintiff's failure to strictly follow the requirements of section 3-103 under the limited good faith exception because plaintiff "failed to act with due diligence to address their failures, be it confusion associated with the Circuit Clerk's fee schedule or otherwise." The court reviewed the fee schedule and observed plaintiff's complaint was filed as a "Miscellaneous Remedy action," which required a \$342 filing fee and \$17.38 per certified mailing. The court noted the circuit clerk's fee schedule for certified mailings indicated there was no fee for the certified mailing of a complaint for administrative view involving an unemployment case, "which conceptually makes sense in a case involving unemployment." The court found summonses were not issued solely due to plaintiff's error in not paying the certified mailing fee. The court found further that the "totality of the circumstances" did not warrant application of the good faith exception. The court disagreed with plaintiff's assertion that the fee schedule was confusing, but even accepting it, plaintiff failed to exercise reasonable diligence to discover and address the problem for over three months. Plaintiff admitted he did nothing until September 16, 2024, when defendants appeared and filed their motion to dismiss. Finally, the court found the Rockford Code of Ordinances does not include a provision allowing for motions to reconsider, to modify, for a rehearing, or for a new trial. Instead, it "indicates final decisions are reviewable only through the Administrative Review Law." Therefore, plaintiff's motions for rehearing and a new trial filed in the code enforcement division did not toll the 35-day period to file an action for judicial review.

¶ 13 Plaintiff filed a motion to reconsider, which was denied on April 17, 2025. This

appeal followed.

¶ 14

II. ANALYSIS

¶ 15 Plaintiff argues the following on appeal: (1) the circuit court erred in granting defendants' motion to dismiss because defendants did not identify the specific subsection of section 2-619 of the Procedure Code upon which they based their claim for relief, (2) his late issuance of summonses should have been excused by the good faith exception, and (3) this case should be remanded to the code hearing division for rulings on plaintiff's motions for reconsideration and a new trial.

¶ 16

A. Circuit Court's Jurisdiction

¶ 17 Although addressed last by plaintiff in his brief, this court must first consider the circuit court's determination that it had jurisdiction to consider this matter as a final and appealable decision of the code hearing division. See *Village of Kirkland v. Kirkland Properties Holdings Co.*, 2023 IL 128612, ¶ 37 (noting jurisdiction is a threshold issue that must be addressed before considering the merits). Plaintiff argues because he had filed motions to reconsider and for a new trial in the code hearing division and those matters had not been heard, the AHO decision was not final and appealable. The question of whether a circuit court had jurisdiction over a matter is a question of law subject to *de novo* review. *Margaret Manor, Inc. v. Lumpkin*, 279 Ill. App. 3d 776, 779 (1996).

¶ 18

“Generally, judicial review of an agency action can only occur where there has been a final agency determination.” *Key Outdoor, Inc. v. Department of Transportation*, 322 Ill. App. 3d 316, 324 (2001). An administrative decision is “any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.”

735 ILCS 5/3-101 (West 2024). “Administrative agencies do not have authority to reconsider, change, or modify decisions once announced unless empowering statutes authorize it.”

Panhandle Eastern Pipe Line Co. v. Illinois Environmental Protection Agency, 314 Ill. App. 3d 296, 303 (2000). If, however, a statute or rule of the agency “requires or permits an application for a rehearing” within a specific time and an application for a rehearing is made, the administrative decision is not final until such a rehearing is had or denied. 735 ILCS 5/3-101 (West 2024). Therefore, unless there is a statute or agency rule which specifically provides for the rehearing of an administrative decision, the final order becomes ripe for administrative review when it is rendered by the agency. See *Fredette v. Village of Beecher*, 192 Ill. App. 3d 737, 740 (1989); *Waste Management of Illinois, Inc. v. Pollution Control Board*, 231 Ill. App. 3d 278, 299-300 (1992).

¶ 19 The City has the authority to enact building code ordinances under the Illinois Municipal Code (65 ILCS 5/1-2-1 (West 2024)). In accordance with section 1-2.2-10 of the Municipal Code (*id.* § 1-2.2-10), the City has established a code hearing division to expedite the prosecution and correction of code violations (Rockford Code of Ordinances § 2-797 (adopted May 12, 2008)). The Rockford Code of Ordinances provides that at the conclusion of a hearing in the code hearing division, the hearing officer shall issue a written decision designated as “findings, decision and order” which must be served upon the property owner within five days after issuance. *Id.* § 2-805 (adopted Mar. 21, 1994). See also 65 ILCS 5/1-2.2-45 (West 2024). It further provides:

“The findings, decision and order of the hearing officer shall be subject to review in the circuit court of the county, and the provisions of the Administrative Review Law (735 ILCS 5/3-101 *et seq.* [(West 2024)]), and the rules adopted pursuant

thereto, are adopted and shall apply to and govern every action for the judicial review of the final findings, decision and order of a hearing officer under this article.” Rockford Code of Ordinances § 2-806 (adopted Mar. 21, 1994).

Similarly, the Municipal Code provides, “Any final decision by a code hearing unit that a code violation does or does not exist shall constitute a final determination for purposes of judicial review and shall be subject to review under the Illinois Administrative Review Law.” 65 ILCS 5/1-2.1-7 (West 2024).

¶ 20 In this case, there are no provisions in the Municipal Code or the Rockford Code of Ordinances which specifically provide for rehearing of a decision made in the code hearing division. As such, the AHO decision was a final and appealable order when it was timely delivered to plaintiff. See Rockford Code of Ordinances, § 2-805 (adopted Mar. 21, 1994) (requiring the AHO decision to be served upon the property owner within five days after issuance). We reject plaintiff’s suggestion that this court “overrule or expand the law” in this area to reach a different conclusion.

¶ 21 B. Form of Defendants’ Motion to Dismiss

¶ 22 Plaintiff argues the circuit court should have denied defendants’ motion to dismiss because they failed to specify which subsection of section 2-619 of the Procedure Code they claimed as a basis for the motion and the defendants’ arguments as to the grounds were otherwise incorrect. We disagree.

¶ 23 It is considered best practice for an attorney to clearly identify the specific statutory provision upon which a motion to dismiss is based. See generally *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994). For example, the practice of filing undesignated or hybrid motions to dismiss is highly disfavored, and a circuit court may reject a movant’s effort to file a

combined motion pursuant to section 2-619.1 of the Procedure Code (735 ILCS 5/2-619.1 (West 2024)) that “comingles claims[] or creates unnecessary complications and confusion.” *Reynolds v. Jimmy John’s Enterprises, LLC*, 2013 IL App (4th) 120139, ¶¶ 20-21. Still, appellate courts may review a combined motion to dismiss brought under both sections 2-619 and 2-615, so long as considering the motion as drafted is not prejudicial to the nonmovant. *Krewionek v. McKnight*, 2022 IL App (2d) 220078, ¶ 21; see *Bank of Northern Illinois v. Nugent*, 223 Ill. App. 3d 1, 8-9 (1991) (finding that in the interest of judicial economy, numerous courts have reviewed the merits of an improperly combined motion to dismiss where there is no prejudice in doing so). We apply this same reasoning to defendants’ lack of specificity in their section 2-619 motion to dismiss in this case. Although defendants did not designate the specific subsection of section 2-619 serving as the basis of their motion to dismiss, a review of the grounds argued, the relief requested, and the treatment by the parties and the circuit court reveals neither prejudice to plaintiff nor confusion as to the basis of the relief sought and granted in this case. Furthermore, this court reviews *de novo* a circuit court’s dismissal of a complaint pursuant to section 2-619, and the decision may be affirmed on any grounds supported by the record. *Caruth v. Quinley*, 333 Ill. App. 3d 94, 97 (2002).

¶ 24 C. Dismissal of the Complaint Finding no Good-Faith Exception for Late

Issuance of Summonses

¶ 25 Section 2-619 of the Procedure Code establishes the procedures by which a defendant may seek involuntary dismissal of a plaintiff’s complaint based upon certain defects or defenses. 735 ILCS 5/2-619(a) (West 2024). Subsection 2-619(a)(9) allows dismissal when the claim asserted is “barred by other affirmative matter avoiding the legal effect of or defeating the claim.” *Id.* § 2-619(a)(9). Such a motion admits the legal sufficiency of a plaintiff’s complaint

and asserts an affirmative matter *outside* the complaint negates the claim. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). A plaintiff's failure to comply with the requirements of section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2024)) is an affirmative matter outside the complaint. Thus, a motion to dismiss pursuant to section 2-619 is the proper method to attack a complaint under these circumstances. See *Palos Bank & Trust Co. v. Illinois Property Tax Appeal Board*, 2015 IL App (1st) 143324, ¶ 11; *Gunther v. State of Illinois Civil Service Comm'n*, 344 Ill. App. 3d 912, 913-14 (2003); *Ocampo v. Illinois Civil Service Comm'n*, 2024 IL App (1st) 230667-U, ¶ 25. When reviewing a circuit court's decision regarding a section 2-619 motion to dismiss, we utilize the *de novo* standard. *Kean*, 235 Ill. 2d at 361.

¶ 26 Section 3-102 of the Administrative Review Law provides that a party shall be barred from obtaining judicial review of an administrative decision unless review is sought within the time and in the manner provided. 735 ILCS 5/3-102 (West 2024). An action for review of an 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." *Id.* § 3-103. Furthermore, the Administrative Review Law provides, "Summons issued in any action to review the final administrative decision of any administrative agency shall be served by registered or certified mail on the administrative agency and on each of the other defendants." *Id.* § 3-105. The 35-day period for the issuance of a summons by the clerk of the court is mandatory, not jurisdictional. *Blumhorst v. Illinois Department of Employment Security*, 335 Ill. App. 3d 1075, 1079 (2002). Because the Administrative Review Law provisions are a departure from common law, they must be strictly followed. *Palos Bank & Trust Co.*, 2015 IL App (1st) 143324, ¶ 12. Courts have

recognized a “narrow good-faith exception” in cases where a plaintiff made a good faith effort to comply with the summons requirements “but failed to do so because of errors committed in the clerk’s office or other factors beyond the plaintiff’s control.” *Id.* ¶ 17. “Mere ‘substantial compliance’ is not enough to trigger the good-faith exception.” *Id.* (quoting *Gunther*, 344 Ill. App. 3d at 915).

¶ 27 It is undisputed in this case that plaintiff failed to strictly comply with section 3-103 of the Administrative Review Law. Although plaintiff filed the complaint for administrative review within 35 days of his receipt of the AHO decision, plaintiff failed to obtain the issuance of summonses within that time frame. When plaintiff filed his complaint, he also filed an affidavit for service identifying AHO Horning and Mayor McNamara as defendants to be issued summonses. However, because plaintiff did not pay the fee for certified mailing of the summonses, they were not issued.

¶ 28 Plaintiff argues his lack of compliance should be excused by the good faith exception courts have recognized in other cases. However, “[a] litigant must show a good faith effort to have the clerk issue the summons within 35 days to warrant relaxation of the filing period.” *Moretti v. Department of Labor*, 119 Ill App. 3d 740, 744 (1983). Plaintiff has shown no good faith effort in this case.

¶ 29 In his response to defendants’ motion to dismiss, plaintiff claimed he did not know the summonses had not been issued until the parties appeared in court on September 26, 2024, which was the first court date in this case triggered by defendants filing their motion to dismiss. He argued the circuit court clerk was “responsible for the service on the defendants.” Plaintiff also claimed confusion regarding the fee schedule, and as a result, his attorney’s legal assistant “mistakenly thought that the amount paid was sufficient to make sure that the case got

underway.” In his brief, plaintiff contends he does not blame the circuit court clerk’s office, explaining “the administration of the Clerk’s Office is only as good as the computers, computer software and computer software programming the Clerks’ Office is served by.” However, plaintiff later argues, “The failure of the clerk’s office in this case is the lack of personal touch in its computer system” and “[t]he computer system of the Clerk’s Office should have rejected the filing entirely or given Notice of non-payment for service.”

¶ 30 Plaintiff has failed to identify any factors beyond his control that prevented him from serving defendants in a timely fashion. The Municipal Code required defendants to be served by registered or certified mail within 35 days of plaintiff’s receipt of the AHO decision. See 735 ILCS 5/3-103, 105 (West 2024). The circuit court clerk’s fee schedule was not misleading. Plaintiff’s complaint for administrative review required payment of a \$342 filing fee and \$17.38 for certified mailing for each summons to be issued. The fee schedule clearly addressed administrative review of *unemployment matters* separately—there being no filing fee and no fee for certified mailing in those cases. Although Rupprecht attested the fee schedule indicated there was no fee for certified mailing for administrative review cases, plaintiff’s counsel acknowledged this was Rupprecht’s mistake. Plaintiff’s counsel’s or his legal assistant’s own misapprehension of the fee schedule is not an excuse for plaintiff’s lack of compliance. Likewise, the fact that the circuit court clerk’s computer system did not reject his filing does not excuse his failure to follow the fee schedule. We are unconvinced by plaintiff’s argument that the computer system is to blame for his failure to comply with the requirement regarding issuance of summonses.

¶ 31 Furthermore, plaintiff’s conduct has otherwise demonstrated a lack of due diligence in discovering and correcting his mistake. Plaintiff filed the complaint for

