IN THE COURT OF APPEALS OF IOWA

No. 3-676 / 12-1988
Filed October 23, 2013

MARY A. WOOD,
Plaintiff-Appellant,

vs.

STATE OF IOWA DEPARTMENT OF EDUCATION, DIVISION OF VOCATIONAL REHABILITATION, INDEPENDENT LIVING PROGRAM,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel, Judge.

Mary Wood appeals the district court's order affirming the ruling of the Department of Education, Division of Vocational Rehabilitation, which denied Wood's claims against Iowa Vocational Rehabilitation Services. **APPEAL DISMISSED.**

Michael D. Ensley of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Jeanie Kunkle Vaudt, Assistant Attorney General, for appellee.

Heard by Vogel, P.J., and Mullins, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

VOGEL, P.J.

Mary Wood appeals the district court's order affirming the ruling of the Department of Education, Division of Vocational Rehabilitation, which denied Wood's claims regarding how Iowa Vocational Rehabilitation Services (IVRS) handled the remodeling of her bathroom. Wood asserts the trial court did not apply the correct standard of review, erred by not addressing her claims individually, and erred in denying her motion for temporary remedy. Wood further argues the agency erred as a matter of law in its various factual and legal findings with respect to how IVRS should have handled Wood's claim. Because we find we do not have jurisdiction, we dismiss the appeal.

I. Factual and Procedural Background

Wood is an elderly woman confined to a wheelchair. To accommodate her disability, she needed her bathroom remodeled so she could access the facilities more easily. Wood sought independent living services from IVRS to help with the costs of the remodel, as well as assistance in securing a contractor. After being removed from a waiting list on July 14, 2009, Wood was assigned Warren Larson as her assistive technology/independent living specialist. Over the next several months, Larson was in contact with Wood and her daughter, Vona Currier, regarding the remodel.

Wood ultimately chose the contractor Rocky Grillo Construction (Grillo) to remodel the bathroom, and he began construction in February 2010.[1] During the pendency of the project, Wood and Currier informed Larson on several occasions

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[1] Grillo's final bill for the construction project was $5450, of which $3000 was paid by IVRS, which is the maximum amount usually permitted for this type of assistance. Wood was aware of, and agreed to, this arrangement.

of complaints Wood had with the quality of the workmanship. Each time Grillo agreed to make any and all necessary adjustments or repairs. Once Grillo completed the remodel, the Boone city building inspector concluded the project met with the city's building code requirements. In July, Larson informed Currier and Wood he was going to proceed with payment and close Wood's file. Currier objected, claiming IVRS should not pay Grillo directly, and that both she and Wood were dissatisfied with the remodel. In response, Larson informed them of their appeal rights and advocacy options.[2] After communication from Currier, the director of IVRS also informed Currier of various advocacy options and the advocacy role of IVRS when the client and IVRS disagree.

Currier and Wood proceeded to contest the actions of IVRS.[3] On September 16, 2010, Wood, proceeding pro se, appealed the decision to IVRS. A hearing officer was appointed, and an in-person hearing was conducted on October 28, 2010. The officer upheld the agency's actions, though concluded IVRS was required to "continue engagement with Ms. Wood and this project" so as to determine whether the project: "1) meets safety standards; 2) meets building code requirements; and 3) achieves the goal of supporting Ms. Wood as stated in her consumer service plan."

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[2] Currier had already complained to the Iowa Ombudsman's Office regarding how IVRS was handling the remodeling project. After investigating her complaint, the ombudsman concluded "IVRS had been responsive" to Wood's concerns, and, specifically, the city inspector "found no safety or contractual defects" in the bathroom. Therefore, it took no further action and closed her file.

[3] Grillo and Wood were also involved in a fee-dispute case filed in Boone County. Grillo filed a claim for the $2384.36 due to him from the bathroom remodel, and Wood counterclaimed for $4584.50, the amount a construction company had bid to correct what Wood and Currier deemed problems with the remodeling project. The district court granted Grillo's request and denied Wood's counterclaim in its entirety.

Once IVRS issued its decision, it sent Wood a letter dated November 18, 2010, informing her she had thirty days upon receipt of the letter in which to file her appeal. On December 23, 2010, thirty-six days after the hearing officer's decision, Wood filed a pro se petition for judicial review. On July 19, 2011, Wood filed another pro se[4] motion for temporary remedy, in which she requested IVRS support modifications to her bathroom floor because it violated "the Iowa state plumbing code." On November 15, 2011, the district court denied the motion but "incorporated [it] into the final arguments in this case to the extent it was raised in the administrative action." Wood, this time through counsel, presented oral arguments on the petition for judicial review on February 24, 2012. The district court denied the petition on July 17, 2012, after which Wood filed a motion to amend or enlarge the court's rulings, requesting the court address the issues of 1) whether the relief requested in her motion for temporary remedy should be granted and 2) whether any of the alleged plumbing code violations occurred. The court issued an order denying Wood's claims on September 28, 2012. Wood now appeals, asserting several bases of error.

II. Standard of Review

Under Iowa Code section 17A.19, our review of agency action is to determine whether our conclusions are the same as those of the district court. *Stephenson v. Furnas Elec. Co.*, 522 N.W.2d 828, 831 (Iowa 1994). "The district court may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria

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[4] Wood briefly retained the services of the Drake Legal Clinic, but on July 15, 2011, the supervising attorney filed a motion to withdraw.

contained in section 17A.19(10)(a) through (n)." *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010). Reviewing the record as a whole, we may reverse, modify, affirm, or remand to the agency for further proceedings if the agency's factual findings are not supported by substantial evidence, or its application of law to the facts is irrational, illogical, or wholly unjustifiable. *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012); *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 264 (Iowa 1995).

III. Jurisdiction

The State maintains we do not have subject matter jurisdiction to hear this appeal. The State relies on the fact Wood filed her petition for judicial review thirty-six days after the agency's final decision, as well as *Anderson v. W. Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 420 (Iowa 1994), which held, "where a party attempts to invoke the district court's appellate jurisdiction, compliance with statutory conditions is required for the court to acquire jurisdiction."

Subject matter jurisdiction refers to the power of a court "to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case . . . occupying the court's attention." *Smith v. Smith*, 646 N.W.2d 412, 414 (Iowa 2002); *see also State v. Mandacino*, 509 N.W.2d 481, 482 (Iowa 1993). Subject matter jurisdiction cannot be conferred by consent or estoppel, and may be raised for the first time on appeal. *State ex rel. Vega v. Medina*, 549 N.W.2d 507, 508 (Iowa 1996).

Except as otherwise provided by statute, the judicial review provisions of chapter 17A are "the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review" of

agency action. Iowa Code § 17A.19. Therefore, a petitioner must file a timely petition for judicial review under this chapter, which is "within thirty days after [the petitioner's] application has been denied or deemed denied." *Id.* § 17A.19(3); s*ee also Sharp v. Iowa Dep't of Job Serv*., 492 N.W.2d 668, 669 (Iowa 1992). Under the section of the Iowa Administrative Code governing the Department of Education, "issuance" is defined as "the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order." Iowa Admin. Code r. 281-6.2 (2011).

Under these statutes and case law, we agree with the State neither our court nor the district court have subject matter jurisdiction over this case. The decision of IVRS was dated November 17, 2010, and Wood's petition for judicial review was filed over thirty days from the date that was "specified in the order." *Id.* This is contrary to the mandate of chapter 17A, which allows thirty days to file an appeal. Therefore, we are deprived of jurisdiction to hear this case. *See Anderson*, 524 N.W.2d at 421.

Because we find we lack subject matter jurisdiction, we dismiss the appeal.

APPEAL DISMISSED.