2022 IL App (5th) 210161

NO. 5-21-0161

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel.* THE DEPARTMENT OF HUMAN RIGHTS, Plaintiff-Appellant, v. INTERSTATE REALTY MANAGEMENT and TOWN AND COUNTRY PRESERVATION ASSOCIATE, LP, Defendants-Appellees.	)	Appeal from the Circuit Court of Madison County. No. 20-CH-251 Honorable Thomas W. Chapman, Judge, presiding.

JUSTICE CATES delivered the judgment of the court, with opinion.
Justices Welch and Wharton concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, the People of the State of Illinois *ex rel*. the Department of Human Rights, appeals the judgment of the circuit court dismissing the plaintiff's case. For the following reasons, we reverse the judgment of the circuit court and remand this matter for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 On April 20, 2016, the complainant, Evan Thomas, filed an unperfected charge of discrimination with the United States Department of Housing and Urban Development (HUD). The charge alleged that the defendants, Interstate Realty Management and Town and Country Preservation Associate, LP, denied the complainant reasonable accommodations due to his

disability in violation of section 3-102.1(C)(2) of the Illinois Human Rights Act (Act) (775 ILCS 5/3-102.1(C)(2) (West 2016)). The charge was referred to the Department of Human Rights (Department), and on July 7, 2016, the complainant's charge was perfected with the Department.

¶ 4 On August 4, 2016, the Department informed the defendants by letter (Hundred Day Letter) that the Department could not complete its investigation within 100 days. The Hundred Day Letter provided that the Department needed to complete interviews with the parties and witnesses, make additional efforts to conciliate the complaint, and finish writing a report of the investigation. Further, the charge had not been signed by the complainant to begin the investigation. The Hundred Day Letter stated that the projected completion date for the investigation was October 7, 2016. The Hundred Day Letter advised the defendants that the projected completion date was subject to change because the Department "cannot always predict what additional information or further action may be necessary to ensure that a comprehensive and impartial investigation has been conducted." The Hundred Day Letter also advised the defendants that they could contact the investigator for an update regarding the completion of the investigation if they had not heard from the investigator by October 7, 2016. The defendants could also contact the investigator with any questions related to the case and obtain additional information with regard to why it was impracticable to complete the investigation within 100 days.

¶ 5 On May 22, 2017, the Department dismissed the complainant's charge for lack of substantial evidence. On August 23, 2017, the complainant filed a request for review with the Human Rights Commission (Commission). On June 3, 2019, the Commission vacated the Department's dismissal, reinstated the complainant's charge, and remanded the matter to the Department for an entry of substantial evidence and for further proceedings.

¶ 6 On July 10, 2019, the Department issued a notice of substantial evidence, which advised that the Act mandated that the Department conduct conciliation to give the parties an opportunity to settle the case before filing a complaint with the Commission. The notice further advised that an attorney had been assigned to facilitate conciliation and that the Department would file a complaint with the Commission if no conciliation agreement was reached. Per the notice, it was the parties' responsibility to contact the Department attorney no later than five days after receiving the notice if the parties wished to conciliate the charge. Otherwise, a complaint would be filed with the Commission.

¶ 7 On July 1, 2020, the Department filed a complaint with the Commission. On September 1, 2020, the Commission issued an order that indicated the complainant had elected on July 21, 2020, to remove the complaint to the circuit court. The Commission's order further indicated that the Commission would take no further action and administratively closed its file.

¶ 8 After the complainant elected to remove the case to circuit court, the case was referred to the Attorney General. On August 24, 2020, the Attorney General filed a complaint pursuant to the Act against the defendants in the circuit court of Madison County. The circuit court complaint[1] alleged that the defendants refused to make a reasonable accommodation in housing; refused to engage in a real estate transaction because of a person's disability; and refused to rent, otherwise make unavailable, or deny a dwelling on the basis of disability.

¶ 9 The defendants moved to dismiss the circuit court complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2020)), asserting several grounds for

[1]This appeal involves the filing of a complaint with the Commission and a subsequent complaint filed in the circuit court of Madison County. For clarity's sake, we will refer to the complaint filed with the Commission simply as the "complaint" and the complaint filed in the circuit court as the "circuit court complaint."

dismissal. The defendants argued that section 7B-102(G)(1) of the Act (775 ILCS 5/7B-102(G)(1) (West 2016)) required the complaint to be filed within 100 days of either the complainant's filing of the charge or the Commission's reversal of the Department's dismissal. The defendants also argued that the complaint was not "immediately" filed after the Department issued its notice of substantial evidence as required by section 7B-102(D)(2)(b) of the Act (775 ILCS 5/7B-102(D)(2)(b) (West 2016)). The defendants further claimed that the circuit court complaint was not filed within the two-year statute of limitations found in section 10-104(A)(1) of the Act (775 ILCS 5/10-104(A)(1) (West 2016)). Finally, the defendants argued that the complainant's case was not removed to the circuit court within 20 days as required by section 8B-102(A) of the Act (775 ILCS 5/8B-102(A) (West 2016)). The defendants alleged that the complaint was filed with the Commission on July 1, 2020, and that the removal to the circuit court was not requested until August 24, 2020. The defendants concluded their motion by asserting that they were prejudiced by the alleged delays in this case.

¶ 10 In response to the defendants' motion, the plaintiff contended that the defendants' arguments were contradicted by statutory language, relied upon inapplicable sections of the Act, and misstated the facts. The plaintiff argued that section 7B-102(G)(1) applied to the complaint filed by the Department with the Commission and that the Act specified that a failure to issue a complaint within 100 days of the charge did not deprive the Department of jurisdiction over the charge. The plaintiff noted that the Department informed the defendants, in accordance with the statute, as to why it was impracticable for the Department to meet the 100-day timeline. The plaintiff also argued that the defendants' claim that the statutory language in section 7B-102(D)(2)(b) requiring the complaint be filed "immediately" after the notice of substantial evidence failed to take into account the context of the entire statute. The plaintiff asserted that

"immediately" was not a definite description of time and that the statute required the Department to conciliate, if feasible, when substantial evidence was found. Next, the plaintiff argued that the two-year statute of limitations found in section 10-104(A)(1) was inapplicable because the proceeding was commenced pursuant to a judicial election under section 10-103 (775 ILCS 5/10-103 (West 2016)) rather than section 10-104. The plaintiff asserted that section 10-104(A)(1) only applied where the Attorney General acts in its *parens patriae* authority against persons or a group of persons the Attorney General reasonably believes are engaged in a pattern or practice of discrimination. Finally, the plaintiff argued that the defendants had misstated the date the complainant elected to remove his case to the circuit court. The plaintiff asserted that the election was made on July 21, 2020, which was within the 20-day deadline found in section 8B-102(A).

¶ 11 In reply, the defendants argued that the 100-day period found in section 7B-102(G)(1) operated as a statute of limitations even if the failure to file a complaint did not deprive the Department of jurisdiction. The defendants also argued that section 10-104 applied to all actions brought by the Attorney General under the Act. The defendants further argued that, as a matter of reasonableness, the complaint was not filed "immediately" upon the Department's notice of substantial evidence because 11 months elapsed between the notice of substantial evidence and the filing of the complaint with the Commission. The defendants alleged that there was no evidence that any meaningful conciliation occurred during this time. Finally, the defendants alleged that they did not receive notice of the complainant's election to proceed in the circuit court until the Attorney General filed the circuit court complaint.

¶ 12 Following a hearing, the circuit court, without specifying the reasons, dismissed the plaintiff's case with prejudice. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A motion to dismiss brought under section 2-619 admits the legal sufficiency of the claim but asserts some affirmative matter that defeats the claim. *Goral v. Dart*, 2020 IL 125085, ¶ 27. A section 2-619 motion also admits as true all well-pleaded facts and all reasonable inferences that can be drawn therefrom. *Goral*, 2020 IL 125085, ¶ 27. When ruling on a section 2-619 motion, the court will construe all pleadings and supporting documents in the light most favorable to the nonmoving party. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). Where the circuit court does not specify the grounds for its order dismissing the plaintiff's complaint, we will presume it was upon one of the grounds properly asserted by the defendants and address the merits. *Giles v. General Motors Corp.*, 344 Ill. App. 3d 1191, 1196 (2003).

¶ 15 A circuit court's decision to dismiss a case pursuant to section 2-619 is reviewed *de novo*. *Goral*, 2020 IL 125085, ¶ 27. This case also presents an issue of statutory construction, which is question of law that we review *de novo*. *Hernandez v. Lifeline Ambulance LLC*, 2020 IL 124610, ¶ 15.

¶ 16 Before addressing the merits of the defendants' contention, a review of the procedural process for discrimination in real estate transaction cases before the Department and the Commission is helpful. It is a civil rights violation under the Act to discriminate against an individual due to a disability in connection with real estate transactions. 775 ILCS 5/3-102, 3-102.1 (West 2016). An aggrieved individual may file a charge with the Department within one year after the date that a civil rights violation allegedly has been committed or terminated. 775 ILCS 5/7B-102(A)(1) (West 2016).

¶ 17 After the charge is filed, the Department must investigate the charge within 100 days unless it is impracticable to do so. 775 ILCS 5/7B-102(C)(1) (West 2016). The Department's failure to

complete the investigation within 100 days does not deprive the Department of jurisdiction over the charge. 775 ILCS 5/7B-102(C)(1) (West 2016). If the Department is unable to complete the investigation within 100 days, the Department must notify the parties in writing of the reasons for not doing so. 775 ILCS 5/7B-102(C)(2) (West 2016).

¶ 18 Each investigated charge shall be the subject of a report to the Director. 775 ILCS 5/7B-102(D)(1) (West 2016). The Director must review the report and, within 100 days of the filing of the charge unless it is impracticable to do so, determine whether there is substantial evidence that the alleged civil rights violation has been committed or is about to be committed. 775 ILCS 5/7B-102(D)(2) (West 2016). If the Director is unable to make this determination within 100 days, the Director must notify the parties in writing of the reasons for not doing so. 775 ILCS 5/7B-102(D)(2) (West 2016). The Director's failure to make a substantial evidence determination within 100 days does not deprive the Department of jurisdiction over the charge. 775 ILCS 5/7B-102(D)(2) (West 2016).

¶ 19 If the Director determines that there is no substantial evidence, the Director will dismiss the charge, and the complainant may request a review of the dismissal by the Commission. 775 ILCS 5/7B-102(D)(2)(a) (West 2016). If the Director determines that there is substantial evidence, the Director must immediately issue a complaint on behalf of the aggrieved party in accordance with subsection (F) of section 7B-102. 775 ILCS 5/7B-102(D)(2)(b) (West 2016). Subsection (F) directs the Department to file a complaint with the Commission when there is a failure to settle or adjust any charge through a conciliation conference and the charge is not dismissed. 775 ILCS 5/7B-102(F)(1), (2) (West 2016). From the time the charge is filed until either a complaint is filed or the charge is dismissed, the Department must, to the extent feasible, engage in conciliation with respect to the charge. 775 ILCS 5/7B-102(E)(1) (West 2016).

¶ 20 A Dismissal Pursuant to Section 7B-102(G)(1) or 7B-102(D)(2)(b)

¶ 21 In the proceedings below, the defendants argued that dismissal of the plaintiff's case was proper under section 7B-102(G)(1) because the Department failed to file a complaint within 100 days of the filing of the charge. The defendants also argued that dismissal of the plaintiff's case was proper under section 7B-102(D)(2)(b) because the Department did not file the complaint with the Commission "immediately" after the Department issued its notice of substantial evidence.

¶ 22 The primary goal of statutory construction is to ascertain and effectuate the legislature's intent. *Hernandez*, 2020 IL 124610, ¶ 16. The most reliable indicator of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. *Haage v. Zavala*, 2021 IL 125918, ¶ 44. In construing a statute, this court must view the statute as a whole and construe the statutory language in light of other relevant statutory provisions. *Haage*, 2021 IL 125918, ¶ 44. If the language of the statutory provision at issue is clear and unambiguous, the provision must be applied as written, without resort to other aids of statutory construction. *Hernandez*, 2020 IL 124610, ¶ 16.

¶ 23 Section 7B-102(G)(1), which is titled "Time Limit," provides:

> "When a charge of a civil rights violation has been properly filed, the Department, within 100 days thereof, unless it is impracticable to do so, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued. Any such order shall be duly served upon both the aggrieved party and the respondent. The Department's failure to either issue and file a complaint or order that no complaint be issued within 100 days after the proper filing of the charge does not deprive the Department of jurisdiction over the charge." 775 ILCS 5/7B-102(G)(1) (West 2016).

¶ 24 The defendants contend that this section required the Department to file a complaint within 100 days of the filing of the charge, referring to this provision as a statute of limitations. The plaintiff argues that the language of the statute is directory rather than mandatory. The plaintiff further argues that the statute expressly provides that the Department did not lose jurisdiction over the charge when it failed to file a complaint within 100 days of the filing of the charge.

¶ 25 Statutory language issuing a procedural command to a government official is presumed directory rather than mandatory, which means that the failure to comply with a particular procedural step will not have the effect of invalidating the governmental action to which the procedural requirement relates. *In re James W.*, 2014 IL 114483, ¶ 35. This presumption may be overcome under either of two conditions: (1) when there is negative language prohibiting further action in the case of noncompliance or (2) when the right the provision is designed to protect would generally be injured under a directory reading. *In re James W.*, 2014 IL 114483, ¶ 35.

¶ 26 Here, a directory reading of the statute is appropriate. Section 7B-102(G)(1) directs the Department to file a complaint with the Commission within 100 days, "unless it is impracticable to do so." Section 7B-102(G)(1) expressly provides that the Department does not lose jurisdiction over the charge if the Department fails to file the complaint within 100 days of the filing of the charge. The language used in subsection (G)(1) is echoed in other portions of section 7B-102. See 775 ILCS 5/7B-102(C)(1), (2) (West 2016) (concerning the Department's investigation); see also 775 ILCS 5/7B-102(D)(2) (West 2016) (concerning the Director's determination of substantial evidence). Thus, the plain and unambiguous language of the statute does not impose any consequence for the Department's failure to file a complaint with the Commission within 100 days of the filing of the charge.

¶ 27 The defendants have not directed this court to any language prohibiting further action where the Department does not file the complaint within 100 days. Further, the defendants have not offered any argument as to what right section 7B-102(G)(1) was designed to protect, or how that right would generally be injured under a directory reading of the statute. Instead, the defendants, citing section 7B-102(D)(2), argue that the Department was required to notify the parties that it was impracticable to comply with the 100-day time limit every 100 days and that the Department only retained jurisdiction over the charge if it did so.

¶ 28 But section 7B-102(D)(2) applies to the Director's determination of substantial evidence. This section provides that the Director shall determine, within 100 days of the filing of the charge unless it is impracticable to do so, whether there is substantial evidence that a civil rights violation has occurred or is about to be committed. This section further provides that, if the Director is unable to make his or her determination within 100 days, the Director shall notify the parties of the reasons for not doing so. There is no indication in the statutory language that the Director, or the Department, must notify the parties every 100 days of why it is impracticable to complete the Department's investigation, make a determination of substantial justice, or file a complaint with the Commission. The defendants' argument would require us to read a new provision into the statute that does not exist. Therefore, we reject this argument.

¶ 29 As to section 7B-102(D)(2)(b), we likewise find that a directory reading of the statutory language is appropriate. This section does not provide any consequence for not "immediately" filing the complaint after the Department enters a finding of substantial evidence. Again, the defendants have not offered any argument as to why a directory reading should not apply to this provision. Moreover, the fact that the legislature used the term "immediately" rather than giving a specific time limit indicates an intention to have a flexible standard. See *In re Bonnie S.*, 2018 IL

App (4th) 170227, ¶ 39 (finding that use of the term "promptly" indicated an intention to have a flexible standard).

¶ 30 Applying a directory reading of the statutory language, we turn to the facts of this case. The complainant's charge was perfected on July 7, 2016. As required by the statute, the Department notified the defendants via the Hundred Day Letter that the Department would be unable to complete the investigation into the complainant's charge within 100 days and provided several reasons as to why it would be impracticable to complete the investigation within 100 days. The Department projected that it could complete the investigation by October 7, 2016, but indicated that this date was subject to change. After the Department dismissed the complainant's charge for lack of substantial evidence on May 22, 2017, the complainant sought review before the Commission as he was permitted to do by statute. On June 3, 2019, the Commission reversed the Department's decision. The Department issued a notice of substantial evidence on July 10, 2019. The notice of substantial evidence provided that an attorney with the Department had been appointed to conciliate the case. The parties were directed to contact the Department attorney no later than five days after the receipt of the notice if they wished to conciliate the case. On July 1, 2020, the Department filed a complaint on behalf of the complainant with the Commission. Accordingly, we find that neither section 7B-102(G)(1) nor section 7B-102(D)(2)(b) provided a justification to dismiss the plaintiff's case, as the Department complied with the relevant statutory provisions.

¶ 31 B. Dismissal Pursuant to Section 8B-102(A)

¶ 32 The defendants also argued that the complainant did not timely elect to remove his case to the circuit court pursuant to section 8B-102(A). When a complaint is filed pursuant to section 7B-102(F), any party to the administrative proceeding may elect to have the claims asserted in the

complaint decided in a civil case in an Illinois circuit court. 775 ILCS 5/8B-102(A) (West 2016). Such an election must be filed with the Commission not later than 20 days after the receipt of the complaint, and the electing party must provide notice of doing so to the Department and all other parties to whom the charge relates. 775 ILCS 5/8B-102(A) (West 2016). If an election is made, the Commission takes no further action and must administratively close its file. 775 ILCS 5/8B-102(A) (West 2016). When the election has been made, "the Department shall authorize and not later than 30 days after the entry of the administrative closure order by the Commission the Attorney General shall commence and maintain a civil action on behalf of the aggrieved party in a circuit court of Illinois." 775 ILCS 5/10-103(A) (West 2020).

¶ 33 The defendant argues that a complaint was filed with the Commission on July 1, 2020, and that this complaint was not removed to the circuit court until August 24, 2020, the date the plaintiff filed the circuit court complaint. The order entered by the Commission on September 1, 2020, however, indicated that the complainant elected to remove his case on July 21, 2020. The defendants alleged that they did not receive notice of the removal as required by section 8B-102(A) until the circuit court complaint was filed. This allegation, however, was not supported by affidavit. See 735 ILCS 5/2-619(a) (West 2020) (if the grounds for the motion to dismiss do not appear on the face of the pleading attacked, the motion shall be supported by affidavit). Consequently, the factual basis properly set forth in the record reveals that the complainant elected to remove his case within 20 days of the filing of the complaint with the Commission. Section 8B-102(A) does not provide a basis to dismiss the plaintiff's case.

¶ 34 C. Dismissal Pursuant to Section 10-104(A)(1)

¶ 35 Finally, the defendants argued that section 10-104(A)(1) of the Act imposed a two-year statute of limitations on civil rights actions brought by the Attorney General. This section,

however, is not applicable to the present case. Section 10-104 applies to actions where the Attorney General, acting as *parens patriae* on behalf of persons within Illinois, has reasonable cause to believe that any persons or group of persons are engaged in a pattern and practice of discrimination prohibited by the Act. 775 ILCS 5/10-104(A)(1) (West 2016). Such an action must be commenced in the circuit court no later than two years after the occurrence or termination of an alleged civil rights violation, or the breach of a conciliation agreement or "Assurance of Voluntary Compliance" entered into under the Act. 775 ILCS 5/10-104(A)(1) (West 2016).

¶ 36 The present case did not involve a pattern and practice of discrimination action commenced by the Attorney General acting as *parens patriae*. Rather, this case was initiated pursuant to section 10-103. The complainant filed a charge of discrimination with the Department. After the Department filed a complaint with the Commission, he elected to have his case heard in the circuit court rather than by the Commission. Therefore, the two-year filing requirement set forth in section 10-104(A)(1) is not applicable to this case and cannot be imputed to actions commenced under section 10-103.

¶ 37 D. *Laches*

¶ 38 Although not raised in the defendants' motion to dismiss, the parties have briefed and argued the defense of *laches*. *Laches* is an equitable defense that bars recovery by a litigant whose unreasonable delay in bringing an action for relief prejudices the rights of the other party. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 51. "Unlike a statute of limitations, *laches* is more than a mere passage of time 'but principally a question of the inequity of permitting the claim to be enforced, an inequity founded upon some change in the condition or relation of the property and parties.' " *Kampmann v. Hillsboro Community School District No. 3 Board of Education*, 2019 IL App (5th) 180043, ¶ 15 (quoting *Pyle v. Ferrell*, 12 Ill. 2d 547, 552 (1958)). Stated another

way, it must appear that a plaintiff's unreasonable delay in asserting his rights has prejudiced and misled the defendant or caused the defendant to pursue a course different from what the defendant would have otherwise taken. *Richter*, 2016 IL 119518, ¶ 51.

¶ 39 In asserting the defense of *laches*, the defendants bear the burden of establishing the defense by a preponderance the evidence. *Kampmann*, 2019 IL App (5th) 180043, ¶ 14. *Laches* has two necessary elements: (1) lack of due diligence by the plaintiff and (2) prejudice to the defendant. *Kampmann*, 2019 IL App (5th) 180043, ¶ 15. The applicability of *laches* depends on the facts and circumstances of each case. *Tillman v. Pritzker*, 2021 IL 126387, ¶ 25. *Laches* may be determined on a motion to dismiss if its applicability is established on the face of the pleadings or by affidavits submitted with the motion to dismiss. *In re Adoption of Miller*, 106 Ill. App. 3d 1025, 1032 (1982). We note that *laches* is only applied against a governmental body under compelling circumstances. *Department of Natural Resources v. Waide*, 2013 IL App (5th) 120340, ¶ 19. Whether *laches* applies is within the circuit court's discretion. *Richter*, 2016 IL 119518, ¶ 51.

¶ 40 Here, the circuit court dismissed the plaintiff's case without specifying its reasoning. Although *laches* was briefly discussed by plaintiff's counsel and the circuit court at the hearing on the defendants' motion to dismiss, the defendants did not assert the defense of *laches* in the proceedings below. Indeed, the defendants' motion to dismiss did not raise *laches*, nor did the defendants make any *laches* argument at the hearing on their motion. In reviewing the circuit court's dismissal, we presume it was based upon one of the grounds asserted in the defendants' motion to dismiss. See *Giles*, 344 Ill. App. 3d at 1196. Considering the foregoing, we decline to consider *laches* as a basis for dismissal in this appeal.

¶ 41 III. CONCLUSION

¶ 42 We find that the none of the grounds asserted in the defendants' motion to dismiss served as a basis for dismissal of the plaintiff's case. We decline to consider the defense of *laches* where the defendants did not raise the issue before the circuit court and the order of dismissal did not specify the reasons for dismissal. We, therefore, reverse the judgment of the circuit court and remand this matter for further proceedings.

¶ 43 Reversed and remanded.

No. 5-21-0161

Cite as:	*People ex rel. Department of Human Rights v. Interstate Realty Management*, 2022 IL App (5th) 210161
Decision Under Review:	Appeal from the Circuit Court of Madison County, No. 20-CH-251; the Hon. Thomas W. Chapman, Judge, presiding.
Attorneys for Appellant:	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Frank H. Bieszczat, Assistant Attorney General, of counsel), for appellant.
Attorneys for Appellee:	Thomas G. Cronin and Bryan G. Lesser, of Gordon Rees Scully Mansukhani LLP, of Chicago, for appellees.