

MEMORANDUM DECISION

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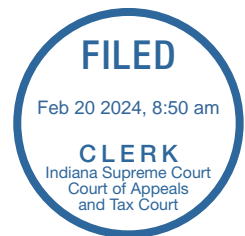


IN THE
Court of Appeals of Indiana

Kendra Moore,
Appellant-Petitioner

v.

Indiana Department of Child Services,
Appellee-Respondent



February 20, 2024

Court of Appeals Case No.
23A-MI-1041

Appeal from the Lake Superior Court
The Honorable Bruce D. Parent, Judge

Trial Court Cause No.
45D11-2211-MI-686

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

- [1] Kendra Moore appeals the trial court’s dismissal of her petition for review of a final agency action. Moore timely filed her petition but did not file or request an extension of time to file the agency record in the timeframe required by the Indiana Administrative Orders and Procedures Act (“AOPA”). Moore claims the court had discretion to hear her petition even though she did not timely file the agency record. We disagree.

Facts and Procedural History

- [2] On November 4, 2022, Moore filed a verified petition for judicial review of an Indiana Department of Child Services (“DCS”) decision. Under AOPA, Moore was required to file the agency record within thirty days of filing the petition (on or before December 5). On December 7, DCS filed a motion to dismiss the petition because the agency record had not been filed. The same day, Moore filed a response and motion for extension of time to file the record. In her response, Moore stated DCS had not provided the record until December 1, leaving Moore insufficient time to transcribe and file the record. Moore eventually filed the agency record on January 6, 2023. Five days later, the trial court granted DCS’s motion to dismiss. Moore subsequently filed a motion to correct error, which the trial court denied following a hearing. Moore now appeals.

The trial court properly granted DCS’s motion to dismiss because Moore did not timely file the agency record.

- [3] Where the facts are not disputed or the trial court rules on a paper record, we review *de novo* a trial court’s ruling on a motion to dismiss for failure to timely file agency records. See *Teaching Our Posterity Success, Inc. v. Ind. Dep’t of Educ.*, 20 N.E.3d 149, 151 (Ind. 2014); *Wayne Cnty. Prop. Tax Assessment Bd. of Appeals v. United Ancient Ord. of Druids–Grove # 29*, 847 N.E.2d 924, 926 (Ind. 2006).
- [4] AOPA provides the exclusive means for judicial review of a final agency action. Ind. Code § 4-21.5-5-1 (1994). After a petition for review is filed in the trial court, the petitioner must file the agency record within thirty days after the petition was filed. I.C. § 4-21.5-5-13(a) (2004). When the petitioner requests an extension of time to file the agency record, the court shall grant the extension for good cause shown. I.C. § 4-21.5-5-13(b). However, subsection (b) also provides: “Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.” *Id.* The statute thus “places on the petitioner the responsibility to file the agency record timely.” *Ind. Fam. & Soc. Servs. Admin. v. Meyer*, 927 N.E.2d 367, 370 (Ind. 2010).
- [5] Our Supreme Court has held “a trial court has no authority to grant an extension of time to file the record in a petition for review of an administrative agency action under [AOPA] if the record is not filed within the required statutory period or any authorized extension of this period.” *Id.* at 368.

Moreover, “a petitioner for review cannot receive consideration of its petition where the statutorily-defined agency record has not been filed.” *Teaching Our Posterity Success*, 20 N.E.3d at 155 (footnote omitted). In sum, the timely filing of the agency record is a prerequisite for obtaining judicial review of an agency action, and dismissal is required when the prerequisite is not met. *See Bookwalter v. Ind. Election Comm’n*, 209 N.E.3d 438, 442 (Ind. Ct. App. 2023) (“The Indiana Supreme Court has interpreted [I.C. § 4-21.5-5-13] as requiring dismissal of a petition for judicial review where the petitioner fails to file the agency record or request an extension in a timely manner.”), *trans. denied*.

[6] Here, Moore neither filed the agency record nor requested an extension of time to file it within the statutorily defined period. Therefore, the trial court properly granted DCS’s motion to dismiss and denied Moore’s subsequent motion to correct error.

[7] Although Moore concedes the trial court did not err in dismissing the petition, she nevertheless asks this Court to reverse the court’s dismissal. *See Appellant’s Br.* at 6-7. Moore argues the statutory language “cause for dismissal” provides the trial court with discretion to dismiss the petition, rather than mandates dismissal. In support, she cites *Reedus v. Ind. Dep’t of Workforce Dev.*, 900 N.E.2d 481 (Ind. Ct. App. 2009).

[8] In *Reedus*, the petitioner filed and attached certain relevant documents to a petition for judicial review but did not file the agency record. *Id.* at 483. A majority of the panel determined that the statutory language “cause for

dismissal” empowered, but did not require, a trial court to dismiss the petition. *Id.* at 487. However, because the petitioner had not attached all relevant documents to complete a meaningful review, the *Reedus* Court affirmed the trial court’s dismissal of the petition. *Id.* at 488.

[9] For some years before and after *Reedus*, there was a split of opinion in both the Supreme Court and this Court regarding whether a petition could be reviewed on the merits when the agency record was not filed, but some or all relevant documents were attached to the petition. *See Teaching Our Posterity Success*, 20 N.E.3d at 154 (acknowledging “our case authority both before and after *Meyer* has generated uncertainty on the question of how the statutory mandate for the filing of an agency record should be applied”); *Meyer*, 927 N.E.2d at 372 (holding a trial court has no authority to grant a belated motion for an extension of time to file the record, but being “equally divided as to whether a case may go forward where a full record of proceedings has not been filed”); *Reedus*, 900 N.E.2d at 486 (noting “the recognized split in authority on how to analyze the adequacy of a petitioner’s filings” when seeking judicial review of an agency decision under AOPA). However, any uncertainty in the law was resolved in *Teaching Our Posterity Success*, which established a “bright-line approach” that foreclosed to petitioners the availability of judicial review when AOPA’s requirements for filing the agency record are not met. 20 N.E.3d at 155.

[10] To the extent Moore asks us to reconsider and reverse Indiana Supreme Court precedent, we are bound by it “until it is changed either by that court or by

legislative enactment.” *Dragon v. State*, 774 N.E.2d 103, 107 (Ind. Ct. App. 2002) (citing *In re Petition to Transfer Appeals*, 174 N.E. 812, 817 (Ind. 1931)), *trans. denied*.¹ Therefore, we decline Moore’s invitation to do so.

[11] Because Moore did not timely file the agency record or request an extension of time to file it, the trial court had no discretion to hear Moore’s petition. The trial court properly granted DCS’s motion to dismiss the petition and denied Moore’s motion to correct error.

[12] Affirmed.

Altice, C.J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Edward J. Calderaro
Merrillville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Evan Matthew Comer

¹ In its order dismissing the petition, the trial court expressed its personal distaste for a statute that places the burden of filing an agency record on the petitioner, rather than the agency. *Appellant’s App. Vol. 2* at 26. Moore echoes this concern, noting the statute “places the burden on the Petitioner to file the record, yet it is the respondent who is in charge of the record.” *Appellant’s Br.* at 5. This Court, too, has previously observed “this issue matches a citizen against his state government, which is well-versed in the ways of its own administrative adjudications and the keeper of the relevant documents.” *Reedus*, 900 N.E.2d at 487. Although not law unless and until enacted, proposed legislation has been introduced in the Indiana House of Representatives that would shift the burden of filing the agency record from the petitioner to the agency. H.B. 1003, 123rd Gen. Assemb., Reg. Sess. (Ind. 2024).

Deputy Attorney General
Indianapolis, Indiana