SIXTH DIVISION
November 9, 2012

No. 1-11-0215

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

VALERIE GIBBS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 09 CH 51303
	)	
CHICAGO HOUSING AUTHORITY, a Municipal Corporation,	)	
	)	Honorable
	)	Leroy K. Martin,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Justices Hall and Gordon concurred in the judgment.

ORDER

¶ *1* *HELD*: The circuit court did not abuse its discretion in setting aside, on *certiorari* review, the administrative decision of the Chicago Housing Authority to deny informal review of the plaintiff's eligibility for a housing voucher program. Nor did the court err in denying the defendant's motions to dismiss the plaintiff's *certiorari* petition or the defendant's challenge based on *laches*.

¶ 2 Defendant Chicago Housing Authority (the CHA) appeals the grant of a writ of *certiorari* by the circuit court of Cook County as requested by *pro se* plaintiff Valerie Gibbs in a verified petition. In her petition, the plaintiff requested administrative review of the CHA's denial of her request for an informal review regarding her eligibility for a Section 8 housing voucher, following the notice by HUD of the possible foreclosure of her public housing residence. The CHA filed a combined dismissal motion contending the plaintiff's petition failed to state a cause of action and she lacked standing to challenge the CHA's denial. The court denied the CHA's dismissal motion and its motion to reconsider raising a claim of *laches*, each of which the CHA contends was error. The circuit court properly denied the motions and the CHA has shown no abuse of discretion in granting the writ. We affirm.

¶ 3 BACKGROUND

¶ 4 The plaintiff is a tenant of the Indiana Terrace Apartments located at 6000 South Indiana Avenue in Chicago. The plaintiff's residence is part of a multi-family rental property owned and operated by the United States Department of Housing and Urban Development (HUD). The plaintiff receives a housing subsidy directly from HUD.

¶ 5 On or about July 10, 2003, HUD sent correspondence to CHA's then-Chief Executive Officer Terry Peterson stating that the Indiana Terrace Apartments complex was in foreclosure. According to the correspondence, "Section 8 enhanced housing choice vouchers will be made available for eligible families who are residing at the property at the time of the foreclosure." In addition, the correspondence confirmed that the CHA "has agreed to administer the Section 8 enhanced vouchers for the eligible families residing at Indiana Terrace."

¶ 6 On or about August 8, 2003, Linda Coleman, the director of Illinois State Office of Public Housing, sent correspondence to Peterson stating the "Section 8 Funding Application for Tenant-Based Assistance, Form HUD-52515 for the 6000 S Indiana property is approved," and that eligible families be issued Section 8 vouchers "in a timely manner." A list of residents from the Indiana Terrace Apartments, which included the plaintiff, was attached to the correspondence.

¶ 7 On September 5, 2003, the Chicago Housing Section 8 Program issued a letter to the plaintiff advising her that her name topped the CHAC's Section 8 waiting list. "If you are interested in receiving Section 8 rental assistance, please come to an eligibility interview with the Section 8 Intake Department Staff." The eligibility interview was scheduled for September 5, 2003, the date of the correspondence.

¶ 8 The record does not include notification to the plaintiff of a second scheduled eligibility interview apparently set for five days later on September 10, 2003. A "Participant Record" shows that the plaintiff did not attend either of the eligibility interviews. The "Participant Record" indicates the plaintiff was denied participation in the Section 8 voucher program on September 10, 2003, because she did not attend an eligibility interview.

¶ 9 On September 25, 2009, the plaintiff submitted a form, seeking "Informal Review or Informal Hearing."[1] The plaintiff checked the box indicating that her name "is currently on the waiting list" or "was withdrawn from the waiting [list]." The form also indicated that the plaintiff was not receiving assistance through the voucher program. The plaintiff submitted her

[1] Neither the petition nor the record discloses what prompted the plaintiff to act in September 2009.

request "because of denial of participation in the program[,] also denial or delay of assistance."

¶ 10 On October 5, 2009, the CHA responded to the plaintiff's request for an informal review of hearing on a form titled "Notice of Informal Review Decision." The form indicated that her request for reinstatement for the Housing Choice Voucher Program was denied because "Your request for an informal review was received after the 10-day limit noted in the notice of withdrawal." The record does not include a document in the nature of a "notice of withdrawal" pertaining to the plaintiff, which presumably would show the date the notice was issued and possibly the limitation period to seek administrative review.

¶ 11 On December 21, 2009, the plaintiff filed a verified petition for writ of *certiorari* in the circuit court seeking judicial review of the CHA's administrative decision to deny the plaintiff's application "to be a participant in Chicago Housing Authority Choice (CHAC) voucher program," as specified in her petition. The plaintiff sought "review of Waitlist # 966760 because this decision is not in accordance with the law." The plaintiff claimed she exhausted all available remedies with the CHA and her petition was filed within the six-month period to seek judicial review by *certiorari* of an administrative decision.

¶ 12 On August 23, 2010, the CHA moved to dismiss the plaintiff's petition. The CHA argued that the plaintiff's petition was subject to dismissal under section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2010)) in that it "fails to state sufficient facts that would demonstrate the existence of a cause of action against the CHA." The CHA contended the deficiency was the petition's failure to explain why the administrative decision was not in accordance with the law and the failure to "plead facts that state the Plaintiff has met the

procedural prerequisites to bring this cause." The CHA also maintained the petition was subject to dismissal because the plaintiff lacked standing under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2010)). The CHA asserted the plaintiff "is neither a household member nor a head of household as defined under 24 CFR 5.504" or a "participant family as defined under CFR 982.201(a)." According to the CHA, the plaintiff lacked standing because she was never a participant in the CHAC voucher program.

¶ 13 Attached to the CHA's motion to dismiss was an affidavit by Rebecca Howe, a hearing officer employed by Illinois Quadel Consulting Corporation, a "Chicago Housing Choice Voucher (CHCV) Vendor and Administrator for the Chicago Housing Authority." Howe averred that she searched "for any and all documents relating to the proposed application for voucher benefits relating to Valerie Gibbs, but could locate only those documents subsequently filed by Defense Counsel for the Chicago Housing Authority on July 7, 2010." Howe attested that "[t]he applicable document retention policy mandates that documents such as those relating to Valerie Gibb's [*sic*] proposed application for voucher benefits, which have not already been produced, would have been destroyed after 5 years and on or about 2008."

¶ 14 Following a hearing on October 21, 2010, the circuit court denied the CHA's combined motion to dismiss and granted the plaintiff's petition for writ of *certiorari*. The court ordered the plaintiff "shall be granted the process as stated in the correspondence dated September 5, 2003, which was made part of the administrative record."

¶ 15 In its motion to reconsider filed on November 12, 2010, the CHA argued that the plaintiff's petition should be denied under the doctrine of *laches*. The CHA asserted the plaintiff

failed to exercise due diligence in asserting her claim and it would suffer prejudice if the plaintiff were allowed to jump to the front of the waiting list for the Section 8 voucher program more than seven years after she failed to appear at her eligibility interview in September 2003.

¶ 16 The circuit court heard argument on the reconsideration motion on December 20, 2010. Counsel for the CHA explained, "When you look at what we filed, Judge, the only document that we could find that was directly directed to Ms. Gibbs was that September 5 letter, Judge, indicating that she was to come in for the eligibility interview. All the other documents, Judge, were whatever we could dig up relating to this HUD program where they mandated that the CHA was supposed to bring people in for this voucher program because the building was undergoing foreclosure[,] which we come to find out that HUD withdrew that program."

¶ 17 The circuit court first addressed the CHA's arguments in favor of its combined dismissal motion. The court noted that the plaintiff appeared *pro se*. "And it is true that the law, the case, the general rule in Illinois is that anyone who represents himself or herself, as the case may be, as a basic proposition is held to the standards of an attorney. Administrative reviews however are somewhat, if I can use this analogy, they're somewhat a horse of a different color inasmuch as a party initiates the administrative review and the Court really relies on the record *** in determining whether or not there is a basis for the review that is being asked for." The court continued, "So it is my considered opinion here that while I would agree with counsel for the Defendant that the pleading submitted by the Plaintiff lacks the - - lacks the detail that one would ordinarily see in these matters, I think it is sufficient to get a record from - - to cause the Defendant to submit to the Court a record upon which the Court could base its decision. And so

that is really how I see the 2-615 and 2-619 issues."

¶ 18 As to the CHA's claim of lack of standing, the circuit court responded, "What troubles me in this particular case, however, is the fact that if Ms. Gibbs was to lack standing at this point, I would ultimately have to look at the CHAC because I think it all goes back to what I consider to be its faulty notice and but for, and this is a court of equity, but for their faulty notice, Ms. Gibbs would have been placed on notice I think of what it was she needed to do. As it turned out, Ms. Gibbs has asserted to this Court on several different occasions that she was only able to find out what she believes was going on [with regard to Section 8 vouchers] based upon other residents in her building and that was how she was able to come to that conclusion."

¶ 19 In denying the CHA's motion to reconsider, the circuit court stated that the pivotal document in the case was "the letter that advises Ms. Gibbs that she must report for the intake hearing. That letter advises her that she was to appear on September 5th, 2003, and the letter is dated September 5th, 2003." The court noted that the notice was faulty in that it did not provide the plaintiff "enough time that she would have gotten the letter and gotten to the office" for her eligibility interview. The court questioned the CHA's assertion that the plaintiff should be held to the consequences of failing to appear at her scheduled interview. "It just seems to me that based upon this letter that would have been impossible." The court explained the relief to which the plaintiff was entitled under her petition. "I'm not making a determination today that Ms. Gibbs has to be put at the front of the list or even at the rear of the list, I'm merely saying I think we should go back to the way things should have been September 5th of 2003 and that Ms. Gibbs ought [to] have an opportunity to appear before the intake folks and they should decide whether

or not she is entitled to a voucher."

¶ 20 The CHA timely appeals the circuit court's judgment.

¶ 21 ANALYSIS

¶ 22 We address in turn each of the four arguments the CHA raises on appeal. We note that the brief the *pro se* plaintiff filed is no more than a facsimile of the CHA's brief and does not directly respond to the CHA's arguments. We consider the circumstances here analogous to the situation where no appellee brief is filed. See First Capitol Mortgage Corp. v. Talandis Construction Corp., 63 Ill. 2d 128 (1976).

¶ 23 The CHA first contends the circuit court's ruling deprived the CHA of due process by denying it the right to defend the administrative decision under the standard of review for common law petitions for judicial review by writ of *certiorari*, which the CHA raises for the first time on appeal. See *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1109 (2006) (arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal).

¶ 24 We reach this issue because the record reveals the circuit court did, in fact, consider the administrative decision under the standard applicable to *certiorari* review. See *Reichert v. Court of Claims*, 203 Ill. 2d 257, 260 (2003). "The purpose of *certiorari* review is to have the entire record of the inferior tribunal brought before the court to determine, from the record alone, whether the tribunal proceeded according to applicable law." *Id.* The avenues available to the court on *certiorari* review are clear: "If the circuit court, on the return of the writ, finds from the record that the inferior tribunal proceeded according to the law, the writ is quashed; however, if

the proceedings are not in compliance with the law, the judgment and proceedings shown by the return will be quashed." *Stratton v. Wenoma Community Unit District No. 1*, 133 Ill. 2d 413, 427 (1990). The circuit court's decision in a *certiorari* review is entitled to deference on appellate review. "As in equity, where the sound discretion of the court is the controlling guide of judicial action in every phase of a suit [citations], issuance of a writ of *certiorari* is within the sound discretion of the court [citations], the purpose of the writ being to prevent injustice [citations]." *Id*.

¶ 25 The circuit court here followed the *certiorari* review process approved by our supreme court in *Stratton*. The court properly considered the avialable administrative record of the CHA as required upon return of the writ of *certiorari*. We reject the CHA's due process claim as contrary to the record.

¶ 26 We next address the CHA's motion to dismiss under section 2-615 of the Code. We are unpersuaded by the CHA's argument that the circuit court erred when it determined that sufficient facts were pled in the verified petition for a writ of *certiorari* to avoid dismissal. The petition adequately pled that she suffered an injustice by the CHA's reliance on a 10-day limitation period to bar informal review when the adequacy of the underlying proceedings was clearly in doubt. The circuit court acted within its discretion to direct the CHA to submit its administrative record for *certiorari* review of its decision of October 5, 2009, against the CHA's contention that the petition alleged insufficient facts to state a claim in equity. We note the record contains no document that the plaintiff was informed of the requirement that she act within 10 days of her apparent removal from the Section 8 waiting list. The administrative record, however, clearly

shows that the plaintiff did not receive sufficient notice of her proposed initial interview with the CHA to determine her eligibility for a Section 8 voucher. The correspondence dated September 5, 2003, requiring the plaintiff to appear for an interview on the very same day, demonstrates a clear injustice to the plaintiff. Although no correspondence appears in the record for what appears to be the plaintiff's rescheduled interview for September 10, 2003, we question the fairness of any such notice to the plaintiff as it was scheduled a mere five days after the "impossible" interview date of September 5. In particular, we do not know when that subsequent correspondence was sent, though a reasonable inference is that it was sent no earlier than September 5, which casts doubt on the reasonableness of that notice as well.

¶ 27 The circuit court did not err in its decision that the petition for a writ of *certiorari* was not subject to dismissal for failure to state a cause of action under section 2-615.

¶ 28 The CHA next claims the circuit court erred in denying its motion to dismiss under section 2-619(a)(9) based on the plaintiff's lack of standing. However, the CHA fails to cite any case law in support of its argument that the plaintiff lacked standing. "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit," and "assures that issues are raised only by those parties with a real interest in the outcome of the controversy." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). Nor does the CHA explain how or why the plaintiff does not have a real interest in the outcome of the controversy. Generally, a party's failure to support an argument with appropriate authority renders the contention subject to forfeiture. See Ill. S. Ct. R. 341 (h)(7) (eff. Sept. 1, 2006). We find no merit to the CHA's contention that the plaintiff lacked standing to challenge its decision of

October 5, 2009. We note that even if the CHA's true contention is that review of the plaintiff's petition is foreclosed by her failure to act "within the 10-day limit noted in the notice of withdrawal," our decision would be unaffected because no such notice of withdrawal exists in the record to trigger the running of the 10-day period.

¶ 29 The CHA has failed to demonstrate that the circuit court erred in denying its motion to dismiss under section 2-619(a)(9) that the plaintiff lacked standing.

¶ 30 In its final claim, the CHA argues the circuit court erred when it declined to dismiss the plaintiff's claim based on *laches*, which the CHA raised for the first time in its motion to reconsider. See *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 415 (2006) (a new legal theory raised in the motion to reconsider triggers an abuse of discretion standard on appellate review of the order being challenged).

¶ 31 "The doctrine of *laches* is applied 'when a party's failure to timely assert a right has caused prejudice to the adverse party.' " *Ashley v. Pierson*, 339 Ill. App. 3d 733, 737 (2003) (quoting *Van Milligan v. Board of Fire & Police Commissioners of the Village of Glenview*, 158 Ill. 2d 85, 89 (1994)). In *City of Chicago v. Condell*, 224 Ill. 595, 598-99 (1906), our supreme court first held that the doctrine of *laches* applies to petitions for writ of *certiorari*. There, the court concluded that the discharged police officer's petition was barred by *laches* because (1) he did not file his petition until 18 months after his discharge, and (2) his delay in filing was not sufficiently justified. *Id*. at 598. Acknowledging that the "mere lapse of time, alone, * * * will not bar the issuing of the common law writ of *certiorari*," the court held that the prejudice to a defendant is inherent in cases "where a detriment or inconvenience to the public will result." *Id.*

¶ 32 Thus, to establish *laches*, a party must generally prove two elements: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting *laches*. *Lippert v. Property Tax Appeal Board*, 273 Ill. App. 3d 150, 155 (1995). When a defendant asserts *laches* as a bar to a plaintiff's petition for a writ of *certiorari*, the plaintiff's lack of due diligence is established by a showing that more than six months elapsed between the accrual of the cause of action and the filing of the petition. *Richter v. Collinsville Township*, 97 Ill. App. 3d 801, 804 (1981).

¶ 33 In this case, the CHA claims its decision on September 10, 2003, should be the date to assess the plaintiff's diligence. The CHA asserts there was a six-year delay before the plaintiff inquired about her eligibility to participate in the Section 8 voucher program. We disagree. The administrative decision challenged by the plaintiff is the CHA's decision of October 5, 2009, denying the plaintiff informal review request of September 25, 2009, regarding her eligibility for the voucher program. Even if there is any merit to the CHA's claim that the lack of diligence element of *laches* relates back to its 2003 decision, we reject the notion that the CHA's faulty notice, which made it impossible for the plaintiff to keep her scheduled interview to be considered for the Section 8 program, is sufficient to trigger a diligence review of the plaintiff's actions. As the circuit court noted, the plaintiff could not have received the September 5, 2003 correspondence "in enough time that she would have gotten the letter and gotten to the office" for her eligibility interview. Nor are we presented with any authority that holds a notice that is "impossible" to comply with nevertheless imposes a burden on the receiver of the notice to act with diligence. We decline to so find here.

¶ 34 There is also no evidence in the record to show the plaintiff received any additional correspondence regarding a rescheduled appointment to examine her eligibility for the voucher program. The plaintiff was apparently was terminated from the program on September 10, 2003, when she failed to appear for the second eligibility interview. As we indicated above, we question when the notice requiring the plaintiff to appear on September 10, 2003, was issued. While the CHA suggests reasonable notice was provided to demonstrate a lack of diligence by the plaintiff, we defer to the circuit court in its assessment to the contrary.

¶ 35 Nor can the CHA show it was prejudiced by the plaintiff's request on September 25, 2009, for an informal review or hearing, when its faulty notice precluded the plaintiff from having her eligibility considered by the CHA. We agree with the circuit court that the plaintiff should be afforded the opportunity to appear before the CHA to determine her eligibility for the Section 8 voucher program. We reject the CHA's claim that *laches* forecloses the relief granted by the circuit court on *certiorari* review.

¶ 36 The CHA's attempt to draw our attention to an unpublished decision, *Philpot v. CHAC, Inc.*, No. 1-09-1563 (2010) (unpublished order pursuant to Supreme Court Rule 23), in support of its *laches* argument warrants a response by this court. Without any effort to demonstrate that citation to a Rule 23 order is permitted under "the limited circumstances allowed under Rule 23(e)(1) (eff. July 1, 2011)," as all Rule 23 decisions provide by way of bold "Notice" since the effective date of the new rule, including this decision, the CHA nonetheless intimates that we should consider the unpublished decision as precedent. Adding to this clear violation of the citation restrictions in Rule 23, the CHA's reliance on *Philpot*, as if it were a published decision,

is patently misplaced. Unlike that case, here, the fairness of the CHA's notice to the plaintiff to appear at an eligibility interview is called into question. The faulty notice by the CHA, directing the plaintiff to appear at an eligibility interview that was "impossible" to keep, is spread of record. As the instant plaintiff asserted before the circuit court, she was unaware that she was terminated from the program until she initiated her own inquiry sometime prior to September 25, 2009, when she filed her request for an informal review.

¶ 37 We also agree with the circuit court's limitation on its judgment. The court did not determine whether "Ms. Gibbs has to be put in the front of the list or even at the rear of the list" of Section 8 eligible recipients from Indiana Terrace. More narrowly, the court ordered that the plaintiff be given "an opportunity to appear before the intake folks [so] *** they [may] decide whether or not she is entitled to a voucher." The limited remedy ordered by the circuit court is particularly apt in light of the possibility that HUD did not foreclose on the Indiana Terrace Apartments, as the CHA appeared to state in open court. "[The voucher program was meant for the residents] because the building was undergoing foreclosure[,] which we come to find out that HUD withdrew that program." The absence of foreclosure may well render moot the correspondence from the CHA that initiated consideration of the residents of that apartment complex for the Section 8 program. According to the HUD correspondence of July 10, 2003, "Section 8 enhanced housing choice vouchers will be made available for eligible families who are residing at the property *at the time of the foreclosure*." (Emphasis added.) We leave it to the circuit court to determine the impact on the limited relief it ordered should the Indiana Terrace Apartments have avoided foreclosure.

¶ 38 CONCLUSION

¶ 39 The circuit court did not abuse its discretion in granting a writ of *certiorari* to review the administrative record of the Chicago Housing Authority as to its decision to deny informal review of the plaintiff's eligibility for a housing voucher program. The CHA issued the plaintiff a faulty notice in 2003 to appear at an eligibility interview. The administrative record suggests the plaintiff was removed from the waiting list for the voucher program based on her failure to appear at the improperly scheduled interview, which prompted the court to grant the plaintiff the limited relief that she be interviewed to determine her eligibility for the program. The court properly denied the CHA's combined motions to dismiss and its contention that the doctrine of *laches* applied to the plaintiff's claim. The court acted within its discretion in affording the plaintiff the limited relief.

¶ 40 Affirmed.