MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Berline Mae Willis,
Appellant-Petitioner,

v.

Department of Business and Neighborhood Services, City of Indianapolis, Indiana,
Appellee-Respondent

July 6, 2023

Court of Appeals Case No. 22A-PL-2800

Appeal from the Marion Superior Court

The Honorable Jason G. Reyome, Magistrate

Trial Court Cause No. 49D07-1903-PL-011928

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Berline Mae Willis appeals the trial court's denial of her petition for judicial review of the administrative decision issued by the Department of Business and Neighborhood Services for the Consolidated City of Indianapolis ("Petition"). Willis presents multiple issues, which we consolidate and restate as:

> 1. Whether trial court relied on the wrong statute when it denied Willis's Petition; and
>
> 2. Whether the trial court erred when it declined Willis's request to reverse the decision of the City of Indianapolis Department of Business and Neighborhood Services Hearing Authority ("Hearing Authority Decision").

We affirm.

Facts and Procedural History

[2] This case involves property located in Indianapolis ("the Property"). In 2015, City of Indianapolis Department of Business and Neighborhood Services ("BNS") imposed $5,000.00 in penalties for unsafe building violations on the Property. The owner of the Property at the time paid $1,032.00 and left an outstanding balance of $3,968.00.

[3] In 2018, Willis sought to buy the Property at a tax sale, however she ultimately came to an agreement with the owners of the Property, Richard Mastenick and Vickie Ricketts, to purchase the Property directly from them. Prior to purchasing the Property, Willis discovered there existed a balance of $3,968.00 in penalty fees from 2015. Willis subsequently purchased the Property from the

owners for $23,465.60, a total that included the redemption price, the $3,968.00 in penalty fees, and taxes. Willis worked to bring the Property into compliance with the applicable City of Indianapolis Ordinances. On November 8, 2018, and February 5, 2019, BNS inspected the Property and found it to be in compliance.

[4] After homeowners bring property back into compliance, BNS policies provide "an opportunity for a hearing at which a property owner can ask that a civil penalty be reduced or removed." (Appellant's App. Vol. II at 58.) Willis requested a hearing and a "Hearing Authority of the BNS" ("Hearing Authority") held a hearing on February 26, 2019. (*Id.* at 59.) Willis was unable to attend the hearing and sent her daughter, Barbara Flint,[1] in her stead. During that hearing, the Hearing Authority questioned Flint, who confirmed that Willis purchased the property knowing the purchase price included the outstanding penalty amount. Flint also confirmed that, after Willis purchased the Property, BNS inspected the Property and found it to be in compliance.

[5] A BNS representative confirmed during the hearing that Willis received notice of the fines, that she paid them at the time she purchased the Property, and that the Property was currently in compliance. After the hearing, BNS submitted a "USB Civil Penalty Advocacy Checklist" ("the Checklist") to the Hearing Authority. (*Id.* at 32.) The Checklist had the Property's address, the case

[1] The hearing transcript indicates Ms. Flint's name is Ms. Clint. (*See*, *e.g.*, Appellee's App. Vol. II at 16 (transcript of hearing listing Flint as Clint)).

number from which the penalty fees originated, and notes on the current status of the Property such as "Penalties were part of Tax sale purchase price[,]" "New owner inherited Civil Penalties with knowledge[,]" and "Compliance was reached well past statutory limits of case[.]" (*Id.*) On the Checklist, BNS recommended "that these CPs not be waived, reduced or refunded. The current owner/requestor purchased the property with the knowledge that the seller was days away from losing the property in the tax sale." (*Id.*) (original formatting omitted). Nuisance Abatement Program Associate Jacob W. Miller affied the Checklist "is not evidence provided in the hearing, but helps the advocate for the Department of Business and Neighborhood Services with providing its recommendation/request during the hearing to the hearing authority . . . The document is provided with the paperwork given to the hearing authority after the hearing." (Appellee's App. Vol. II at 12.)

[6] On March 12, 2023, "John Krause – Hearing Authority, Department of Business & Neighborhood Services, City of Indianapolis" issued the Hearing Authority Decision. (Appellant's App. Vol. II at 8.) The order in the Hearing Authority Decision stated "Case closed. Owner repaired. No reduction on penalties." (*Id.*) On March 25, 2019, Willis filed for judicial review of the Hearing Authority Decision.

[7] On October 14, 2021, Willis filed her brief on the matter and alleged judicial review was appropriate because:

> 1) The Administrative Law Judge received ex parte communication from BNS.

> 2) BNS did not provide legitimate evidence to the ALJ that substantiates a recommendation to deny the reduction of penalties.
>
> 3) The Administrative Law Judge denied reduction of the civil penalties.
>
> 4) There are no published standards on reducing penalties for the BNS administrative hearings.
>
> 5) I am entitled to relief from the penalties assessed to this property.

(*Id*. at 20.) On August 11, 2022, the trial court held a hearing on the matter.[2] On November 3, 2022, the trial court issued its order denying Willis's petition for judicial review of the BNS Decision. In its denial order, the trial court found:

> Petitioner has advanced arguments that she is entitled to judicial review on the grounds that BNS's decision was arbitrary, capricious, and an abuse of discretion. Petitioner presents two arguments to support her position: first, that she was unaware of BNS's position regarding the refund of her penalties, and (2) that

[2] The transcript of this hearing is not in the record before us. Indiana Rule of Appellate Procedure 9(F)(5) requires a notice of appeal to include a request for "all portions of the Transcript necessary to present fairly and decide the issues on appeal." Further, "[i]f the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of the evidence." *Id*. A violation of the Indiana Appellate Rules that substantially impedes our ability to review an appeal may result in waiver of that appeal. *In re Moeder*, 27 N.E.3d 1089, 1097 n.4 (Ind. Ct. App. 2015), *trans. denied*. However, we prefer to decide cases on the merits and we exercise our discretion to do so in this case. *See Omni Ins. Group v. Poage*, 966 N.E.2d 750, 753 (Ind. Ct. App. 2012) (appellate court prefers "to decide a case on the merits whenever possible"), *trans. denied*.

the hearing officer improperly relied upon ex parte communication.

Although it is commendable that Petitioner paid the redemption fees and brought the property into compliance, it is clear from the record of the hearing that Petitioner was aware of penalties attached to the Property when Petitioner purchased it. It is also clear form [sic] the portions of the record cited below, that Petitioner knowingly and willingly paid the penalties to redeem the property as part of the purchase agreement and in consideration for a reduced purchase price.

ADMINISTRATIVE LAW JUDGE: Okay. Just one second. And how did – how did your mother acquire this property?

MS. CLINT: She purchased it directly from the owners.

ADMINISTRATIVE LAW JUDGE: Okay. And that was on October 3rd – or on or about early October 2018?

MS. CLINT: Yes. Yes. Uh-huh

ADMINISTRATIVE LAW JUDGE: Okay. And did the previous owners pay the penalty that was on there during closing?

MS. CLINT: No. Nu-nu.

ADMINISTRATIVE LAW JUDGE: So we have a payment that was made on October 4th, which is right when the property transferred.

MS. CLINT: Right.

ADMINISTRATIVE LAW JUDGE: So was the penalty ever addressed during the transfer?

MS. CLINT: We – well, part of the – I'm sorry. Go ahead.

MS. LIPSCOMB:[3] You paid it.

MS. CLINT: Yeah.

MS. LIPSCOMB: Yeah.

MS. CLINT: Yeah.

ADMINISTRATIVE LAW JUDGE: You paid it as part of the purchase?

MS. CLINT: Right. Okay.

MS. LIPSCOMB: Yeah. MS. CLINT: I was in the processing.

ADMINISTRATIVE LAW JUDGE: I know, it is – but you – you guys were –

MS. CLINT: Yeah that was part of the purchase agreement because they didn't want to lose the house to the person who had bought it at the tax sale, so they couldn't afford to redeem the certificate. They couldn't pay for the deed certificate redemption. Am I saying that right? Anyway, so that was part of the

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[3] It is unclear from the record who Ms. Lipscomb is, but based on the fact the Hearing Authority asked her to confirm the amount owed in penalties, it would seem she is a BNS employee.

agreement, is that we would pay off the deed redemption, which included all the penalties and everything, so.

ADMINISTRATIVE LAW JUDGE: Okay. So – so, okay, we got – because we don't have a lot of people here, and we got a little time, I just want to – so this was sold – and to your knowledge, this was sold in the tax sale then in probably the 2017 tax sale?

MS. CLINT: Right. Right. Uh-huh.

ADMINISTRATIVE LAW JUDGE: And the redemption period was set to expire –

MS. CLINT: Right. Right. Uh-huh

ADMINISTRATIVE LAW JUDGE: -- and then you guys stepped in.

MS. CLINT: Uh-huh.

ADMINISTRATIVE LAW JUDGE: And paid so that the property could be redeemed.

MS. CLINT: Well, we – we paid for the – we paid the money for the deed redemption and that was – and then we had to pay him a little bit more, you know, about that, so –

ADMINISTRATIVE LAW JUDGE: Uh-huh. And that was Richard Mastenick (phonetic)?

MS. CLINT: Right. Uh-huh. And Vickie Ricketts (phonetic)…

ADMINSTRATIVE LAW JUDGE: And you say you redeemed –you paid the redemption.

MS. CLINT: Right.

ADMINISTRATIVE LAW JUDGE: And then some money on top of that?

MS. CLINT: Right. Right.

ADMINSTRATIVE LAW JUDGE: Okay. I would assume the amount you paid to Mr. Mastenick was – you took into account that you had to pay all this other stuff, right?

MS. CLINT: Right. Right.

ADMINISTRATIVE LAW JUDGE: So he got a little less than he would have. Right?

MS. CLINT: Uh-uh. (Agency record pg 6, line 21-25, pg 7 lines 8-25, pg. 9 lines 13-25)

The decision of the Hearing Authority was clearly supported by substantial, unrefuted evidence presented by the Petitioner.

Finally, the Petition argues that the USB Civil Penalty Advocacy Checklist ("the Checklist") was an ex parte communication. Even if that were the case, Petitioner fails to demonstrate how this entitles her to judicial review of BNS's decision because there was a reasonable basis for the hearing officer's decision, independent of any of the alleged ex parte communication. To the extent it was an error, it was harmless.

(*Id*. at 14-8) (formatting in original).

Discussion and Decision

[8] Initially, we note that Willis proceeds pro se. A pro se litigant is not entitled to any special considerations because of the litigant's pro se status. *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021). Rather, we hold pro se litigants to the same legal standards as licensed attorneys. *Id*. "This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), reh'g denied*. "We will not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood." *Id*. at 984 (internal quotation marks omitted).

1. Statute Used to Consider Willis's Petition

[9] Willis argues the trial court used the incorrect section of the Indiana Code to determine the burden of proof and factors considered when deciding whether to grant a petition for judicial review and possible reversal of the Hearing Authority Decision. The trial court stated in its order that "[a]s a party seeking to invalidate BNS's decision, Petitioner bears the burden of demonstrating the invalidity of the decision. IND. CODE § 4-21.5-5-14." (Appellant's App. Vol. II at 14.) It went on to indicate it would be using Indiana Code chapter 36-7-4, which covers judicial review of a zoning-related decision, to determine whether

to reverse the Hearing Authority Decision. In particular, the trial court used Indiana Code section 36-7-4-1614(d), which states:

> The court shall grant relief under section 1615[4] of this chapter only if the court determines that a person seeking judicial relief has been prejudiced by a zoning decision that is:
>
> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (2) contrary to constitutional right, power, privilege, or immunity;
>
> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (4) without observance of procedure required by law; or
>
> (5) unsupported by substantial evidence.

[10] Willis contends Indiana Code 36-7-4 is the incorrect statutory chapter to examine her Petition because it pertains to requests for judicial review of zoning board decisions and not to the judicial review of BNS hearing officer decisions.

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[4] Indiana Code section 36-7-4-1615 requires a trial court, if a petitioner proves prejudice based on any factors set forth in Indiana Code section 36-7-4-1614(f), to "(1) remand the case to the board for further proceedings; or (2) compel a decision that has been unreasonably delayed or unlawfully withheld." Ind. Code § 36-7-4-1614(f).

She claims the trial court should have used Indiana Code section 36-7-9-8, which governs violations of the Unsafe Building Law. That statute provides:

> (a) An action taken by the hearing authority under section 7(d), 7(e), or 9(d) of this chapter or a finding by the hearing authority of abandonment under IC 36-7-37 is subject to review by the circuit or superior court of the county in which the unsafe premises are located, on request of:
>
> > (1) any person who has a substantial property interest in the unsafe premises; or
> >
> > (2) any person to whom that order or finding was issued.
>
> (b) A person requesting judicial review under this section must file a verified complaint including the findings of fact and the action taken by the hearing authority. The complaint must be filed within ten (10) days after the date when the action was taken.
>
> (c) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the hearing authority.

The portions of the Unsafe Building Law chapter referenced in Indiana Code section 36-7-9-8, that is, Indiana Code sections 36-7-9-7(d), -7(e), and -9(d) do not apply to Willis's situation. Indiana Code section 36-7-9-7(d) concerns the review process of the order issued declaring a building unsafe under the Unsafe Building law. Indiana Code section 36-7-9-7(e) sets forth civil penalties for failure to bring an unsafe building into compliance. Indiana Code section 36-7-

9-9(d) concerns the commencement of emergency actions to enforce unsafe buildings.

[11] Indiana Code chapter 36-7-9 would apply if Willis was challenging the order declaring the building in question an unsafe building. That is not the case here, as the appeal before the Hearing Authority concerned the denial of her request for return of the fees assessed because the building was an unsafe building. As the chapter of the Indiana Code Willis suggests the trial court should have used does not apply, the trial court did not err when it used Indiana Code chapter 36-7-4 to review Willis's Petition for judicial review.

[12] Additionally, Willis argues the trial court erred when it stated, "Judicial review of zoning board decisions is governed by Indiana Code Chapter 36-7-4" (Appellant's App. at 11), because the Hearing Authority's decision was not a zoning board decision. However, the first section of that chapter, Indiana Code section 36-7-4-1601, states the use of "board" in the subsequent portions of Indiana Code chapter 36-7-4 pertains to decisions made by lower administrative bodies such as determinations made by a zoning administrator, the duties of which could reasonably be equated to those of the Hearing Authority. *See*, *e.g.*, *Lucas Outdoor Advert. v. City of Crawfordsville*, 840 N.E.2d 449, 451 (Ind. Ct. App 2006) (zoning administrator decision regarding permits appealed to higher authority who could affirm or reverse that decision), *reh'g denied*, *trans. denied*. Further, Willis has not indicated any other statute that could provide her the relief she seeks, that is, the refund of fees paid after a building on the Property was declared unsafe and Willis subsequent brought it into compliance. Based

thereon, we conclude Indiana Code chapter 36-7-4 was the proper statutory authority to use when the trial court reviewed Willis's Petition.

2. Denial of the Petition

[13] We set forth the case law relevant to our review of a trial court's decision on a petition for judicial review from a local agency decision[5] in *Dept. of Business and Neighborhood Servs. of the Consolidate City of Indianapolis v. H-Indy, LLC*, 166 N.E.3d 347, 356 (Ind. Ct. App. 2021):

> "When reviewing a zoning board's decision, we are bound by the same standard of review as the trial court." *Essroc Cement Corp. v. Clark Cnty. Bd. of Zoning App.*, 122 N.E.3d 881, 890-91 (Ind. Ct. App. 2019) (citing *Flat Rock Wind, LLC v. Rush Cnty. Area Bd. of Zoning App.*, 70 N.E.3d 848, 857 (Ind. Ct. App. 2017), *trans. denied*), *trans. denied*. Judicial review of zoning board decisions is governed by Indiana Code Chapter 36-7-4. Neither the trial court nor this Court may "try the cause de novo or substitute its judgment for that of the board." Ind. Code § 36-7-4-1611. As such, neither the trial court nor this Court may reweigh the evidence or reassess the credibility of witnesses. *Essroc Cement*, 122 N.E.3d at 890-91.

Id. at 356. As noted above, the section used by the trial court, Indiana Code section 36-7-4-1614(d), states:

[5] As noted above Indiana Code chapter 36-7-4 uses the term "board" generically to refer to several types of underlying decisions, Ind. Code § 36-7-4-1601, including those made by a zoning administrator, which we liken to the BNS Hearing Authority in this case.

> The court shall grant relief under section 1615[6] of this chapter only if the court determines that a person seeking judicial relief has been prejudiced by a zoning decision that is:
>
> > (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> >
> > (2) contrary to constitutional right, power, privilege, or immunity;
> >
> > (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
> >
> > (4) without observance of procedure required by law; or
> >
> > (5) unsupported by substantial evidence.

Willis argues the Hearing Authority's[7] use of ex parte communication "violated [her] rights at the hearing and violated judicial conduct." (Br. of Appellant at 14.) However, as the trial court noted in its order, even if the USB Civil

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[6] Indiana Code section 36-7-4-1615 requires a trial court, if a petitioner proves prejudice based on any factors set forth in Indiana Code section 36-7-4-1614(f), to "(1) remand the case to the board for further proceedings; or (2) compel a decision that has been unreasonably delayed or unlawfully withheld." Ind. Code § 36-7-4-1614(f).

[7] Part of Willis's argument focuses on her assertion that it was the "*BNS'* [sic] decision/position that were [sic] being considered throughout the Final Order. However, in fact the judicial review was regarding the appeal of the *ALJ's* [Administrative Law Judge's] decision." (Br. of Appellant at 12) (emphasis in original). The BNS Hearing Authority is essentially an Administrative Law Judge reviewing BNS's decision to deny Willis's request for reduced or refunded fees paid as part of an enforcement action. In the transcript of the hearing before the Hearing Authority, the Hearing Authority is referred to as "Administrative Law Judge." (*See*, *e.g.*, Appellee's App. Vol. II at 15.) However, the Hearing Authority's Decision was made by the Hearing Authority, which is the person who heard the case. (*Id.* at 8.)

Advocacy Checklist provided by BNS after the hearing on Willis's Petition amounted to an ex parte communication, the checklist was not evidence and even if it were "there was a reasonable basis for the hearing officer's decision, independent of any of the alleged ex parte communication." (Appellant's App. Vol. II at 18.) On appeal, Willis has not demonstrated how the subsequently-received Checklist prejudiced her in any way, as she had ample opportunity to present evidence and testimony to support her claim. The Checklist was a record of dates relevant to the case and the action taken on those dates, offered for the purpose of "help[ing] the advocate for the Department of Business and Neighborhood Services with providing its recommendation/request during the hearing." (Appellee's App. Vol. II at 12.) As there was other evidence presented during the hearing to support the Hearing Authority's decision, we conclude any error stemming from the Hearing Authority's receipt of the Checklist is harmless. *See Pelissier v. State*, 122 N.E.3d 983, 988 (Ind. Ct. App. 2019) (any error in the admission of videotaped statements was harmless error because the evidence was cumulative of other properly-admitted evidence), *trans. denied*.

[14] Willis also argues the BNS did not present sufficient evidence that the Hearing Authority's Decision was not arbitrary, capricious, or an abuse of discretion and thus she was prejudiced by the Hearing Officer's Decision. The BNS indicated to the Hearing Authority that Willis paid all fines associated with the Property when she bought it. At the hearing, Willis's representative affirmed Willis was aware of the fines when she bought the Property. Willis did not

provide any other evidence to the Hearing Authority to suggest she was entitled to a reduction or refund of the fees. Thus, there existed sufficient evidence from which the trial court could make its decision and, based on that evidence, a reasonable person could have come to the same conclusion as the trial court. We conclude the trial court's order that denied Willis's Petition[8] and affirmed the Hearing Authority Decision was not error because Willis did not prove she was prejudiced by the Hearing Authority Decision. *See*, *e.g.*, Ind. Code § 36-7-4-1614 through 15 (person who files a petition for judicial review of a decision must prove the decision prejudiced that person pursuant to the factors listed in Indiana Code section 36-7-4-1614; if that person was prejudiced by the decision, they can receive relief under Indiana Code section 36-7-4-1615).

Conclusion

[15] We conclude the trial court did not use the incorrect statute when reviewing Willis's Petition. Further, if the submission of the Checklist after the hearing was error, the error was harmless because there existed other properly-admitted

[8] Willis also argues the trial court's "denial" of her petition violated her right to due process because the Indiana Code gives her a right to judicial review of the decision by the Administrative Law Judge. The process by which a trial court reviews an agency's decision is a Petition for Judicial Review. After a hearing on that petition, the trial court can affirm or reverse the agency decision. Here, the trial court did not violate Willis's right to judicial review - she received judicial review when she filed her Petition, throughout briefing, and at the hearing before the trial court. The trial court's decision while denominated a "denial" of her Petition, simply declined to reverse the BNS Hearing Authority's decision after consideration of the merits of Willis's Petition. *See* Ind. Code § 36-7-4-1615 ("If the court finds that a person has been prejudiced under section 1614 of this chapter, the court may set aside a zoning decision and: (1) remand the case to the board for further proceedings; or (2) compel a decision that has been unreasonably delayed or unlawfully withheld.").

evidence to support the Hearing Authority Decision. Finally, the evidence before the Hearing Authority supported the Hearing Authority Decision because Willis failed to prove she was prejudiced by the Hearing Authority Decision. Accordingly, we affirm the denial of Willis's Petition.

[16] Affirmed.

Mathias, J., and Bradford, J., concur.