MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Department of Business and Neighborhood Services,

Appellant-Defendant,

v.

Scott Beasley,

Appellee-Plaintiff.

May 14, 2021

Court of Appeals Case No. 20A-SC-1928

Appeal from the Center Township Small Claims Court, Marion County

The Honorable Brenda A. Roper, Judge

The Honorable Myron E. Hockman, Judge

Trial Court Cause No. 49K01-2008-SC-1539

Brown, Judge.

[1] The City of Indianapolis (the "City")[1] appeals the Marion County Center Township Small Claims Court's August 25, 2020 Order Denying Jury Trial Request and September 21, 2020 Order. We reverse.

Facts and Procedural History

[2] In 2018, Scott Beasley purchased a commercial building on Lots 86 and 87 in Lukenbill's East 10th Street Addition, which is located east of a residential duplex in Indianapolis. The Corporate Warranty Deed, received by the Marion County Assessor in April 2018 and recorded with the Marion County Recorder, identified the lots as Parcel Numbers 1048612 and 1048613, "commonly known as 3709 East 10th Street in Indianapolis." Appellant's Appendix Volume II at 22. At the time, the City's GIS system identified Lots 86 and 87 as having street addresses of 3707, 3709, and 3711 East 10th Street.

[3] On May 31, 2018, and again on August 30, 2018, Beasley was issued a Failure to Repair Penalty Notice from the City "For The Property Located At 3707 E 10th St," indicating that the real estate was not in compliance with the Indiana Unsafe Building Law, Indiana Code §§ 36-7-9. *Id.* at 17, 31. The May 31, 2018 notice stated, "Legal Description: Lukenbills E 10th St Add L86" and "Parcel: 1048612," *id.* at 17, and the August 30, 2018 notice stated, "Legal Description:

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[1] While Beasley's August 5, 2020 Notice of Claim identifies "Dept. of Business & Neighborhood Services," which is reflected on the caption page, we note that the City, through the Office of Corporation Counsel, points out correctly that the "'department' of a city is merely a vehicle through which government fulfills its policy functions and is not a governmental entity unto itself." *City of Peru v. Lewis*, 950 N.E.2d 1, 4 (Ind. Ct. App. 2011), *trans. denied*.

Lukenbills E 10th St Add L87" and "Parcel: 1048613." *Id.* at 31. Both notices indicated "Structure Type: Commercial" and stated the "Commercial Structure Is In Violation Of The Following."[2] *Id.* at 17, 31.

[4] In July 2018, Beasley asked the City's GIS project manager to change the addresses of his commercial property in the system to 3709A, 3709B, and 3709C. Beasley corresponded with the Department of Business and Neighborhood Services (the "Department") regarding the notices and stated in a September 7, 2018 email message, "the address of 3707 is very clearly listed on the house next door. It is a duplex and is 3705 and 3707," in response to a message from the Department that stated, "[t]he cases we have are on your parcels of 1048613 and 1048612." *Id.* at 34.

[5] On January 29, 2019, Beasley appeared before an administrative law judge (the "Hearing Authority"), who held a hearing and issued an order on February 27, 2019, indicating the following findings of fact in "Case Number: RNH16-02483" on parcel 1048612:

> 1. Proper notice of order and hearing relative to order was given to all persons with a substantial property interest in the real estate affected.

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[2] Both notices listed several necessary repairs, including among others: "Repair or replace gutter boards, gutters, leaders and downspouts and maintain in good working condition to provide proper drainage of storm water away from the structure," "Maintain structure in a secure and weathertight fashion," and "Remove shrubbery and/or trees growing adjacent and causing damage to the structure." Appellant's Appendix Volume II at 17, 31 (capitalization omitted).

> 2. Evidence was presented by all persons present who wished to be heard.
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> 3. The building and/or premises is/are unsafe as alleged in the order being reviewed and said order is incorporated herein by reference.
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> 4. Case closed. Owner repaired. Civil penalty reduced from $3,220 to $1,500.

Id. at 5.

[6] On August 5, 2020, Beasley filed a Notice of Claim in the Marion County Center Township Small Claims Court against the Department, which alleged he was owed $1500 for "[f]ines placed onto my property taxes from a property that I do not own." *Id.* at 10-11. On August 24, 2020, the City filed a motion for jury trial and to transfer Beasley's claim "to the Superior Court of Marion County, Indiana," but the small claims court denied the motion on August 25, 2020. *Id.* at 7.

[7] On August 31, 2020, the small claims court held an initial hearing at which Beasley referenced "the notice that I received once the fine was reduced." Transcript at 10. When asked if he had a notice number or "some type of filing number," Beasley answered "RNH1602483," and when asked to provide the date on the notice, he stated "Dated January 29, 2019." *Id.* The small claims court reconvened on September 21, 2020, and the City's counsel argued that to the extent Beasley's claim was an appeal of the administrative law judge's decision, it was untimely. The City's counsel presented testimony from the

manager of the Department's Nuisance Abatement Bureau, who stated the Bureau followed Ind. Code § 36-7-9-8 and the sending of a letter by the Department was an administrative action and is "automatically affirmed . . . if a hearing contesting it hasn't been requested within ten days." *Id.* at 49. The manager also indicated that the hearing before the Hearing Authority was not a statutory obligation but a courtesy as a "civil penalty review hearing once the property is in compliance to provide relief." *Id.* When Beasley attempted to respond to the timeliness argument, the City's counsel indicated that Beasley had testified at the August 31st hearing that he had received the Hearing Authority's order.

[8] On September 21, 2020, the small claims court reduced the Hearing Authority's $1,500 judgment in favor of the City to $1,000. Specifically, its order indicated: "Judgment for [the Department] in amount of $1,000." Appellant's Appendix Volume II at 9.

Discussion

[9] Beasley has not filed a brief in this appeal. "When the Appellee fails to submit an answer brief 'we need not undertake the burden of developing an argument on the [A]ppellee's behalf.'" *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014) (quoting *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006)). Without a supporting brief, this Court may "reverse the trial court's judgment if the appellant's brief presents a case of prima facie error . . . [which]

in this context is defined as, 'at first sight, on first appearance, or on the face of it.'" *Id.* (quoting *Santana v. Santana*, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)).

[10] Ind. Code §§ 36-7-9-1 et seq. is known as the Unsafe Building Law. Ind. Code § 36-7-9-8 provides:

> (a) An action taken by the hearing authority under section 7(d),[3] 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:
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> > (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.
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> (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.

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[3] Ind. Code § 36-7-9-7(d) provides:

> At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:
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> > (1) affirm the order;
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> > (2) rescind the order; or
> >
> > (3) modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

> (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.

(Emphasis added).

[11] Beasley did not follow the process prescribed by Ind. Code § 36-7-9-8 as he did not file an appeal with the Circuit or Superior Court of Marion County. Further, Beasley's administrative hearing occurred on January 29, 2019, with the order issued on February 27, 2019. Beasley waited until August 5, 2020, to file a case with the Marion County Center Township Small Claims Court. Beasley's appeal of the Hearing Authority's order was to the improper court and untimely. *See Quaker Props., Inc. v. Dep't of Unsafe Bldgs. of City of Greendale, Ind.*, 842 N.E.2d 865, 867 (Ind. Ct. App. 2006) (holding that to properly file an appeal from the decision of an administrative body, "one must timely file the appeal in order to invoke the jurisdiction of the court"), *reh'g denied*, *trans. denied*; *see also Starzenski v. City of Elkhart*, 659 N.E.2d 1132, 1137 (Ind. Ct. App. 1996) (holding that appellants failed to appeal from an action within the requisite time period and had "waived their challenge to the Hearing Authority's decision and the Enforcement Authority's order, and the opportunity to have the court conduct a *de novo* review of the evidence under I.C. 36-7-9-8"), *trans. denied*, *cert. denied*, 519 U.S. 1028, 117 S. Ct. 582 (1996).

[12] For the foregoing reasons, we reverse the small claims court.

[13] Reversed.

Bradford, C.J., and Vaidik, J., concur.