



Patricia Ritchie ("Ritchie") was terminated effective October 22, 2012, from her position as an environmental specialist with the Department of Natural Resources ("DNR") following a series of reported incidents of misbehavior and inappropriate interactions with supervisors and co-workers. The Administrative Hearing Commission ("AHC") sustained DNR's dismissal of Ritchie, finding that Ritchie's dismissal was required in the interest of efficient administration, and for the good of the service.

Ritchie sought review of the AHC's decision in the circuit court, and the circuit court entered a Judgment reversing the AHC.

As the party aggrieved by the circuit court's Judgment, DNR filed a notice of appeal to this court. However, because we review the agency's decision and not the circuit court's decision, Ritchie was required to file the appellant's brief pursuant to Rule 84.05(e)¹. She did not file an appellant's brief despite notice of dismissal pursuant to Rule 84.08. Ritchie's failure to file the appellant's brief failed to preserve any issue for appellate review, and requires us to conclude that Ritchie has not sustained her burden to demonstrate that the AHC's decision was incorrect. Pursuant to Rule 84.08(b), we vacate the circuit court's Judgment and remand this matter with directions to reinstate the decision of the AHC.

Analysis

"In an appeal following judicial review of an administrative agency's decision, this court reviews the agency's decision and not the circuit court's judgment." *Ringer v. Mo. Dept. of Health & Senior Servs.*, 306 S.W.3d 113, 114 (Mo. App. W.D. 2010) (citing *Mo. Coalition for the Env't v. Herrmann*, 142 S.W.3d 700, 701 (Mo. banc 2004)). In conducting our review, "we presume that the agency's decision is correct, and the burden to show otherwise is placed on the party challenging the decision." *Id.* (citing *Versatile Mgmt. Group v. Finke*, 252 S.W.3d 227, 231 (Mo. App. E.D. 2008)). That is so even where the party aggrieved by the agency decision prevails before the circuit court, and is not the party who filed the appeal. *Id.*

¹All rule references are to *Missouri Court Rules, Volume I -- State, 2020* unless otherwise referenced.

This "procedural anomaly" is reflected in Rule 84.05(e), which describes "the briefing procedures to be followed in these types of cases." *Id.* at 115. Rule 84.05(e) provides:

If the circuit court reverses a decision of an administrative agency and the appellate court reviews the decision of the agency rather than of the circuit court, a party aggrieved by the circuit court decision shall file a notice of appeal and the record on appeal and shall file with the record on appeal a notice designating the party that is aggrieved by the agency decision. The party aggrieved by the agency decision shall file the appellant's brief and reply brief, if any, within the time otherwise required for the appellant to file briefs.

If a party who is aggrieved by an agency decision fails to file the first brief, that party shall be given notice of dismissal as required in Rule 84.08.

Here, DNR was a party aggrieved by the circuit court's judgment. As such, DNR filed a notice of appeal, the record on appeal, and a notice designating Ritchie as the party aggrieved by the agency decision. Though the notice designating Ritchie as the party aggrieved by the agency decision was not filed with the record on appeal as technically required by Rule 84.05(e)², Ritchie expressly indicated she had no objection. We issued a notice to the parties on April 9, 2020, confirming that a reverse briefing schedule would be employed pursuant to Rule 85.05(e), with Ritchie filing the first brief.

Because Ritchie was the party aggrieved by the AHC's decision, she was required by the plain and unambiguous language of Rule 84.05(e) to file the appellant's brief. Acknowledging her obligation to file the opening brief, Ritchie twice moved for extensions of time to file her brief, which deadline was extended on Ritchie's motion to May 18, 2020, and then again to June 18, 2020.

²The same requirement is also provided for in Western District Special Rule 35.

Ritchie failed to file the appellant's brief by June 18, 2020. On June 22, 2020, this Court advised Ritchie that she had until July 7, 2020 to file her appellant's brief, and that if she did not do so, "the appeal will be dismissed." In response, Ritchie filed a motion to dismiss the entire appeal, arguing that DNR's late filed notice that she was the party aggrieved by the agency's decision provided her with "insufficient process." Ritchie's motion to dismiss was denied by this Court on June 30, 2020.³

Ritchie did not file the appellant's brief by July 7, 2020. On July 9, 2020, this Court issued a letter stating that "By default, the court will remove the Rule 84.05(e) briefing scheduled and [DNR] will now file the opening brief."⁴ The letter further provided that Ritchie would not be permitted to file a responsive brief, or to participate in oral argument, effectively dismissing Ritchie's right to seek appellate review of DNR's decision.

On August 31, 2020, Ritchie filed a second motion to dismiss demanding that the entire appeal be dismissed. Ritchie argued that this Court's June 22, 2020 letter stating that "the appeal will be dismissed" should Ritchie fail to file her appellant's brief by July 7, 2020 was inconsistent with this Court's letter dated July 9, 2020 directing DNR to file a brief, and advising Ritchie she could not file a responsive brief or orally argue the case

³Rule 84.05(e) does require the party aggrieved by the circuit court's judgment to file, along with the record on appeal, "a notice designating the party that is aggrieved by the agency decision." Although DNR failed to file this required notice with the record on appeal, we do not construe this requirement notice to be a condition precedent to the mandatory directive described in the next sentence of Rule 84.05(e) that the "party aggrieved by the agency decision *shall* file the appellant's brief." (Emphasis added). Rather, we construe the requirement to file a notice as intended to avoid confusion on the subject of who is the party aggrieved by the agency decision. Here, there is no confusion that Ritchie was the party aggrieved by the agency decision.

⁴As we explain, *infra*, DNR would not have been required to file a brief, and instead could have simply filed a motion pursuant to Rule 84.08(b) asking this Court to vacate the circuit court's Judgment reversing the AHC's decision.

as a result of her failure to file the opening brief as required by Rule 84.05(e). Ritchie argued without explanation that this resulted in an "insufficiency of process." Ritchie's motion to dismiss was denied by this Court on September 9, 2020.

DNR filed its brief on September 9, 2020, and asked that the circuit court's Judgment be vacated. We agree that the circuit court's Judgment must be vacated.

Rule 84.05(e) provides that if the "party who is aggrieved by an agency decision fails to file the first brief, that party shall be given notice of dismissal as required in Rule 84.08." Rule 84.08 provides in pertinent part as follows:

(b) If the party who is aggrieved by an agency decision fails to file the first brief as required under Rule 84.05, that party shall be given notice as otherwise required in this Rule 84.08. If the party fails to remedy the default, any party aggrieved by the circuit court decision may file a motion in the appellate court requesting that the judgment of the circuit court be vacated.

The "notice as otherwise required" referred to in Rule 84.08(b) is described in Rule 84.08(a), which provides as follows:

After the timely filing of a notice of appeal, if the appellant fails to take the further steps required to secure review of the appeal within the periods of time allowed or as extended, the clerk shall place the case on a dismissal docket. The clerk shall notify all parties that the appeal will be dismissed unless the appellant remedies the default before a specified date. The date shall not be less than 15 days from the date of the notice. If the default is not remedied by that date, an order of dismissal shall be entered.

Here, Ritchie failed to comply with Rule 84.08(b), as she did not file the opening brief required by Rule 84.05(e) despite the fact she was the party aggrieved by the AHC's decision. As such, pursuant to Rule 84.08(b), the clerk provided the "notice as otherwise required" by Rule 84.08(a), and advised Ritchie that her appeal would be "dismissed"

unless Ritchie remedied her default by a date that was not less than 15 days from the date of the notice. Ritchie did not remedy her default.

Ritchie's failure to remedy her default did not require dismissal of the entire appeal pursuant to the last sentence in Rule 84.08(a). Instead, Rule 84.08(b) provides that where a party aggrieved by an agency's decision fails to file the opening brief despite receiving a Rule 84.08(a) notice of dismissal, "any party aggrieved by the circuit court decision may file a motion in the appellate court requesting that the judgment of the circuit court be vacated." In effect, the "dismissal" notice required by Rule 84.08(a) for a party aggrieved by an agency decision pursuant to Rule 84.05(e) advises said party that their right to seek appellate review will be dismissed if the opening brief is not filed. Were we to hold otherwise and read the last sentence of Rule 84.08(a) to require the dismissal of the entire appeal when Rule 84.05(e) applies, a party aggrieved by an **agency** decision could: (i) default on the mandatory obligation to file the opening brief; (ii) demand dismissal of the appeal initiated by the party aggrieved by the **circuit court** decision; and (iii) ensure by virtue of the dismissal that the circuit court's decision remains intact, even though the party aggrieved by the agency's decision has not sustained their burden to demonstrate that the agency's decision is incorrect. We will not construe our Supreme Court Rules to work such an absurd result. *Elrod v. Treasurer of Mo. as Custodian of Second Injury Fund*, 138 S.W.3d 714, 716 (Mo. banc 2004) (holding that statutes will not be construed to "work unreasonable, oppressive, or absurd results"); *Gabriel v. Saint Joseph License, LLC*, 425 S.W.3d 133, 139 (Mo. App. W.D. 2013) (citing *Gillespie v. Rice*, 224 S.W.3d 608, 612 (Mo. App. W.D. 2006) ("Authorized by the Missouri

constitution and statutes, Missouri Supreme Court Rules are to be given the same effect as statutes so long as they are not in conflict with other law."'). A party aggrieved by an agency decision cannot unilaterally or summarily relieve themselves of their burden on appeal to demonstrate that an agency's decision is incorrect by ignoring mandatory briefing obligations imposed by Rule 84.05(e) and Rule 84.08(b). Instead, we conclude that when a party aggrieved by an agency's decision fails to file the first brief as required by Rule 84.05(e) and Rule 84.08(b), the "order of dismissal" contemplated by the last sentence of Rule 84.08(a) is an order dismissing that party's right to seek appellate review of the agency decision.

As such, Ritchie's failure to file an appellant's brief as required by Rule 84.05(e), despite notice of dismissal pursuant to Rule 84.08(a), appropriately resulted in an order from this Court that effectively dismissed Ritchie's right to seek appellate review of the AHC's decision. In accordance with Rule 84.08(b), DNR was thereafter entitled to ask this court to vacate the circuit court's Judgment reversing the AHC's decision. DNR has done just that in its brief.⁵

Pursuant to Rule 84.08(b), we are required to vacate the circuit court's Judgment reversing the AHC's decision. In doing so, we do not review the merits of the AHC's decision. Instead, we presume that the AHC's decision is correct, and deem that presumption not rebutted as a matter of law given Ritchie's failure to file an opening brief as required by Rule 84.05(e).

⁵That DNR asked this Court to vacate the circuit court's Judgment by filing a brief instead of a motion is immaterial.

This conclusion is consistent with the result reached in *Ringer*, 306 S.W.3d 113, where a party aggrieved by an agency decision failed to file an opening brief as required by the reverse briefing schedule imposed pursuant to Rule 84.05(e). We concluded in *Ringer* that the failure to file an opening brief meant that the party aggrieved by an agency decision failed "to carry her burden of persuading this court that [the agency] decision was in error." *Id.* at 115. The same result was reached in *McCleney v. Neese*, 288 S.W.3d 326, 328 (Mo. App. S.D. 2009), where the Southern District found that a party aggrieved by an agency decision who failed to file the opening brief required by Rule 84.05(e) had "failed to preserve any issue for appellate review and ha[d] failed to carry his burden of persuading this Court that the [agency's] decision was in error[.]" "Under these circumstances, we have no alternative but to affirm the [agency's] decision." *Id.*; see also *Ringer*, 306 S.W.3d at 115.

We recognize that Rules 84.05(e) and 84.08 were modified after the decisions in *Ringer* and *McCleney*. However, the modifications to these Rules strengthen the efficacy of the results reached in *Ringer* and *McCleney*. Rule 84.05(e) was amended by Supreme Court Order dated June 25, 2010, approximately 6 months after *Ringer* was decided. Among other things, the amendment deleted a sentence that had provided that "[t]he party aggrieved by the circuit court decision shall prepare the respondent's brief and serve it in a time otherwise required for the respondent to serve briefs," and added the provision that should a party aggrieved by the agency decision fail to file the first brief, "that party shall be given notice of dismissal as required in Rule 84.08(b)." In the same Supreme Court Order, Rule 84.08 was amended effective January 1, 2011, to add new subsection

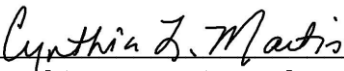
(b), addressing the involuntary dismissal impact should the party aggrieved by an agency decision fail to file the first brief as required by Rule 84.05(e).

The Supreme Court's amendments to Rules 84.05(e) and 84.08 shortly after *Ringer* appear plainly intended to codify the outcomes reached in *Ringer* and *McCleney*. The amendment to Rule 84.05(e) expressly relieves the party aggrieved by the circuit court's decision from any obligation to file a brief if no opening brief is filed by the party aggrieved by the agency decision. The Rule amendments require notice of dismissal, and describe the involuntary dismissal recourse this Court is authorized to impose should a party aggrieved by an agency decision fail to file the first brief as required by Rule 84.05(e). Rule 84.05(e); Rule 84.08(b). That recourse is not dismissal of the ***non-defaulting*** party's appeal, and is instead dismissal of the defaulting party's ability to seek appellate review, with the attendant result being that the party aggrieved by an agency decision is unable, as a matter of law, to rebut the presumption that the agency decision is correct. The recourse authorized by Rule 84.08(b) also requires this Court to vacate the circuit court's judgment if the party aggrieved by that judgment so requests.

Ritchie's right to seek appellate review was appropriately dismissed after she failed to file the appellant's brief as required by Rule 84.05(e), despite due notice of dismissal as required by Rule 84.08. DNR has requested that we vacate the circuit court's Judgment as authorized by Rule 84.08(b). We are obligated to afford the relief requested by DNR as Ritchie has preserved no issue for appellate review, and cannot sustain her burden to demonstrate that the AHC's decision was incorrect.

Conclusion

The circuit court's Judgment is vacated. This matter is remanded to the circuit court with directions to reinstate the AHC's decision.



Cynthia L. Martin, Judge

All concur