IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 17, 2022 Session

CITY OF MEMPHIS v. GEORGE EDWARDS BY AND THROUGH ELIZABETH W. EDWARDS

Appeal from the Chancery Court for Shelby County
No. CH-20-0267 JoeDae L. Jenkins, Chancellor

No. W2022-00087-COA-R3-CV

Appellant City of Memphis appeals the dismissal of its petition for judicial review of the ruling of an administrative law judge. The trial court dismissed the appeal on the ground that the City failed to provide the entire administrative record. Despite profound deficiencies in the City's brief, the dispositive issue is one of law and involves only the question of whether the trial court should have proceeded with its review on the partial administrative record. Because our review is de novo on questions of law, we exercise our discretion under Tennessee Rules of Appellate Procedure 2 and 13(b) to proceed with adjudication of the appeal on the merits. We conclude that the trial court should have proceeded with its review on the partial administrative record; as such, we reverse the trial court's dismissal of the appeal and remand for further hearing.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

KENNY ARMSTRONG, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN, J., joined. J. STEVEN STAFFORD, P.J., W.S., filed a separate opinion, dissenting.

Van D. Turner, Memphis, Tennessee, for the appellant, City of Memphis.

Robert L.J. Spence, Jr. and Andrew M. Horvath, Memphis, Tennessee, for the appellee, George Edwards by and through Elizabeth W. Edwards.

OPINION

I. BACKGROUND

On or about April 11, 1983, George Edwards was hired by Appellant City of Memphis (the "City") as a firefighter. In 2002, Mr. Edwards began treatment for a heart

condition. In 2004, Mr. Edwards underwent heart surgery, including the placement of a stent; the surgery was performed by Dr. Brenda H. Richardson, M.D.

Following his 2004 surgery, Mr. Edwards filed for benefits under the City's On-the-Job Injury Plan ("OJI"), and its Heart, Hypertension, and Lung ("HHL") Program. The City initially denied Mr. Edwards' claim, and he appealed. On or about January 31, 2008, Mr. Edwards resolved his appeal by executing an "employee settlement and release agreement" (the "Settlement Agreement"). Under the Settlement Agreement, Mr. Edwards received a lump-sum payment of $17,000.00 and agreed

> not to seek acceptance into the HHL Program for any known condition to date. No admission or waivers, by either side, are attached to this settlement agreement. Whether a condition can be characterized as arising subsequent to the date of this agreement, if not agreed upon by the parties involved, will be determined, without limitation, in the appropriate judicial forum as provided for under the law. Employee acknowledges that the payment to him under this Agreement is being made for the sole purpose of avoiding the uncertainties, vexations and expense of litigation.[1]

In 2009, after executing the Settlement Agreement, Mr. Edwards underwent another heart surgery. According to an excerpt from Dr. Richardson's deposition, Mr. Edwards "had recurrent, progressive coronary disease," which required the placement of additional stents. Following the second surgery, Mr. Edwards sought benefits under the HHL Program. By letter of September 9, 2010, the City denied Mr. Edwards' claim. The letter specified that Mr. Edwards was not eligible for OJI/HHL benefits based on the terms of the Settlement Agreement. Mr. Edwards did not appeal the City's decision.

However, in 2011, Mr. Edwards again applied for OJI/HHL benefits. By letter of July 20, 2011, the City notified Mr. Edwards that it denied his claim based on its conclusion that Mr. Edwards' "current diagnosis is a progression of previous heart diagnosis/disease and not a new diagnosis/disease and as previous HHL/heart claim has been denied, you . . . do not qualify for acceptance in the HHL/heart program." Mr. Edwards appealed the denial of benefits to the administrative law judge (the "ALJ"). In August 2012, Mr. Edwards retired.

At the outset of the August 23, 2017 administrative hearing, the City introduced the Settlement Agreement, and Mr. Edwards orally moved to strike it from the record. After ordering additional briefing, on September 6, 2017, the ALJ entered an order granting Mr. Edwards' motion to strike the Settlement Agreement. In relevant part, the ALJ reasoned:

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[1] It appears that Mr. Edwards never disputed the existence or enforceability of the Settlement Agreement. As discussed, *infra*, Mr. Edwards moved to strike the Settlement Agreement based on the City's failure to assert it as a defense.

(1) that the [Settlement Agreement] produced by the City during the August 23, 2017 hearing constitutes an affirmative defense under Tenn. R. Civ. P. 8.03; (2) that the non-production of the [Settlement Agreement] was the fault of the City and not the City's counsel; (3) that the City did not timely plead the [Settlement Agreement] as a defense to the claim of [Mr. Edwards]; (4) that the City's untimely production of the [Settlement Agreement] caused severe prejudice to [Mr. Edwards]; and (5) that the [Settlement Agreement] has been waived by the City pursuant to Tenn. R. Civ. P. 8.03 and 12.08.[2]

On October 17, 2017, the ALJ entered an order finding that

(1) [Mr. Edwards] brought the present appeal challenging the City's denial of his statutory and administrative benefits under the City's HHL program for Memphis Firefighters; (2) [Mr. Edwards] did not suffer with coronary artery disease prior to beginning his firefighting career in 1983 with the City of Memphis; (3) [Mr. Edwards] worked for nearly three decades as a firefighter for the City of Memphis; (4) as a firefighter, [Mr. Edwards'] overall health declined as he gradually developed coronary artery disease and hypertension; (5) pursuant to Tenn. Code Ann. § 7-51-201, [Mr. Edwards] is granted a presumption that his coronary artery disease and hypertension were caused by his occupation as a firefighter and entitle him to the statutory and administrative policy benefits of the City's HHL program;[3] (6) that [Mr.

[2] Tennessee Rule of Civil Procedure 8.03 provides, in part, that "[i]n pleading to a preceding pleading, a party shall set forth affirmatively facts in short and plain terms relied upon to constitute [an affirmative defense]." Tennessee Rule of Civil Procedure 12.08 provides, in part, that "[a] party waives all defenses and objections which the party does not present either by motion as hereinbefore provided, or, if the party has made no motion, in the party's answer or reply, or any amendments thereto . . . ." We make no findings concerning whether these rules apply in the context of a hearing before an administrative body.

[3] Tennessee Code Annotated section 7-51-201 provides, in relevant part:

> (b)(1) Whenever the state of Tennessee, or any municipal corporation or other political subdivision of the state maintains a regular fire department manned by regular and full-time employees and has established or hereafter establishes any form of compensation, other than workers' compensation, to be paid to such firefighters for any condition or impairment of health that results in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of such firefighters caused by disease of the lungs, hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed, unless the contrary is shown by competent medical evidence, to have occurred or to be due to accidental injury suffered in the course of employment. Any such condition or impairment of health which results in death shall be presumed, unless the contrary is shown by competent medical evidence, to be a loss of life in line of duty, and to have been in the line and course of employment, and in the actual discharge of the duties of such firefighter's position, or the sustaining of personal injuries by external and violent means or by accident in the course of employment and in the line of duty. Such firefighter shall

> Edwards] presented credible medical testimony from cardiologist Brenda J. Richardson, M.D. who has acted as [Mr. Edward's] treating cardiologist since 2004; (7) that the City offered no contrary or countervailing medical proof to rebut the statutory presumption or the testimony of Dr. Richardson; (8) that based on the statutory presumption and Dr. Richardson's testimony, [Mr. Edwards'] coronary artery disease and hypertension were caused by his occupation as a firefighter with the [City].

Based on the foregoing findings, the ALJ concluded that the City "wrongly denied [Mr. Edwards'] application for entry into the City's HHL program for benefits." On October 14, 2019, the ALJ entered final judgment in favor of Mr. Edwards in the total amount of $165,208.04.

On February 21, 2020, the City filed a petition for judicial review.[4] In its petition, which was filed in the Shelby County Chancery Court (the "trial court"), the City sought judicial review of the administrative decision awarding $165,208.04 in benefits to Mr. Edwards. The City argued that Mr. Edwards was not entitled to these benefits because he signed the Settlement Agreement. Specifically, the City's petition states:

> The Settlement Agreement should not have been stricken from the [ALJ] hearing as it was a binding agreement between [Mr. Edwards] and the City, and the City relied on said Settlement Agreement in two subsequent follow-up denial letters to [Mr. Edwards]. . . . Accordingly, the striking of the Settlement Agreement from the hearing was arbitrary and capricious and was unsupported by evidence that is both substantial and material in light of the entire record especially given the fact that [Mr. Edwards] received two follow-up certified letters denying his claim as a result of the settlement and because [Mr. Edwards] failed to timely appeal the first denial of his claim.

More than a year after the City filed its petition for judicial review, on April 5, 2021, Appellee filed a motion to compel the City to file the administrative record pursuant to Tennessee Code Annotated section 27-9-109 ("Immediately upon the grant of a writ, the board or commission shall cause to be made, certified and forwarded to such court a complete transcript of the proceedings in the cause, containing also all the proof submitted before the board or commission."). On April 16, 2021, the parties entered a consent order

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> have successfully passed a physical examination prior to such claimed disability, or upon entering upon governmental employment, and such examination fails to reveal any evidence of the condition or disease of the lungs, hypertension or heart disease.

Tenn. Code Ann. § 7-51-201.

[4] Mr. Edwards died during the administrative proceedings, and Mrs. Edwards was substituted as his surviving spouse. Accordingly, the Appellee in this appeal is George Edwards, by and through Elizabeth W. Edwards.

allowing the City an additional thirty days "to compile and file a complete copy of the record from the administrative matter."

On June 7, 2021, Appellee filed a motion to dismiss the City's appeal on the ground that the City failed to file the administrative record as ordered. On August 9, 2021, the City asked the trial court to take judicial notice of its efforts to acquire the administrative record, but the City conceded that "it does not appear that a complete record currently exists to the prejudice of [the City]." On the same day, the City gave notice that it was filing a partial administrative record and conceded that it was not able to locate transcripts from three hearing dates before the ALJ, i.e., "missing from the record are the hearing transcripts for the following dates: (1) August 23, 2017; (2) September 13, 2017; and (3) October 14, 2019." On August 9, 2021, the City also filed its response in opposition to Appellee's motion to dismiss the appeal.

The trial court directed the parties to file briefs concerning the effect of the absence of the full administrative record. In its September 3, 2021 brief, Appellee argued that in the absence of the full record, the trial court should either dismiss the petition or assume that the ALJ's decision was correct. In its September 15, 2021 brief, the City argued that the ALJ's written orders, which were available, were sufficient to allow the trial court to conduct a meaningful review of the issue regarding the ALJ's striking of the Settlement Agreement.

By order of September 30, 2021, the trial court granted the City an additional sixty days to compile and file the full administrative record. The City was unable to comply with the mandate and, by order of December 21, 2021, the trial court granted Appellee's motion to dismiss the City's petition for judicial review. In relevant part, the trial court held:

> [I]n the absence of a complete administrative record to review, this Court must assume the sufficiency of the underlying decision and dismiss the petition for judicial review. ***Taylor v. Allstate Ins. Co.***,158 S.W.3d 929, 931 (Tenn. Ct. App, 2005)[, *perm. app. denied* (Tenn. Jan. 24, 2005)]. Moreover, without an administrative record for review, the Court is required to defer to the decision of the administrative agency [i.e., ALJ], and dismissal is appropriate. ***Durham v. Tenn. Dept of Labor & Workforce Dev.***, [No. M2011-01515-COA-R3-CV, 2012 WL 1407372], at *[3] (Jan. 27, 2021, Tenn. Ct. App.) (citing Tenn. Code Ann. § 4-5-322(h)(1)-(5)(A)); and ***Wayne County v. Tennessee Solid Waste Disposal Control Bd.***, 756 S.W.2d 274, 279-80 (Tenn. Ct. App. 1988)). Pursuant to the foregoing, and in light of [Appellee's] Motion to Dismiss, the City's Response in Opposition, the subsequent briefs of the parties and the record as a whole, the Court finds [Appellee's] Motion to Dismiss well-taken, and it is GRANTED.

The City filed a timely appeal to this Court.

II. ISSUES PRESENTED

In its brief, the City raises two issues for review:

> 1. Whether the Administrative Law Judge ("ALJ") abused its discretion and issued an arbitrary and capricious opinion when he granted the Appellee's Motion to Strike the release agreement the Appellee signed barring his filing of any further on-the-job injury claims?
> 2. Whether the Chancery Court made a clear error when it upheld the ALJ's Order striking the release agreement the Appellee signed?

The City's statement of the issues does not encapsulate the gravamen of this appeal. In its appellate brief, the City primarily focuses on the ruling of the ALJ. However, before addressing the ALJ's judgment, we must first address the trial court's decision to dismiss the City's appeal of the ALJ's ruling. As discussed above, the trial court dismissed the appeal on the sole ground that the City failed to provide the complete administrative record for its review. In other words, the trial court did not review the ALJ's decision under the standard of review set out at Tennessee Code Annotated section 4-5-322.[5] Rather, the trial

[5] The City filed its petition for judicial review under both Tennessee Code Annotated section 27-9-101 *et seq*. and the Uniform Administrative Procedures Act ("UAPA"), Tennessee Code Annotated section 4-5-322. At the time of the initiation of this case in the trial court, section 4-5-322 provided the following parameters for judicial review:

> (g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.
> (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
> (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.
> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.
> (i) No agency decision pursuant to a hearing in a contested case shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

court ruled, as a matter of law, that it could not proceed with a substantive review of the ALJ's decision in the absence of a full administrative record. This Court's

> [r]eview generally will extend only to those issues presented for review. The appellate court may in its discretion consider other issues in order, among other reasons: (1) to prevent needless litigation, (2) to prevent injury to the interests of the public, and (3) to prevent prejudice to the judicial process.

Tenn. R. App. P. 13(b). Furthermore, we acknowledge that

> use of Rule 13(b) to consider previously waived issues is rare. *See* ***Bell v. Todd***, 206 S.W.3d 86, 91 (Tenn. Ct. App. 2005); ***In re C.R.B.***, No. M2003-00345-COA-R3-JV, 2003 WL 22680911, at *3 (Tenn. Ct. App. Nov. 13, 2003). As such, we have been directed to exercise our discretion under Rule 13(b) "sparingly." ***State v. Bledsoe***, 226 S.W.3d 349, 354 (Tenn. 2007) (citing Tenn. R. App. P. 13(b) advisory comm'n cmt).

McCormick v. McCormick, No. W2019-00647-COA-R3-CV, 2020 WL 1042500, *5 (Tenn. Ct. App. March 4, 2020). That being said, "we note that Tennessee law clearly favors that disputes be adjudicated on their merits." ***Carnett v. PNC Bank NA***, No. W2015-01677-COA-R3-CV, 2016 WL 402495, *4 (Tenn. Ct. App. Feb. 2, 2016) (citations omitted). The question this Court must resolve is whether the trial court erred in dismissing the City's appeal of the ALJ's ruling on the ground that its review was precluded by an incomplete administrative record. Resolution of this issue is necessary to determine whether the case can ultimately be decided on the merits. As discussed below, in its brief, the City merely hints at an argument addressing the foregoing issue. Nonetheless, because the issue presents a discrete question of law, we exercise our discretion under Tennessee Rule of Appellate Procedure 13(b) to reach it. *See, e.g.,* ***Tolley v. Attorney General of Tennessee***, 402 S.W.3d 232, 234 (Tenn. Ct. App. 2012) (discerning and restating the dispositive issue); ***Lemonte v. Lemonte***, No. M2018-02193-COA-R3-CV, 2019 WL 2157646, at *1 (Tenn. Ct. App. May 17, 2019) (same). We review questions of law *de novo*, affording the trial court's decision no presumption of correctness. ***Armbrister v. Armbrister***, 414 S.W.3d 685, 692 (Tenn. 2013) (citing ***Mills v. Fulmarque***, 360 S.W.3d 362, 366 (Tenn. 2012)).

III. BRIEFING ISSUES

Before turning to the issue, we acknowledge that the City's misstatement of the issues also results in serious deficiencies in its briefing. Although the City addressed the two issues it raised, because the City did not discern the dispositive issue in this appeal, its briefing is woefully inadequate on the question of the trial court's dismissal of the appeal

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Tenn. Code Ann. § 4-5-322

for lack of a full administrative record. In fact, the only argument the City propounds on this question is:

> In the instant case, the Chancery Court dismissed [the City's] Judicial Review because it did not have a complete administrative record. (T.R. Vol. 1, p. 105-106). However, the administrative record was complete regarding the ALJ's decision to strike the Settlement Agreement. Although the actual hearing transcript was missing, the orders of the ALJ constituted a clear expression of the Tribunal's rulings and was sufficient for [the trial court] to review on the specific and narrow question on judicial review concerning whether the striking of the Settlement Agreement was an arbitrary and capricious decision.

This is no more than a skeletal argument. It is well-settled that a skeletal argument containing no legal authority in support of its contentions is insufficient and may result in waiver. *See* ***Sneed v. Bd. of Pro. Resp. of Sup. Ct.***, 301 S.W.3d 603, 615 (Tenn. 2010). An argument that is more than skeletal is one that both cites legal authority and explains "how the cited legal principles apply to the facts in this case." ***Tennesseans for Sensible Election Laws v. Slatery***, No. M2020-01292-COA-R3-CV, 2021 WL 4621249, at *6 (Tenn. Ct. App. Oct. 7, 2021), *perm. app. denied* (Tenn. Mar. 24, 2022) (describing the explanation as "necessary"). Tennessee courts have held that arguments that are unsupported by legal authority,[6] rely only on quotes from non-controlling authority,[7] or are based on a theory that is only vaguely explained,[8] are skeletal.

It is apparent to this Court that the City's shortcomings in briefing stem from the fact that the City failed to discern the dispositive issue in this case. In other words, the City did not fail to brief; it failed to brief the correct issue. Nonetheless, in order to reach the dispositive issue, we must also exercise our discretion to suspend the rules concerning appellate briefing. Tenn. R. App. P. 2 ("For good cause, including the interest of expediting decision upon any matter, the . . . Court of Appeals . . . may suspend the requirements or provisions of any of these rules in a particular case . . . and may order proceedings in accordance with its discretion."); *see also* ***Diggs v. Lasalle***, 387 S.W.3d 559, 563-64 (Tenn. Ct. App. 2012), *perm. app. denied* (Tenn. Oct. 18, 2012) ("Although there are profound deficiencies in [Appellant's] brief, we discern that there is only one dispositive issue in this case. . . . Accordingly, under our authority under Rule 2 of the Tennessee Rules of Appellate Procedure, we proceed to consider the substance of this appeal."). Although we

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[6] *See, e.g.*, ***Newcomb v. Kohler Co.***, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006); ***Forbess v. Forbess***, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011).

[7] *See* ***Tennesseans for Sensible Election Laws***, 2021 WL 4621249, at *6.

[8] *See, e.g.*, ***Conley v. Tennessee Farmers Ins. Co.***, No. W2017-00803-COA-R3-CV, 2018 WL 3561725, at *6 (Tenn. Ct. App. July 24, 2018) (invoking waiver when the brief contained "no clearly developed explanation").

exercise our discretion to proceed with adjudication of the dispositive issue, we strongly caution the City that this is not our usual practice, and we exercise our discretion in this appeal only because it rests on the resolution of a clear legal issue. However, in future filings to this Court, we strongly caution the City to frame the correct issues and to thoroughly brief them under Rule 6 of the Rules of the Court of Appeals of Tennessee and Rule 27 of the Tennessee Rules of Appellate Procedure.[9]

IV. TRIAL COURT'S DISMISSAL OF APPEAL ON INCOMPLETE ADMINISTRATIVE RECORD

As set out in context above, the trial court cited three cases to support its decision to dismiss the City's petition in the absence of a complete administrative record. These cases include: (1) ***Taylor***, 158 S.W.3d at 931, which the trial court cited for the proposition that "in the absence of a complete administrative record to review, this court must assume the sufficiency of the underlying decision and dismiss the petition for judicial review[]"; (2) ***Durham***, 2012 WL 1407372, *3 (citing Tenn. Code Ann. § § 4-5-322(H)(1)-(5)(A)); and (3) ***Wayne County***, 756 S.W.2d at 279-280, which was cited along with ***Durham*** for the proposition that "without an administrative record for review, the court is required to defer to the decision of the administrative agency [i.e., ALJ], and dismissal is appropriate." The cases cited by the trial court are distinguishable from the instant appeal.

The ***Taylor*** case did not involve an appeal from an administrative decision. Rather, in ***Taylor***, a homeowner sued his insurance company after the company denied the homeowner's claim for damage to his home's roof and attic. ***Taylor***, 158 S.W.3d at 929. The trial court entered judgment in favor of the insurance company, and the homeowner appealed to this Court. ***Id.*** Unlike in the instant case, the issues in ***Taylor*** presented questions of fact, not law. The ***Taylor*** Court determined that "the factual findings cannot be reviewed, *de novo* or otherwise, because the record on appeal contains no record of the

[9] Rule 6 generally provides that arguments to this Court must be supported by citation to the record where the trial court's allegedly erroneous ruling was made, where the error was called to the attention of the trial court, and where the appellant was prejudiced by the error. *See* Tenn. Ct. App. R. 6(a). Rule 27(a) provides that an appellant's brief must contain a variety of different sections, including, among other things, "[a] statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below[,]" as well as an argument section. Tenn. R. App. P. 27(a)(5) & (7). The argument must contain the following:

> (A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on; and (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues)[.]

Tenn. R. App. P. 27(a)(7).

evidence or of the trial court's findings of fact." ***Id.*** at 931 (***citing Sherrod v. Wix***, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992); ***Craft v. Forklift Systems, Inc.***, No. M2002-00040-COA-R3-CV, 2003 WL 21642767, at *2 (Tenn. Ct. App. July 14, 2003)). Contrary to the trial court's interpretation, the ***Taylor*** opinion does not stand for the rigid proposition that in the absence of a complete administrative record, a reviewing court cannot conduct its review. Rather, as the ***Taylor*** Court went on the explain, a "[c]ourt's authority to review a trial court's decision is limited to those issues for which **an adequate legal record** has been preserved. ***Id.*** (emphasis added) (citing ***Trusty v. Robinson***, No. M2000-01590-COA-R3-CV, 2001 WL 96043, at *1 (Tenn. Ct. App. Feb.6, 2001)). The question, then, is not whether the entire administrative record has been preserved and transmitted to the reviewing court; the question is whether "an adequate legal record" has been preserved and transmitted such that the reviewing court may conduct a meaningful review of the dispositive issues.

Although ***Durham*** and ***Wayne County*** involve appeals of administrative decisions, they are also distinguishable from the instant appeal. In ***Durham***, the entire administrative record was struck from the record. As such, there was nothing for the Court to review, to-wit:

> The administrative record was struck from the judicial proceedings upon Ms. Durham's motion and repeated insistence. Because there is **no record** for the court to review, Ms. Durham is unable to establish that the Commission's decision to terminate her employment was in violation of her constitutional rights, in excess of the Commission's statutory authority, upon unlawful procedure, or that it was arbitrary, capricious, or unsupported by material evidence. Tenn. Code Ann. § 4-5-322(h)(1)-(5)(A).

Durham, 2012 WL 1407372, *3 (emphasis added). In the instant case, the entire administrative record is not missing. Rather, only the transcripts of the hearings before the ALJ are absent. In this regard, our case is distinguishable from ***Durham***.

In ***Wayne County***, the Court conducted its review under the UAPA, but noted that the board's decision involved technical and scientific questions concerning whether the "Wayne County landfill [was] contributing to the contamination of two wells belonging to a neighboring landowner." ***Wayne County***, 756 S.W.2d at 274. Contrary to the trial court's interpretation, the ***Wayne County*** Court did not refuse to review the board's decision. Rather, the Court noted that

> [t]he general rules governing judicial review of an agency's factual decisions apply with even greater force when the issues require scientific or technical proof. Appellate courts have neither the expertise nor the resources to evaluate complex scientific issues de novo. When very technical areas of expertise are involved, they generally defer to agency decisions, and will not

> substitute their judgment for that of the agency on highly technical matters.
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> However, the court's deference to an agency's expertise is no excuse for judicial inertia. Even in cases involving scientific or technical evidence, the "substantial and material evidence standard" in Tenn. Code Ann. § 4-5-322(h)(5) requires a searching and careful inquiry that subjects the agency's decision to close scrutiny. When very technical areas of expertise are involved, they generally defer to agency decisions.

Id. at 280 (citations omitted). Unlike the instant case, in ***Wayne County***, both the trial court and this Court applied the UAPA standard of review. Here, however, the trial court dismissed the City's appeal of the ALJ's ruling on a technicality—i.e., that the absence of the full administrative record precluded any review. Regardless, the ***Wayne County*** ruling is not dispositive and, in fact, is not relevant to the question urged in this appeal. ***Wayne County*** stands for the narrow proposition that appellate review under the UAPA may be limited in cases involving very technical or scientific matters. This case does not involve any such matters; thus, the trial court's reliance on ***Wayne County*** was misplaced.

Although ***Taylor***, ***Durham***, and ***Wayne County*** are not dispositive of the question of whether the trial court erred in dismissing the City's appeal on its finding that review was precluded in the absence of the full administrative record, our research has revealed several cases that are relevant to and dispositive of that question. For example, in ***County of Shelby v. Tompkins***, 241 S.W.3d 500 (Tenn. Ct. App. 2007), *perm. app. denied* (Tenn. Nov. 19, 2007), a Shelby County firefighter's employment was terminated for violation of the county residency requirement. ***Id.*** at 500. The firefighter appealed to the civil service merit board, which upheld the finding of a violation of the residency requirement but modified the discipline from termination of employment to suspension without pay. ***Id.*** The county then appealed to the Shelby County Chancery Court. ***Id.*** The chancery court reinstated the firefighter, and the county appealed to this Court. On appeal, the firefighter argued:

> that this Court lack[ed] subject matter jurisdiction because the Merit Board's written final decision was omitted from the administrative record and from the record on appeal to this Court. Tennessee Code Annotated Section 4-5-322(d) requires the agency to transmit to the reviewing court the "entire record of the proceeding under review." Tenn. Code Ann. § 4-5-322(d) (2005). In this case, the Merit Board omitted its written decision from the otherwise complete record, including the hearing transcript and various exhibits, it transmitted to the chancery court.

Id. at 503. This Court rejected the firefighter's subject-matter-jurisdiction argument, finding that his argument "raises concerns not about jurisdiction to hear the case, but about the impediment to judicial review posed by an incomplete administrative record." ***Id***. Ultimately, the ***Tompkins*** Court concluded that the omission of the administrative order

was not an impediment to appellate review. Specifically, the court reasoned:

> Importantly, the disputed issue under review is a narrow one of pure law, and there are no disputed material facts. Neither party disputes what the Merit Board decided or why it did so. . . . There is no question that the Merit Board rendered a final decision subject to appellate review; that the lower court had before it all relevant information pertaining to that decision; and that this Court has subject matter jurisdiction over the matter. Although the Merit Board was required to transmit its final decision as part of the administrative record, we believe the unusual circumstances of this case, as noted above, justify resolving this dispute without a remand. Neither party suffers prejudice in this instance, and to proceed otherwise would delay matters further without any corresponding benefit.

Id. at 504. The same is true here. As discussed above, this case presents a discrete question of law, i.e., whether the trial court erred in dismissing the City's appeal for want of a complete administrative record. ***Tompkins*** indicates that the full administrative record is not always necessary to facilitate a full and meaningful review. ***Id.*** ("[A] reviewing court must have **sufficient** information regarding the agency action to determine whether the action comports with the law and to avoid substituting its judgment for that of the administrative tribunal.") (emphasis added); *accord* ***Macon v. Shelby County Gov't Civil Service Merit Bd***, 309 S.W.3d 504, 511 (Tenn. Ct. App. 2009), *perm. app. denied* (Tenn. March 15, 2010) (holding that the failure of the reviewing board to provide its conclusions of law in its decision did not preclude judicial review because "the basis of the [b]oard's determination [wa]s apparent from the content of the written decision and the record as a whole.").

In this case, the ALJ's September 6, 2017 order, which was included in the administrative record, sets out the ALJ's reasoning for disallowing the Settlement Agreement, and the Agreement is also included in the administrative record. As set out in context above, the ALJ's decision was based solely on its application of Tennessee Rule of Civil Procedure 8.03 and Tennessee Rule of Civil Procedure 12.08. The ALJ's September 6, 2017 order clearly sets out the basis of its decision concerning the Settlement Agreement; as such, the trial court could have reviewed that decision based solely on this order and the Settlement Agreement itself. As to the ALJ's substantive ruling, in its October 17, 2017 order, the ALJ applied the statutory presumption that Mr. Edwards' coronary artery disease and hypertension were caused by his occupation as a firefighter. Tenn. Code Ann. § 7-51-201. Having previously disallowed the Settlement Agreement, the ALJ went on to conclude that the statutory presumption entitled Mr. Edwards to the statutory and administrative policy benefits under the City's HHL program. The ALJ's decision was based on: (1) its decision not to consider the Settlement Agreement; (2) application of the statutory presumption; (3) "credible medical testimony from cardiologist Brenda J. Richardson, M.D., who has acted as [Mr. Edward's] treating cardiologist since

2004"; and (4) the fact "that the City offered no contrary or countervailing medical proof to rebut the statutory presumption or the testimony of Dr. Richardson." Relevant portions of Dr. Richardson's deposition testimony are included in the administrative record. Although the full transcripts of the hearings before the ALJ are missing from the administrative record, the trial court's statement that the City offered no countervailing medical proof to rebut Dr. Richardson's testimony (and the inclusion of Dr. Richardson's deposition testimony in the administrative record) seemingly would negate the need for the transcripts. From our review, the administrative record presented to the trial court was sufficient to allow the trial court to conduct a meaningful review of the dispositive questions, i.e.: (1) whether the ALJ's decision to disallow the Settlement Agreement constituted "unlawful procedure," or otherwise constituted an abuse of discretion, Tenn. Code Ann. §§ 4-5-322(h)(2), (4); (2) if so, whether the Settlement Agreement constituted a bar to Mr. Edwards' recovery; and (3) if it was not error for the ALJ to disallow the Settlement Agreement and/or the Settlement Agreement was not a bar to Mr. Edwards' recovery, whether the statutory presumption and Dr. Richardson's testimony provided "substantial and material" evidence to support the ALJ's judgment in favor of Mr. Edwards. Tenn. Code Ann. § 4-5-322(h)(5)(A). Because the administrative record contains sufficient information to allow the trial court to conduct a meaningful review of the foregoing questions, we reverse the trial court's order dismissing the City's appeal for lack of a full administrative record and remand the case to the trial court for review under the UAPA standard.

V. FRIVOLOUS APPEAL

As a final matter, Appellee asks that this Court award damages for defending against a frivolous appeal pursuant to Tennessee Code Annotated section 27-1-122, which provides:

> When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

The decision whether to award damages for a frivolous appeal rests solely in this Court's discretion. ***Chiozza v. Chiozza***, 315 S.W.3d 482, 493 (Tenn. Ct. App. 2009). "A frivolous appeal is one that is 'devoid of merit,' or one in which there is little prospect that it can ever succeed." ***Indus. Dev. Bd. v. Hancock***, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995). Here, the City is the prevailing party. As such, we exercise our discretion to decline Appellee's request for frivolous appeal damages.

VI. CONCLUSION

The judgment of the Shelby County Chancery Court is reversed, and the case is remanded to the trial court for further proceedings as may be necessary and are consistent with this Opinion. Due to the deficiencies in its appellate brief, costs of this appeal are assessed to the Appellant, the City of Memphis, for which execution may issue if necessary.

S/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE