

2019 IL App (1st) 182151-U
No. 1-18-2151
Order filed September 25, 2019

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JERMAINE BRIGHT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 18 M3 3117
)	
VILLAGE OF HANOVER PARK,)	Honorable
)	Martin C. Kelley,
Defendant-Appellee.)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* Finding by administrative hearing officer that plaintiff violated the Village of Hanover Park's ordinance code affirmed where plaintiff failed to provide a sufficient record to show that the finding was against the manifest weight of the evidence.
- ¶ 2 *Pro se* plaintiff Jermaine Bright appeals from an order of the circuit court affirming an adverse final decision by defendant, the Village of Hanover Park, fining him for his unlawful possession of cannabis in contravention of section 66-1182 of the Hanover Park Code of

Ordinances (Hanover Park Code of Ordinances § 66-182 (adopted March 15, 2012)), which provides that it “shall be unlawful for any person to knowingly possess or use up to 30 grams or deliver up to ten grams of cannabis.” On appeal, plaintiff challenges that finding, arguing he legally possessed cannabis because it was properly packaged and he had a valid “medical” cannabis license. For the following reasons, we affirm.

¶ 3 On March 9, 2018, Hanover Park police officer Timothy Allen issued plaintiff an ordinance citation for possession of cannabis. An administrative hearing officer heard the case on April 3, 2018. The record shows there was an audio recording of the hearing, but the audio disc is not contained in the record.¹

¶ 4 Plaintiff’s arrest report was presented at the hearing and showed that, on the day of the incident at issue, Allen stopped plaintiff’s vehicle for various traffic violations. Allen smelled a strong odor of cannabis coming from the vehicle. Dispatch informed Allen that plaintiff had a valid cannabis license and was an active gang member. Plaintiff gave Allen consent to search the vehicle and informed the officer that he had a small amount of cannabis inside his vehicle. Allen recovered from the door storage compartment an old, black plastic bottle containing cannabis. The bottle had no label, seal, or name affixed to it. The report notes that, under the medical marijuana act, cannabis purchased at a medical marijuana facility must be transported in a vehicle in a sealed and unopened state. Allen additionally found cannabis particles scattered throughout the vehicle. He issued plaintiff citations for the traffic violations and the possession

¹ The record contains a photocopy of the audio disc. The Village’s answer to plaintiff’s complaint states the disc was submitted to the circuit court.

of cannabis. The cannabis “field tested” positive for cannabis and weighed 2.2 grams. Allen entered the cannabis “into BEAST as evidence.”²

¶ 5 At the conclusion of the hearing, administrative hearing officer, Victor Puscas, entered a written order. The hearing officer stated that he had “reviewed the evidence presented” and found plaintiff (respondent at the administrative hearing) liable for unlawful possession of up to 10 grams of cannabis in violation of section 66-182 of the Hanover Park Code of Ordinances. The hearing officer further found that the evidence submitted by plaintiff was not sufficient. In an “addendum note” the hearing officer noted the following findings:

“disobey stop sign - front seat passenger - strong odor of cannabis – valid prescription for cannabis - active gang member - warrant for passenger - search - bottle located in driver’s door with cannabis - not marked properly - field tested positive-no label on bottle”

Based on his violation of the Hanover Park Ordinance, plaintiff was ordered to pay a \$150 fine, plus \$100 in court costs.³

¶ 6 On April 23, 2018, plaintiff filed a timely complaint for administrative review in the circuit court of Cook County. In his specification of errors, plaintiff alleged (1) Allen stated plaintiff’s marijuana was packaged incorrectly, (2) Allen “lied about container being unmarked,” (3) it was repeatedly stated that plaintiff was a gang member, (4) “there was no odor of marijuana,” (5) “[t]he bottle was marked medical marijuana,” (6) Allen lacked probable cause to

² No definition for “BEAST” appears in the record on appeal.

³ Pursuant to section 66-184 of the Hanover Park Code of Ordinances, a violation of section 66-182 is a fine-only offense, and a person who violates section 66-182 for possessing “[n]ot more than ten grams of any substance containing cannabis” is subject to a fine of “not less than \$150.00 or more than \$750.00.” Hanover Park Code of Ordinances § 66-184 (adopted March 15, 2012)

stop his vehicle, (7) “they said container was not closed,” and (8) his traffic citations were “thrown out” because the stop was invalid. Defendant responded that plaintiff failed to show that the administrative hearing officer’s decision was against the manifest weight of the evidence.

¶ 7 On August 24, 2018, the circuit court affirmed the administrative hearing officer’s decision. We allowed plaintiff to file late notice of appeal on October 29, 2018.

¶ 8 On appeal, plaintiff challenges the circuit court’s affirmance of the administrative hearing officer’s finding, arguing he legally possessed marijuana because it was properly packaged and he had a valid medical cannabis license.

¶ 9 The Village has not filed a responsive appellee brief. This court, however, has elected to consider this appeal on plaintiff’s brief alone under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 10 In an appeal from an administrative review, this court reviews the final decision of the administrative agency, rather than that of the circuit court. *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 13. An agency’s factual findings and conclusions are held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2016). Therefore, we will not overturn an agency’s factual findings on review unless they are against the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). An agency’s factual determinations are against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *Id.* By contrast, a reviewing court is not bound by an agency’s decision on a question of law and its review is independent, not deferential. *Id.* at 210-11.

¶ 11 The administrative agency is responsible for determining the credibility of the witnesses, weighing the evidence, and drawing reasonable inferences from that evidence. *Aich v. City of Chicago*, 2013 IL App (1st) 120987, ¶ 18. When reviewing an agency's factual findings, this court will not reweigh the evidence or substitute its judgment for that of the agency. *Cinkus*, 228 Ill. 2d at 210. The burden of proof is on the plaintiff seeking administrative review. *Shachter v. City of Chicago*, 2016 IL App (1st) 150442, ¶ 22.

¶ 12 In this case, our review is frustrated by an incomplete record. An appellant has the burden of presenting a sufficiently complete record of the trial court proceedings to support claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Without a complete record, this court will not speculate as to errors that may have occurred below and will presume that the trial court's order conformed with the law and had a sufficient factual basis. *Id.* Any doubts arising from an incomplete record will be resolved against the appellant. *Id.* This rule also applies in the context of an administrative review if the appellant fails to provide the necessary transcript from an administrative hearing. See *Burns v. Department of Insurance*, 2013 IL App (1st) 122449, ¶ 15.

¶ 13 The record before us consists solely of one volume of common law record. While plaintiff has included the order from the administrative hearing officer, which includes an "addendum note" recounting some of the evidence relied upon, he has failed to include a transcript or audio recording of what occurred at the hearing. The record shows the Village submitted an audio disc of the hearing to the circuit court. Yet plaintiff did not include it in the record on appeal. Nor did he include a transcript or bystander's report from the hearing in the circuit court from which the content of the audio might be gleaned. Without the benefit of a

transcript or audio of the administrative hearing, this court will not speculate as to what occurred before the administrative hearing officer. We therefore presume the administrative agency acted in conformity with the law and its evidentiary rulings had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92; *Burns*, 2013 IL App (1st) 122449, ¶ 15.

¶ 14 Notwithstanding the incomplete record on appeal, we also conclude that the plaintiff failed to meet his burden of proof to support his claim. Plaintiff's argument on appeal is that he legally possessed the cannabis at issue because it was properly packaged and he had a valid "medical" cannabis license.

¶ 15 Pursuant to the Compassionate Use of Medical Cannabis Program Act ("Act"), a "qualifying patient" may register and obtain an identification card allowing him or her to possess and use medical cannabis products in certain circumstances. See 410 ILCS 130/7 (West 2016); 410 ILCS 130/60 (West 2016). However, the Act provides specific limitations, including the following:

"(a) This Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

(2) Possessing cannabis:

(E) in a vehicle not open to the public unless the medical cannabis is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving.

410 ILCS 130/30(a)(2)(E) (West 2016).

¶ 16 The record here contains the final decision of the hearing officer, who concluded that plaintiff possessed cannabis in his vehicle, and that the cannabis was not properly packaged or possessed in compliance with plaintiff's medical cannabis card. The arrest report also indicates that the bottle containing cannabis was not in a sealed condition, and additionally, that there were "cannabis particles scattered throughout the vehicle." As stated above, the agency's factual findings and conclusions are held to be *prima facie* true and correct (735 ILCS 5/3-110 (West 2016)), and plaintiff has shown nothing in the record which would preclude such a conclusion.

¶ 17 For these reasons, we affirm the judgment of the circuit court of Cook County affirming the decision of the Village of Hanover Park.

¶ 18 Affirmed.