2021 IL App (1st) 192126-U

No. 1-19-2126

Order filed February 2, 2021

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MITCHELL KADLEC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 19 M1 625401
CITY OF CHICAGO, a Municipal Corporation,	)	
and CITY OF CHICAGO DEPARTMENT OF	)	
ADMINISTRATIVE HEARINGS,	)	Honorable
	)	Michael A. Strom,
Defendants-Appellees.	)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court affirming the administrative finding of liability for a parking violation is affirmed.

¶ 2 Following a mail-in hearing in the City of Chicago's Department of Administrative Hearings (DOAH), plaintiff Mitchell Kadlec was found liable for parking his vehicle in a zone where standing or parking was prohibited. Plaintiff sought administrative review in the circuit

court, which affirmed the agency determination. On appeal, plaintiff contends that the Administrative Law Judge (ALJ) committed clear error by failing to consider the evidence presented, make findings of fact, and determine whether plaintiff violated the ordinance at issue. In the alternative, plaintiff contends that the ALJ's decision is contrary to the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 On February 16, 2019, plaintiff was ticketed for violating section 9-64-150(b) of the City of Chicago Municipal Code (Code) (Chicago Municipal Code § 9-64-150(b) (amended Nov. 13, 2007)) for parking a vehicle in a location where signage indicated standing or parking was prohibited. Plaintiff was assessed a fine of $75. The parking ticket included the vehicle's license plate number, the street address, the date and time of violation, and the reason for the ticket, *i.e.*, "park/stand prohibited anytime 9-64-150(b)."

¶ 4 Plaintiff requested a mail-in hearing at DOAH. In support, he submitted four pages of records. Three of the pages consisted of photographs of a vehicle parked near the end of a block. One of the photographs depicted the back of the vehicle, close to but not in the crosswalk. A second photograph depicted the front of the vehicle, just behind a pole with a rectangular sign attached to it. The third photograph depicted the entire vehicle. Underneath this photograph plaintiff wrote, "I'm not in the meter or crosswalk." The fourth record plaintiff submitted was a DOAH decision from January 18, 2019, indicating that plaintiff had been issued a violation for parking outside of a metered space on December 8, 2018. In that case, the ALJ found that the information submitted supported a determination that the violation did not occur and, therefore, that plaintiff was not responsible for the fine.

¶ 5 On April 16, 2019, the ALJ issued a written decision in the instant case, stating it had reviewed all the evidence submitted by the City of Chicago (the City) and by plaintiff. The ALJ found "that the information submitted supports a determination that the violation occurred" and, therefore, that plaintiff was liable for the $75 fine. In its written case notes in the DOAH "Circuit Court Report," the ALJ made the following notation: "PFC estab by City[.] Citizen submits photos stating not in a metered area not in a crosswalk[.] Also submits a dismissal for an outside meter spot decision by ALJ. Citizen does not address issue of no parking standing anytime which is what he was cited for[.] City by POE [preponderance of evidence]." The report further indicated "Decision: Liable" and "Reason: Violated the Parking or Compliance Ordinance."

¶ 6 On May 13, 2019, plaintiff filed a complaint for administrative review in the circuit court. Following a hearing, the circuit court affirmed the DOAH decision on September 25, 2019. Plaintiff filed a timely notice of appeal on October 16, 2019.

¶ 7 On appeal, we review the administrative agency's decision, not the determination of the circuit court. *Wolin v. Department of Financial and Professional Regulation*, 2012 IL App (1st) 112113, ¶ 19. The applicable standard for reviewing an administrative decision depends on whether the question presented is one of fact, a mixed question of fact and law, or a pure question of law. *Cunningham v. Schaeflein*, 2012 IL App (1st) 120529, ¶ 19.

¶ 8 Section 9-64-150(b) of the Code provides as follows:

> "(b) The commissioner of transportation is authorized to determine places in which the standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic and those streets or parts of streets upon which parking shall be prohibited, and to erect and maintain appropriate signs giving notice that standing

> or parking is prohibited. It shall be unlawful to stand or park any vehicle in violation of any sign erected or maintained pursuant to this subsection." Chicago Municipal Code § 9-64-150(b) (amended Nov. 13, 2007).

The question presented in the instant case is whether plaintiff's vehicle was parked, in violation of this ordinance, in a place where there was a sign giving notice that standing or parking is prohibited. This is a question of fact. See *O'Brien v. Musfeldt*, 345 Ill. App. 12, 22 (1951) (whether appropriate traffic warning signs were properly erected was a question of fact); *Wuebbles v. Shea*, 294 Ill. App. 157, 162 (1938) (whether vehicle was parked within 20 feet of a crosswalk was a question of fact).

¶ 9 With respect to questions of fact, our function is to determine whether the hearing officer's findings and decision are contrary to the manifest weight of the evidence. *Wolin*, 2012 IL App (1st) 112113, ¶ 19 (citing *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)). "Administrative decisions are against the manifest weight of the evidence when the court, viewing the evidence in light most favorable to the administrative agency, determines that no rational trier of fact could have agreed with the agency's decision and that an opposite conclusion is clearly evident." *Lapp v. Village of Winnetka*, 359 Ill. App. 3d 152, 167 (2005). "The mere fact that an opposite conclusion is reasonable *** will not justify the reversal of administrative findings." *Abrahamson*, 153 Ill. 2d at 88. The findings and conclusions of the administrative agency on questions of fact are accepted as *prima facie* true and correct, and we do not reweigh the evidence. 735 ILCS 5/3-110 (West 2018); *Arroyo v. Chicago Transit Authority*, 394 Ill. App. 3d 822, 829-30 (2009).

¶ 10 The administrative finding that plaintiff's vehicle was parked in a place where there was a sign giving notice that standing or parking was prohibited was not against the manifest weight of the evidence. The parking ticket, which the ALJ had before it, specified that plaintiff had parked in a location where signage indicated standing or parking was prohibited. At a mail-in hearing, "a parking or compliance violation notice, or a copy thereof *** shall be *prima facie* evidence of the correctness of the facts specified therein." Chicago Municipal Code § 9-100-070(c) (amended Apr. 18, 2012); see also *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 974 (1999) (under the City's system for the administrative adjudication of parking violations, "the parking ticket is considered *prima facie* evidence of a violation"). Thus, the ALJ was presented with *prima facie* evidence that plaintiff violated the ordinance.

¶ 11 To rebut the ticket, plaintiff submitted a prior DOAH decision finding that he was not liable for a ticket issued for parking outside of a metered space. The decision did not reflect where in Chicago the ticket was issued. Plaintiff also submitted three photographs depicting a parked car. Underneath one of the photographs, he wrote, "I'm not in the meter or crosswalk." In two of the photographs, it is clear that the vehicle is parked just behind a pole with a rectangular sign attached to it. However, it cannot be discerned what words or images are printed on the sign.

¶ 12 The ALJ found that the City had proven the parking violation by a preponderance of the evidence, noting that plaintiff had not addressed the issue of "no parking standing anytime." We agree that plaintiff did not successfully rebut the *prima facie* evidence submitted by the City, as the evidence he presented did not address whether, on the date in question, he parked in a location where signage indicated standing or parking was prohibited. We cannot say that the ALJ's factual findings are contrary to the manifest weight of the evidence, *i.e.*, that the opposite conclusion is

clearly evident. See *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). As such, we accept the ALJ's factual findings as *prima facie* true and correct. See *id.* Viewing the evidence in the light most favorable to DOAH, we find that the ALJ rationally concluded plaintiff's vehicle was parked where signage indicated standing or parking was prohibited. See *Lapp*, 359 Ill. App. 3d at 167.

¶ 13 Plaintiff nevertheless argues that the ALJ's decision was clearly erroneous because the ALJ failed to consider the evidence he presented, make any findings of fact, or determine whether he violated the ordinance at issue. We disagree. Contrary to plaintiff's assertions, the ALJ's decision indicates that it "reviewed all the evidence submitted" and its case notes specifically reference the photographs and prior ALJ determination that plaintiff submitted for the mail-in hearing. Moreover, the ALJ made an express finding that plaintiff parked in violation of the ordinance. Thus, we reject plaintiff's argument.

¶ 14 We also reject plaintiff's argument, made in the alternative, that, if the ALJ's ruling was based on "an unstated/implied factual finding," that finding is against the manifest weight of the evidence because (1) the conduct prohibited by the relevant ordinance is standing or parking in violation of any sign erected or maintained pursuant to the ordinance, (2) plaintiff submitted photographs showing that no such signage was erected or maintained, and (3) the City introduced no evidence to rebut or controvert his evidence.

¶ 15 First, we have already determined that the ALJ's ruling was based on an express factual finding that was not against the manifest weight of the evidence. Second, the photographs plaintiff submitted do not establish the absence of relevant signage; they only depict the area immediately surrounding the parked vehicle, and the single sign depicted in the photographs is indecipherable.

As to plaintiff's third point, the record establishes that the City did introduce evidence in the form of the parking ticket. As explained above, the ticket served as *prima facie* evidence of the violation. *Van Harken*, 305 Ill. App. 3d at 974. Where plaintiff's evidence did not rebut the City's *prima facie* evidence, the burden of proof did not shift back to the City. See, *e.g., Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 462 (1983) (if a presumption is rebutted, then the burden of production "shifts back" to the initial party).

¶ 16 Finally, we address plaintiff's request that we take judicial notice of documentation he has appended to his brief, showing that on four prior occasions, ALJs dismissed citations issued to him for parking outside a metered space or parking within 20 feet of a crosswalk (one of the four dismissals was the subject of the ALJ decision plaintiff submitted for the mail-in hearing). According to plaintiff, all four of the dismissed citations were issued to him for parking in the "same spot" where he parked on February 16, 2019. He asserts that the dismissal of the four prior citations is corroborating evidence that no sign prohibiting parking or standing was present in the area.

¶ 17 Documents that contain readily verifiable facts capable of instant and unquestionable demonstration may be judicially noticed. *Muller v. Zollar*, 267 Ill. App. 3d 339, 341 (1994). However, the document plaintiff sets forth as judicially noticeable does not indicate where the four prior tickets were issued. Thus, the document does not support his assertion that the tickets were issued in the "same spot" where he was parked on February 16, 2019. The document also does not speak to the issue of whether there was a sign indicating that standing or parking was prohibited in the area where he parked on that date. Similarly, the prior ALJ decision that plaintiff submitted for the mail-in hearing does not indicate where he was parked or provide any information regarding

the existence of relevant signage. Accordingly, we do not find plaintiff's documentation persuasive.

¶ 18 For the reasons explained above, we affirm the decision of the circuit court of Cook County affirming the decision of the DOAH.

¶ 19 Affirmed.