

2013 IL App (2d) 121095-U
No. 2-12-1095
Order filed August 26, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THOMAS JAKUBIK,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellant,)	
)	
v.)	No. 12-MR-114
)	
THE VILLAGE OF MUNDELEIN,)	Honorable
)	Jorge L. Ortiz,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defendant’s ordinance requiring registration of certain rental property was not unconstitutional under the uniformity clause (as it did not create unreasonable classifications or “tax” them non-uniformly) or the equal protection clause (as requiring registration for long-term rentals, but not for hotels and motels, was reasonable); (2) plaintiff’s objection to service was moot, as the hearing officer vacated the resulting default judgment; by subsequently appearing in the proceedings, plaintiff waived any further objection to service.

¶ 2 Defendant, the Village of Mundelein, charged plaintiff, Thomas Jakubik, with violating an ordinance that required him to register his rooming house. After proceedings in defendant’s “Administrative Hearing System,” including an evidentiary hearing, the hearing officer found for

defendant and fined plaintiff \$1,300. Plaintiff, who has proceeded *pro se* throughout this case, sought judicial review of the decision (see 735 ILCS 5/3-101 *et seq.* (West 2012)). The trial court affirmed the hearing officer. Plaintiff appeals. We affirm.

¶ 3 Plaintiff owns a building at 133 East Maple Avenue in Mundelein. At all pertinent times, defendant has had in force an ordinance (Mundelein Municipal Ordinance, No. 09-12-77 (eff. Dec. 14, 2009)), under which it is unlawful for any person to let for occupancy any “Residential Rental Property” without a current and valid certificate of registration. “Residential Rental Property” means “any Dwelling Unit let or intended to be let for any amount of compensation.” *Id.* The registration requirement does not apply to single-family owner-occupied buildings; single-family buildings that are vacant but are not intended to be let for rent; townhouse and condominium owner-occupied units; hotels, motels, and “other structures that rent rooms to occupants that are primarily transient *** and make use of the facilities for *** less than thirty (30) days”; and buildings that are registered and inspected by the State of Illinois or the federal government. *Id.*

¶ 4 On April 27, 2011, defendant issued plaintiff a “Notice to Appear” at an administrative hearing on May 10, 2011[,] “to respond to a violation [*sic*] of [Ordinance] No. 09-12-77 which was observed on Monday, April 25, 2011, at 1:30 P.M. at 133 E. MAPLE AV. [*sic*]” The notice alleged that plaintiff had “allowed a person to occupy the property without a Certificate of Registration.” It listed plaintiff’s address as 1125 Weiland Road in Buffalo Grove, Illinois. That day, a “Notice to Appear” at the same hearing was issued to Martin Henson at 133 East Maple Avenue. Both notices were signed by Kathy Mueller, a building inspector for defendant.

¶ 5 On May 2, 2011, plaintiff filed with defendant an “Application for Rental Dwelling Unit Registration,” so as to bring 133 East Maple into compliance with the ordinance. The application listed plaintiff’s address as “P.O. Box 5662, Vernon Hills, Illinois.”

¶ 6 On May 10, 2011, administrative hearing officer Joan Vasquez entered an “Order of Default.” It stated that the matter had come for a hearing but that plaintiff had not appeared; that the violation had been proved; and that a judgment for \$750 was entered against plaintiff. Further, “Information ha[d] been provided that tenant(s) ha[d] been living at the property more than 30 days.” A copy of the order was sent by certified mail to plaintiff at the Weiland Road address, but it was returned undelivered.

¶ 7 In a letter dated May 31, 2011, and mailed to plaintiff’s Vernon Hills post office box, Peter J. Schubkegel, the director of defendant’s building department, told plaintiff that he was returning plaintiff’s registration application. Schubkegel explained that, according to defendant’s records, plaintiff’s building had 9 rooming units, not 11 as the application had stated. Schubkegel asked plaintiff to schedule an inspection so as to ascertain the number of units, after which plaintiff could submit a proper application.

¶ 8 On June 10, 2011, plaintiff filed a “Notice of Motions” stating that, on May 27, 2011, he had mailed several motions (attached to the notice) to Schubkegel’s office. One motion requested the vacatur of the May 10, 2011, order and a “show cause hearing of [*sic*] the Village of Mundelein and Administrative Judge Joan Vasquez as to how [they] held a hearing with [*sic*] notifying [plaintiff] as required by law.” A document entitled “Questionable Defendant’s THIRD MOTION cancelled [*sic*]” alleged again that plaintiff had never received notice of the May 10, 2011, hearing; it requested

a “continuance” to June 14, 2011, and the provision of a court reporter for the hearing. On June 21, 2011, Vasquez continued the proceedings to July 12, 2011.

¶ 9 By a letter dated June 3, 2011, Schubkegel told plaintiff that he had received plaintiff’s motions. Schubkegel’s letter continued, “Enclosed please find a Motion to Set Aside Default that needs to be completed and returned to me *** no later than June 10, 2011. I have tentatively placed your case on the June 14, 2011, Hearing docket, pending the receipt of your Motion to Set Aside Default.” Schubkegel explained that, at the June 14, 2011, hearing, Vasquez would decide whether to set aside the May 10, 2011, order and then rehear the case. Vasquez later continued the proceedings to July 12, 2011, and allowed plaintiff to provide for a court reporter at his own expense.

¶ 10 On July 12, 2011, plaintiff failed to appear at the hearing. Vasquez continued the cause to August 9, 2011. On July 25, 2011, defendant’s building department received a subpoena from the circuit court of Lake County, commanding Vasquez, Schubkegel, and Mueller to deliver certain records to plaintiff. On July 26, 2011, plaintiff filed a “Counter Complaint” alleging that Vasquez had committed official misconduct by remaining as the hearing officer in plaintiff’s case and by entering the default order of May 10, 2011; that Schubkegel had improperly rejected plaintiff’s application to register his building; and that Mueller had intentionally served plaintiff at the wrong address. The “Counter Complaint” requested that the proceedings be transferred to the circuit court.

¶ 11 On August 9, 2011, Vasquez presided over a hearing on the pending motions. Plaintiff appeared. Vasquez set October 11, 2011, for a ruling on plaintiff’s motion for a new hearing officer and for status on all other matters. On October 11, 2011, defendant’s attorney suggested to Vasquez that she allow William Franks to replace her in the case. Defendant moved to quash the subpoena.

¶ 12 The cause was continued to November 8, 2011. On that date, Franks presided. Plaintiff noted that his motion to vacate the May 10, 2011, order was pending. Defendant's attorney said that defendant had no objection to vacating the May 10, 2011, order. However, he argued, there was no authority for Franks to hear plaintiff's motion to show cause or his "Counter Complaint."

¶ 13 Franks granted plaintiff's motion to vacate, explaining to him that "it's as if it didn't happen. It's nunc pro tunc. We just go back." Franks then explained that he had no authority to hear plaintiff's motion to show cause or "Counter Complaint": as a hearing officer, he could decide only the propriety of defendant's action against the alleged ordinance violation, and there was no authority allowing plaintiff to file a counterclaim in the action. Franks then asked plaintiff why he needed to engage in discovery. Plaintiff responded that the police had intimidated him at some point and that he had originally been denied proper notice of the May 10, 2011, hearing. Franks explained to plaintiff that the May 10, 2011, order had been vacated and that plaintiff had obviously received notice of the present hearing. After further argument, Franks stated that he would quash the subpoena except insofar as it related to records that were relevant to the alleged ordinance violation. Plaintiff objected that Franks was trying to "erase all the nonsense that these people pull."

¶ 14 On December 14, 2011, at a hearing, Franks denied plaintiff's other motions, including one for summary judgment, in which he contended that, because he had already obtained a business license to operate the rooming house at 133 East Maple, he had not violated the ordinance and that, for the same reason, the ordinance was unconstitutional as applied to him. Defendant responded that, even were a motion for summary judgment permissible in an administrative proceeding, plaintiff's motion lacked merit, because there were disputed factual issues. Franks denied the motion and continued the cause to January 10, 2012, for an evidentiary hearing on defendant's action.

¶ 15 At the January 10, 2012, hearing, defendant first called Schubkegel. On direct examination, he testified as follows. Under the ordinance, if a residential rental property is not owner-occupied, and a person resides there for more than 30 days, then “the unit has to be registered.” In April 2011, Schubkegel learned through police records that Henson, a registered sex offender, had listed his address for the previous six years as 133 East Maple. Schubkegel checked defendant’s records and found that defendant had not received any application from plaintiff to register the property. On April 18, 2011, plaintiff telephoned Schubkegel and said that he did not have to register the property, because he already had a business license to run the rooming house. Schubkegel explained to plaintiff that he still had to register because Henson had lived there for more than 30 days. Plaintiff disagreed and hung up. At that point, Schubkegel had not sent plaintiff anything in writing.

¶ 16 Schubkegel testified that, on April 27, 2011, defendant sent plaintiff and Henson the notices to appear. Schubkegel heard nothing further from plaintiff until about May 9, 2011, when he received his registration application, accompanied by a check for \$125. The application stated that the building contained 11 units. According to the building department’s records, when the building was last inspected, in 1979, it contained nine units. Schubkegel returned plaintiff’s application and fee, enclosing the letter asking him to allow an inspection to ascertain the number of units, after which he could pay the appropriate registration fee. Schubkegel received no response to the letter.

¶ 17 Plaintiff cross-examined Schubkegel. Defendant stipulated that plaintiff had a business license for the rooming house. Franks took judicial notice of several of defendant’s business-related ordinances but sustained defendant’s objections to questions about them, noting that the hearing was limited to deciding whether plaintiff had violated the registration ordinance. Franks then took judicial notice of the registration ordinance.

¶ 18 Defendant called Scott Clark, a police officer, who testified on direct examination as follows. He conducted a training class for landlords. One purpose of the class was to familiarize landlords with the registration ordinance; when a landlord registered a property, he became obligated to attend the class. In March or April 2011, Clark learned that Henson, who had been arrested in a bar fight, had given his address as 133 East Maple. Clark learned from police department records that Henson, a registered sex offender, had resided at 133 East Maple for six years. Clark then spoke to Henson, who confirmed that he had been renting a room at that location for six years. Clark called plaintiff, leaving a message about the incident. Plaintiff called back. Clark told him that the rooming house had not been registered as the ordinance required, and he added that plaintiff would need to contact the building department. Plaintiff responded that he would be in contact with Clark.

¶ 19 Plaintiff cross-examined Clark. Franks refused plaintiff's request to admit copies of police reports and other evidence relating to the service of the notice to appear. Franks explained that, because the May 10, 2011, default order had been vacated, the evidence was not relevant to the present proceeding. Defendant rested.

¶ 20 Plaintiff called Mueller. Franks sustained defendant's objections to questions about the service of the notice to appear. Plaintiff then called Schubkegel, who testified that, on May 9, 2011, he returned plaintiff's registration application. Plaintiff asked Schubkegel whether he had had any authority to reject the application. Defendant objected on relevance grounds, as the alleged violations all took place before May 9, 2011. Franks sustained the objection. Plaintiff rested.

¶ 21 In argument, defendant contended that the evidence proved that, because Henson had resided at 133 East Maple continuously for more than 30 days, plaintiff had been required to register the property with defendant. However, defendant contended, the evidence proved that plaintiff had not

done so, at least until he filed the application on or about May 9, 2011. That plaintiff had obtained a business license for the property, under a separate ordinance, was legally irrelevant.

¶ 22 Plaintiff argued in response that his business license allowed him the “unrestricted operation of a rooming house.” He asserted that he “was never served until after the May 10th hearing.” Further, his right to due process had been violated, because (1) Schubkegel had had no authority to reject his application; and (2) plaintiff was “the only one [who was] required two licenses [*sic*] in this Village, required to pay two fees and required to have two inspections. No one else in the Village has that.” Finally, he contended, “The Uniformity Clause says that you have to treat everybody fairly and in this case this ordinance does not treat anybody fairly.” In reply, defendant argued that many businesses are required to have more than one license, depending on what activities take place on their property, and that the mere fact that plaintiff’s business required more than one “license” did not prove a constitutional violation.

¶ 23 Franks found that defendant had proved by a preponderance of the evidence that plaintiff had violated the ordinance by failing to register his property after Henson had resided there continuously for more than 30 days. Next, Franks ruled that the ordinance applied to the property even though plaintiff had a separate business license and that the ordinance was constitutional. Franks turned to the penalty phase of the proceeding. Defendant noted that, under the ordinance, each day of noncompliance was a separate offense with a minimum fine of \$100. Because plaintiff had been noncompliant from April 27, 2011, until May 9, 2011, when he did attempt to register the property, a total of 13 days, defendant requested that plaintiff be fined \$1,300. Plaintiff did not object. Franks imposed the \$1,300 fine. Plaintiff filed a timely complaint for judicial review.

¶ 24 Plaintiff's complaint for judicial review raised several claims of error. First, defendant's failure to serve plaintiff violated his right to due process. Second, the registration ordinance discriminated against plaintiff, who owned the only rental property in Mundelein that required two licenses. Third, Vasquez violated plaintiff's rights by holding an "ex parte" hearing on May 10, 2011. Fourth, Mueller and the police committed official misconduct (720 ILCS 5/33-3(b) (West 2010)) by serving the notice to appear at the wrong address. Fifth, Schubkegel denied plaintiff due process by rejecting his completed application to register the property. The complaint named as defendants "Village of Mundelein *** and listed accomplices," apparently including those named in an accompanying "Pro Se Summons in Administrative Review." This document included, among others, Vasquez, Franks, Schubkegel, Mueller, and defendant's attorney.

¶ 25 At a hearing on April 25, 2012, the trial court granted defendant's motion to strike all of the other named defendants from the complaint. Plaintiff stated that he was refileing his "counter complaint," which had been "totally ignored." The trial court granted defendant 28 days "to respond to [plaintiff's] complaint." On June 13, 2012, at the next hearing, plaintiff stated that defendant had yet to answer his "counter complaint." Defendant's attorney told the court that, because plaintiff had filed a complaint for administrative review, "technically there [was] no counterclaim." Also, any "counterclaim" had been filed in the administrative proceedings before the hearing officers, not in the trial court. The trial judge agreed, noting that the only thing before the court was the complaint for administrative review and that plaintiff had not been given leave to file any other pleading. Plaintiff responded that, at the previous hearing, the court had ordered defendant to respond to the "counter complaint." The judge explained that the order had said no such thing and that defendant

had complied with the order by filing the administrative record as its answer to the complaint for administrative review.

¶ 26 On September 19, 2012, the court heard arguments on the merits of plaintiff's complaint for administrative review. The judge asked plaintiff why Franks' decision was erroneous. Plaintiff said that Franks had refused to allow him to present a defense or to ask any questions of defendant's witnesses. Also, there "[had] never been a service in this matter. So I brought it up for the last 14 months. And since that initial complaint expired on May 10th, anything after that is void."

¶ 27 Defendant responded that the record showed that Franks had allowed plaintiff to question witnesses and present his case. Further, after the May 10, 2011, order had been vacated, plaintiff waived any challenge to service, because he had appeared and participated fully in the proceedings, thereby submitting to the jurisdiction of the hearing officer. Defendant also contended that, because the registration fee was not a tax, it could not violate the uniformity clause. Plaintiff replied that the fee was unconstitutional as applied to him, because he was already paying a fee for a business license and thus was already subjected to inspections. He added that "there was never any service on this" and that, because the service before May 10, 2011, had been defective, "everything after that was improper." The trial judge explained to plaintiff that Franks had vacated all of the proceedings that were allegedly tainted by the improper service and that the record of the January 10, 2012, hearing showed that Franks had allowed plaintiff to question defendant's witnesses and to present his case.

¶ 28 The trial court ruled as follows. Plaintiff had received a proper hearing. He had participated in the proceedings on the charge of violating the ordinance. The ordinance was constitutional, having a rational basis in the promotion of the public safety; the mere fact that plaintiff had had to obtain a separate business license for his rooming house did not free him from the obligation to

register the property and did not invalidate the ordinance. Therefore, Franks's ruling was affirmed. Plaintiff timely appealed.

¶ 29 Plaintiff's appellate brief presents this court with 20 "issues." However, it is very difficult to discern how many separate contentions of error plaintiff actually seeks to raise. This is partly because the 20 "issues" are in fact highly repetitious and duplicative. It is also because, in many instances, a single "issue" is really a melange of unrelated assertions, presented in no apparent order. Within a given "issue," authorities are cited with no explanation of their relation to the rest of the argument.

¶ 30 We are compelled to make these observations because an appellant is obligated to present a reviewing court with clearly defined legal arguments and citations to *pertinent* authority. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993); *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986); see Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).¹ Issues that are raised inadequately are forfeited. *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991). Plaintiff's *pro se* status does not free him from these rules. See *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010); *First Illinois Bank & Trust v. Galuska*, 255 Ill. App. 3d 86, 94 (1993).

¶ 31 This court has the discretion to strike plaintiff's brief and dismiss his appeal, based on the severe deficiencies in the presentation of the facts and issues. See *Holzricher v. Yorath*, 2013 IL App

¹An appellant is also obligated to provide a statement of the facts that are necessary to an understanding of the case, provided accurately and fairly without argument or comment. Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Plaintiff's statement of facts omits many facts that are necessary to understand this case and includes much argument and commentary. Like much of the argument portion of the brief, much of the statement of facts is literally incomprehensible.

(1st) 110287, ¶ 77. However, we shall not take this drastic step, because some coherent arguments are discernible from the brief, when read in conjunction with the record. Nonetheless, we shall restrict our review to those claims of error that have not been forfeited by inadequate presentation. In so doing, we bear in mind that we review the decision of the administrative agency, not that of the trial court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006).

¶ 32 Plaintiff contends that the ordinance is unconstitutional for several reasons. Plaintiff's arguments raise questions of law, which we review *de novo*. *Id.* at 532. Plaintiff asserts that the ordinance violates the state constitution's uniformity clause (Ill. Const. 1970, art. IX, § 2). Because plaintiff fails to cite any pertinent legal authority, beyond the clause itself, we consider his argument forfeited. See *Holmstrom*, 221 Ill. App. 3d at 325. In any event, we discern no merit in the argument.

¶ 33 The uniformity clause states, "In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX, § 2. Plaintiff appears to contend that the ordinance, which requires both the registration of certain property and the payment of a registration fee, violates the uniformity clause because his property is the sole real estate under defendant's jurisdiction to be subject to more than one fee or "license." The problems with this assertion are manifest.

¶ 34 First, plaintiff's factual premise is unsupported by evidence in the record. His *claim* that his property is treated uniquely is not proof of anything. Second, assuming that the uniformity clause applies to a fee charged under a police-power regulation (see *Federated Distributors, Inc. v. Johnson*, 125 Ill. 2d 1, 22 (1988) (Miller, J., specially concurring)), plaintiff has not shown any

violation. The ordinance does not create unreasonable classifications or “tax” rental properties non-uniformly. That plaintiff is required to pay a fee for a separate business license is legally irrelevant here.

¶ 35 Plaintiff may be arguing further that the ordinance violates equal protection (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2) because it exempts hotels and motels that rent rooms to people who stay for fewer than 30 days. Insofar as plaintiff has preserved this argument, we find it has no legal merit. Because the ordinance does not create a suspect classification or involve a fundamental right, it will be upheld if it is rationally related to a legitimate governmental interest. *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 325 (2005). Rental property registration ordinances such as the one here, which aid in the enforcement of local housing standards, are rationally related to the promotion of the public health and safety. *Lock Haven Property Owners’ Ass’n v. City of Lock Haven*, 911 F. Supp. 155, 161 (M.D. Pa. 1995); *Greenacres Apartments, Inc. v. Bristol Township*, 482 A.2d 1356, 1359 (Pa. Cmwlth. 1984). The exemption of hotels and motels that cater primarily to transients is reasonable, given the relative ease with which these people can leave undesirable accommodations. *Greenacres Apartments, Inc.*, 482 A.2d at 1359. Hence, there is a rational basis for treating the two types of property differently. Thus, plaintiff’s constitutional arguments, insofar as they are preserved, are without merit.

¶ 36 Plaintiff also attacks the service of process in this case. In numerous passages he apparently contends that (1) the service of the original notice to appear, which led to the default judgment entered May 10, 2011, was defective; and that (2) as a result, all of the proceedings at the administrative level were void *ab initio*. The first point is moot, and the second point does not follow even if the first point is correct. The default judgment was vacated and, as Franks explained

several times to plaintiff, the proceedings then began anew. Insofar as the original service was defective, plaintiff received a full remedy. After the default judgment was vacated, plaintiff appeared at the hearings, contested defendant's action, and participated in the evidentiary hearing. Personal jurisdiction may attach either by the proper service of process or by a personal appearance. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989). Plaintiff's appearances and his participation in the proceedings gave the Administrative Hearing System jurisdiction over him. Plaintiff does not explain why any failure in the original service of process (and no such failure was proved) would affect the validity of the proceedings that took place after the default judgment was vacated.

¶ 37 Insofar as plaintiff seeks to raise other claims of error, we have reviewed the record carefully and conclude that there is no basis to hold that either the administrative hearing officers or the trial judge denied plaintiff a fair hearing or any other procedural or substantive rights.

¶ 38 Accordingly, the judgment of the circuit court of Lake County is affirmed.

¶ 39 Affirmed.