

No. 1-15-0581

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 JUDICIAL DISTRICT

CHARLETTE WORTHAM,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant/Cross-Appellee,)	Cook County.
)	
v.)	Nos. 12 M1 450611
)	13 M1 450357
CITY OF CHICAGO DEPARTMENT OF)	14 M1 450263
ADMINISTRATIVE HEARINGS and CHICAGO)	
ANIMAL CARE AND CONTROL COMMISSION,)	Honorable
)	Mark J. Ballard,
Defendants-Appellees/Cross-Appellants.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's order is reversed and the Administrative Law Judge's order of euthanasia for the dog Thumbelina is reinstated
- ¶ 2 Following an order from the administrative law judge (ALJ) declaring two of plaintiff-appellant/cross-appellee Charlette Wortham's (Wortham) dogs dangerous and ordering them to be euthanized, Wortham appealed to the circuit court of Cook County. The circuit court affirmed the euthanasia order for one of the dogs, Moo Moo, but remanded the matter back to the ALJ

with directions for a penalty other than euthanasia for the other dog, Thumbelina. On remand, the ALJ ordered Moo Moo to be euthanized, and ordered Wortham to comply with Chicago Municipal Code (the Code) sections 7-12-050(c)(1) through (c)(8) for Thumbelina. The circuit court affirmed that order. Wortham filed a notice of appeal and defendants-appellees/cross-appellants, the City of Chicago Department of Administrative Hearings and Chicago Animal Care and Control Commission (the city) cross-appealed. For the following reasons, we reverse the judgment of the circuit court of Cook County and reinstate the ALJ's original order of euthanasia for Thumbelina.

¶ 3

BACKGROUND

¶ 4 This is an administrative review action between Wortham and the city.

¶ 5 On April 3, 2012, the Executive Director of Animal Control (the director) ordered three of Wortham's four rottweilers, Moo Moo, Thumbelina, and Hugo, to be declared dangerous. This ruling was based on an incident that occurred on January 11, 2012, between Wortham's three dogs and another dog. As part of the ruling, Wortham was ordered to comply with the requirements set forth in sections 7-12-050(c)(1) through (c)(6) and (c)(8) of the Code for each dog, which includes but is not limited to leashing, muzzling, and controlling the dog when in public (Chicago Municipal Code §§ 7-12-050(c)(1) through (c)(6) and (c)(8) (amended Mar. 14, 2007)). Wortham sought administrative review of that ruling on April 9, 2012. After a hearing on June 26, 2012, the ALJ entered an order declaring Moo Moo, Thumbelina, and Hugo dangerous. Wortham appealed to the circuit court, which affirmed that order, as did this court on May 1, 2015 (that case is hereinafter referred to as Wortham I).

¶ 6 The matter currently before us first arose out of a separate incident on June 18, 2012, also involving Moo Moo and Thumbelina.

¶ 7 It is undisputed that on June 18, 2012, Wortham walked three of her rottweilers, Moo Moo, Thumbelina, and Foxy, to a fenced yard at the Horatio May School (the yard). None of the three dogs were leashed or muzzled, despite the compliance order from Wortham I. Wortham's three dogs ran around to an area of the fence that was open and began barking at Jimmie Sanders (Sanders) and his Ihasa Apso, Coogi, who were walking along the sidewalk. It is undisputed that all three of Wortham's dogs ran up to Sanders and Coogi, and then Moo Moo bit Coogi on her backside. From that point in the occurrence, Wortham and Sanders greatly dispute the remaining facts.

¶ 8 Based on that occurrence, the director declared three of Wortham's dogs, Moo Moo, Thumbelina, and Foxy, to be dangerous and ordered them to be euthanized. The order was based on section 7-12-051(b)(2) of the Code, which authorizes the director to euthanize an animal if it attacks or injures a person or animal after being declared dangerous (Chicago Municipal Code § 7-12-051(b)(2) (amended Mar. 14, 2007)). Wortham again sought administrative review of the director's ruling, and a hearing was held before the ALJ on November 13, 2012.

¶ 9 At the November 13, 2012 hearing, Sanders testified to the following facts. On June 18, 2012, he walked Coogi to the yard. At the yard, all three of Wortham's dogs charged at him and Coogi, and all three attacked and grabbed Coogi in their mouths. He tried to save Coogi, but one of the dogs knocked him to the ground. At some point, one of the three dogs ran back to Wortham, while Sanders continued to try to save Coogi who was still being attacked by the other two dogs. Wortham's two dogs eventually threw Coogi into the street. While Coogi was in the street, a vehicle began driving in the direction of Coogi. Sanders put himself in front of the vehicle and made contact with it, but the vehicle did not hit Coogi. Coogi was already dead at that time or shortly thereafter. Sanders took Coogi to a veterinarian, who told Sanders that all of

Coogi's organs had been punctured and that his neck was broken. Sanders further claimed that his own back had been hurt when one of the dogs knocked him to the ground, and that he also received "a little nick" on his hand from one of Wortham's dogs, although he does not know which one.

¶ 10 At the November 13, 2012 hearing, Wortham testified to the following facts. She had taken all her dogs to the yard before, usually at least two times a week, without any issues. On June 18, 2012, she took Moo Moo, Thumbelina, and Foxy to the yard, and did not have any of them leashed or muzzled. All three dogs ran towards Sanders and Coogi, but only Moo Moo bit or grabbed Coogi. Neither Thumbelina nor Foxy ever bit or grabbed Coogi. Then Coogi ran into the street out of fear, where he was hit by a vehicle. The vehicle stopped long enough for Sanders to pick him up, and then it drove off. She did not see any bite wounds or blood on Coogi. She also never saw her dogs knock Sanders to the ground or bite him.

¶ 11 Ernestine Crayton (Crayton), an inspector with the City of Chicago Animal Care and Control, also testified at the hearing about her investigation of the incident. She testified that when she initially interviewed Sanders, he told her that Coogi had "tried to escape the vicious attack and ran into *** oncoming traffic and was hit by a passing vehicle." Crayton testified that she called Sanders a day or two later for some additional paperwork, and he corrected his initial statement, telling her that Coogi had not been hit by a vehicle in the street.

¶ 12 After the testimony at the November 13, 2012 hearing, the ALJ stated that she found some credibility issues with Sanders. Specifically, she noted how Sanders initially reported to Crayton that Coogi had run into the street and was hit by a vehicle, but then later told her that Coogi had been thrown into the street by Wortham's dogs and had not been hit by a vehicle,

which is what he testified to at the hearing. The ALJ also stressed how Sanders did not know which dog committed which act in the incident, just that they all participated in the attack.

¶ 13 The ALJ reviewed the Wortham I ruling which had declared Thumbelina, Moo Moo, and Hugo to be dangerous. She noted that even though Thumbelina had been declared dangerous from that incident, there was no evidence in the record describing Thumbelina's specific level of involvement.

¶ 14 At the conclusion of the hearing, the ALJ reversed the dangerous declaration and euthanasia order for Foxy, and affirmed the dangerous declaration and euthanasia order for both Moo Moo and Thumbelina. In reversing the order for Foxy, the ALJ noted that Foxy had not been involved in the prior incident from Wortham I, and stated that it was unclear whether or not Foxy had participated in the incident at hand.

¶ 15 Wortham appealed that order to the circuit court of Cook County. On June 4, 2013, the circuit court affirmed the dangerous declaration and euthanasia order for Moo Moo, but vacated the euthanasia order for Thumbelina and remanded the matter to the ALJ. The remand order requested an explanation from the ALJ regarding the euthanasia order for Thumbelina in light of the ALJ's statements on Thumbelina's involvement in the incident. On remand on July 9, 2013, the ALJ entered an order of euthanasia, stating that Thumbelina had already been declared dangerous from Wortham I and that she had participated in the incident in which Coogi was killed. Wortham appealed that order to the circuit court of Cook County.

¶ 16 On March 31, 2014, the circuit court vacated the ALJ's order to euthanize Thumbelina and remanded the matter back to the ALJ with instructions to order a penalty other than euthanasia.¹

¶ 17 On April 29, 2014, the ALJ affirmed the dangerous declaration for Thumbelina, but did not order euthanasia in accordance with the circuit court's instructions. Instead, the ALJ ordered Wortham to comply with sections 7-12-050(c)(1) through (c)(8) of the Code for Thumbelina, which requires muzzling the dangerous animal when off the owner's property, confining the dangerous animal when on the owner's property, completing an animal obedience course, and more. Wortham again appealed to the circuit court of Cook County

¶ 18 On January 29, 2015, the circuit court affirmed the order, declaring both Moo Moo and Thumbelina dangerous, and ordering euthanasia only for Moo Moo.

¶ 19 On February 26, 2015, Wortham appealed the circuit court's order from January 29, 2015, requesting reversal of the dangerous declaration for both Moo Moo and Thumbelina, and reversal of the euthanasia order for Moo Moo. On March 6, 2015, the city filed a cross appeal, requesting reversal of the circuit court's June 4, 2013 order which had remanded the case to the ALJ for reconsideration of the penalty as to Thumbelina. The city also sought reinstatement of the penalty of euthanasia as to Thumbelina via reversal of the circuit court order of March 31, 2014.

¶ 20 On September 22, 2016, Wortham's appeal regarding Moo Moo was voluntarily dismissed based on a settlement agreement which she reached with the city, permanently barring

¹ The record on appeal does not contain the transcripts from the circuit court, so we do not know the circuit court's reasoning for ordering a penalty other than euthanasia. This court is limited to reviewing the material which was presented to the trial court and determining whether it is sufficient to support the trial court's judgment which altered the agency's judgment. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006).

Moo Moo from Chicago's city limits. Moo Moo now lives outside of Chicago. Thus, our analysis is limited to the city's cross appeal regarding Thumbelina.

¶ 21

ANALYSIS

¶ 22 We have jurisdiction to hear this cross appeal because it is from a final order of the circuit court, under Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015). We also have jurisdiction to review the interlocutory orders made in the circuit court on June 4, 2013, and March 31, 2014, which reversed and remanded the ALJ's original order. See *Grames v. Illinois State Police*, 254 Ill. App. 3d 191, 198-99 (1993) (the circuit court's initial decision to reverse and remand can be reviewed within the context of the court's final judgment on administrative review).

¶ 23 On administrative review, this court reviews the administrative decision rather than the circuit court's decision. *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 13 (citing *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007)). The scope of our review is a two-part analysis. *Krocka v. Police Board of City of Chicago*, 327 Ill. App. 3d 36, 46 (2001). First, we must determine whether the ALJ's findings are contrary to the manifest weight of the evidence. *Id.* Second, we must determine whether the findings of fact provide a sufficient basis for the penalty imposed by the ALJ. *Id.* Thus, the ALJ's decision will not be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of the agency's service. *Id.* (quoting *Department of Mental Health & Developmental Disabilities v. Civil Service Commission*, 85 Ill. 2d 547, 552 (1981)).

¶ 24 Before we review the merits of this case, we will address Wortham's due process argument. Wortham argues that her due process rights were violated by the ALJ when Wortham's request to subpoena several staff members of Chicago Animal Care and Control was

denied. However, this argument is forfeited as she did not raise this issue before the ALJ. See *Owens v. Dep't of Human Rights*, 403 Ill. App. 3d 899, 926 (2010) (issues not raised before the administrative agency, including constitutional claims, are forfeited on administrative review). In any event, her argument lacks merit as administrative proceedings do not require the full range of procedural processes as found in a court hearing. *Sangirardi v. Village of Stickney*, 342 Ill. App. 3d 1, 11 (2003). Moreover, determining whether to subpoena a witness for testimony is within the discretion of the ALJ. Chicago Municipal Code § 2-14-080(a) (amended April 29, 1998).

¶ 25 Turning to the merits of the case, we must first determine whether the ALJ's findings are contrary to the manifest weight of the evidence. Findings of fact and credibility on review are held to be *prima facie* true and correct and should not be overturned unless they are against the manifest weight of the evidence. *Senno v. Dep't of Healthcare & Family Services*, 2015 IL App (1st) 132837, ¶ 40 (citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 210 (2008)). The mere fact that a conclusion opposite to the one reached by the ALJ is reasonable will not justify the reversal of administrative findings. *Gernaga v. City of Chicago*, 2015 IL App (1st) 130272, ¶ 13 (quoting *Terrano v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 315 Ill. App. 3d 270, 274 (2000)).

¶ 26 Wortham argues that the ALJ's findings that Thumbelina participated in the incident which led to Coogi's death were against the manifest weight of the evidence. While Wortham admits that Moo Moo bit Coogi on the backside, she claims that Thumbelina acted in a different fashion than Moo Moo. Wortham argues that there is no evidence that Thumbelina participated in the incident except for Sanders's testimony, which the ALJ found to be incredible.

¶ 27 The city argues that Sanders's testimony was sufficient evidence for the ALJ to find that both Moo Moo and Thumbelina participated in the attack on him and Coogi. The city further

argues that the ALJ's credibility finding as to Sanders was insignificant as it pertained to only a single issue regarding his initial statement that Coogi was hit by the vehicle. The city posits that notwithstanding that single issue, the ALJ still believed Sanders's testimony over Wortham's testimony.

¶ 28 After our review of the record, we find that the ALJ's findings were not against the manifest weight of the evidence. While the ALJ did find one credibility issue with Sanders regarding whether or not Coogi had been hit by a vehicle, it is clear that the ALJ ultimately believed Sanders's testimony regarding Thumbelina's participation in the incident. As the ALJ had the opportunity to see and hear the testimony and we have only the record on appeal, it is not our prerogative job as the reviewing court to make credibility determinations. See *Senno v. Dep't of Healthcare & Family Services*, 2015 IL App (1st) 132837, ¶ 40 (it is not this court's function to reevaluate witness credibility or resolve conflicting evidence, and if these issues are merely ones of conflicting testimony or credibility of witnesses, the determinations of the agency should be upheld).

¶ 29 The scope of this case comes down to the conflicting testimony of Wortham and Sanders. It was reasonable for the ALJ to believe Sanders's testimony that Wortham's dogs attacked him and Coogi. Even if Coogi had run into the street out of fear and was killed by a passing vehicle, the rest of Sanders's testimony supports the findings that both Moo Moo and Thumbelina attacked Coogi. It does not matter that Sanders could not specify which dog committed which specific part of the attack, especially because all of Wortham's dogs are of the same dog breed. In the confusion of the attack, it is reasonable to infer that Sanders could not keep track of which dog did what. Additionally, the ALJ reversed the director's decision ordering Foxy to be euthanized, which illustrates that the ALJ carefully considered each dog's participation in the

incident. Thus, it cannot be said that the ALJ's findings that Thumbelina participated in the incident that led to Coogi's death were against the manifest weight of the evidence.

¶ 30 Second, we must determine whether the findings of fact provide a sufficient basis for the ALJ's order of euthanasia. We will reverse an agency's sanction only if it is arbitrary and unreasonable or unrelated to the requirements of the agency's service. *Smoke N Stuff v. City of Chicago*, 2015 IL App (1st) 140936, ¶ 26 (quoting *Launius v. Board of Fire & Police Commissioners of the City of Des Plaines*, 151 Ill.2d 419, 435 (1992)).

¶ 31 Wortham argues that the penalty of euthanasia is too harsh for Thumbelina, especially because the extent to which she attacked Coogi is unclear. Wortham also points out that on the date of the incident, Thumbelina's dangerous declaration from Wortham I was being appealed.

¶ 32 The city argues that the ALJ's findings support a penalty of euthanasia because Thumbelina had already been declared dangerous at the date of the incident. The city claims that euthanasia is an appropriate sanction because Wortham already had an opportunity to comply with the measures set forth in sections 7-12-00(c)(1) through (c)(6) and (c)(8) of the Code based on the prior incident in Wortham I, but failed to do so, which resulted in Thumbelina participating in the attack on Sanders and Coogi.

¶ 33 In remanding the case back to the ALJ, the circuit court instructed the ALJ to explain why she ordered euthanasia for Thumbelina in light of the ALJ's questioning the level of Thumbelina's involvement in the attack. In reviewing the transcript, it is clear that the ALJ's comments were in reference to Thumbelina's involvement in Wortham I, a previous case which was not before the ALJ. However, the ALJ did not need to know Thumbelina's specific conduct in Wortham I. It was sufficient to know that she had been declared dangerous from that case. Nevertheless, it does not matter that Wortham was appealing Wortham I at the time of the

incident. Her argument suggests that she was excused from compliance with the director's order because she had filed an appeal. On the contrary, she was required to comply with the order while her appeal was pending. In any event, the ALJ's order in Wortham I was affirmed on appeal by this court.

¶ 34 To be in accordance with the Code authorizing euthanasia, all the ALJ needed to find was that Thumbelina had previously been declared dangerous and that she bit or injured a person or another animal (Chicago Municipal Code § 7-12-051(b)(2) (amended Mar. 14, 2007)). As discussed *supra*, Thumbelina had been declared dangerous in Wortham I, which was affirmed by this court, and the ALJ reasonably found that Thumbelina had participated in the attack on Sanders and Coogi.

¶ 35 We agree with the city that it is difficult to discern what other penalty would be appropriate, considering that Thumbelina had already been declared dangerous from Wortham I which had been upheld on appeal. Further, Wortham was noncompliant with sections 7-12-00(c)(1) through (c)(6) and (c)(8) of the Code at the time of the attack, in contravention of the director's order. Wortham admits she did not have any of her dogs leashed or muzzled on the date of the attack. She has demonstrated that she is unwilling to comply with the Code and legitimate administrative orders, and may allow Thumbelina to injure another person or animal. It should be noted that if Wortham had been in compliance with the director's order, specifically leashing and muzzling her dogs, at the time of their encounter with Sanders and Coogi, the attack is unlikely to have occurred. Protecting the public from dangerous animals is part of Chicago Animal Care and Control's responsibility and service. Euthanizing dangerous dogs to prevent them from attacking again is an appropriate sanction in accordance with that responsibility and service, especially when the dog owner has shown her refusal to comply with a less severe

sanction. Thus, the ALJ's findings provide a sufficient basis for ordering the penalty of euthanasia for Thumbelina.

¶ 36

CONCLUSION

¶ 37 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County and reinstate the November 13, 2012 order of the ALJ.

¶ 38 Reversed.