

2017 IL App (1st) 161148-U

No. 1-16-1148

May 11, 2017

Fourth 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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JOHN SHIN, )  
 ) Appeal from the  
 ) Circuit Court of  
 Plaintiff-Appellant, ) Cook County.  
 )  
 v. )  
 )  
 THE CITY OF CHICAGO, THE CITY OF CHICAGO ) No. 15 M1 450469  
 DEPARTMENT OF ADMINISTRATIVE HEARINGS, )  
 and THE CITY OF CHICAGO DEPARTMENT OF )  
 STREETS AND SANITATION, ) Honorable  
 ) Joseph M. Sconza,  
 Defendants-Appellees. ) Judge, presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Ellis and Justice Burke concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Finding by administrative law judge that plaintiff violated the city’s municipal code affirmed where the judge’s findings were not against the manifest weight of the evidence.
- ¶ 2 Plaintiff John Shin appeals *pro se* from an order of the circuit court of Cook County affirming an adverse final decision by defendant, the City of Chicago Department of

Administrative Hearings (DOAH). An administrative law judge (ALJ) for DOAH found plaintiff liable for violating section 7-28-710 of the Chicago Municipal Code (Code) (Chicago Municipal Code §7-28-710 (amended Nov. 16, 2011)) because he allowed garbage to accumulate on his property. On appeal, plaintiff challenges that finding, arguing that the accumulation was beyond his control because it was blown onto his property by the wind. Plaintiff also argues that defendant, the City of Chicago (City), failed to prove at the hearing that he did not take reasonable measures to clean his property in a timely manner. We affirm.

¶ 3 On September 9, 2015, the City of Chicago Department of Streets and Sanitation (Department) issued plaintiff an administrative notice of an ordinance violation. The notice alleged that at 3:18 p.m. on May 7, 2015, an inspector with the Department conducted an inspection of plaintiff's property at 4100 West Madison Street and observed that plaintiff was in violation of section 7-28-710 of the Code because he allowed garbage or trash to accumulate on his property, causing food or harborage for rats. In the notice, the inspector certified that photographs attached to the complaint filed with DOAH truly and accurately depicted plaintiff's property on the inspection date.

¶ 4 At the administrative hearing, the City presented the notice of ordinance violation issued to plaintiff and four photographs of plaintiff's property taken by the inspector on the date of the alleged violation. All four photographs, included in the record, depict a fence along plaintiff's property with a large amount of garbage strewn along the bottom of the fence for several feet. The City pointed out that the inspector certified that the photos truly and accurately depicted plaintiff's property on the inspection date, and that he observed the alleged Code violation cited. The City also submitted copies of the deed and property tax records for the subject property, both

indicating that plaintiff was the property owner. The ALJ then found that the City had established a *prima facie* case that a violation had occurred.

¶ 5 Plaintiff pled not liable, and then testified that he received a similar violation for having garbage on his property a month earlier and had paid that fine. Plaintiff testified that he pays a man \$120 a month to clean the garbage from his property every two days, or 15 times a month. Plaintiff further testified that the wind is very strong and blows garbage from the street onto his property.

¶ 6 The ALJ explained that all property owners are accountable for any garbage that accumulates on their property, regardless of how it got there or who put it there. The ALJ clarified that the City was not claiming that plaintiff put the garbage there, but instead, the issue was whether or not there was an accumulation of garbage on his property.

¶ 7 Plaintiff replied that he could not stand there 24 hours a day every day and pick up the garbage whenever the wind blows. Plaintiff reiterated that the wind blows the garbage from the street against the fence, and some of the garbage comes through the fence onto his property.

¶ 8 Plaintiff called Jesse Campbell as a witness who testified that the alley is always full of garbage because people throw garbage into the alley and the street, and the City did not take care of the street. Campbell also testified that he tried to clean up the garbage, but he could not stand there 24 hours a day.

¶ 9 Plaintiff stated that he had called the City many times asking that the streets be cleaned, but nothing happened. He also stated that he paid nearly \$3,000 in fines over the past two years, and that he cannot continue paying.

¶ 10 The ALJ stated that he believed plaintiff was a responsible citizen and noted that the photographs showed closed dumpsters on his property. However, the ALJ found that the photographs clearly showed that there was an accumulation of garbage on plaintiff's property on the date in question. The ALJ further found that some of the garbage could not have been windblown, and specifically, that a plastic jug did not blow over or through the fence. He also found that it was not possible that the large amount of garbage accumulated in one day. The ALJ acknowledged that plaintiff did not put the garbage there, and again explained that plaintiff was responsible for his property. The ALJ concluded that the City established by a preponderance of the evidence that garbage had accumulated on plaintiff's property on the date in question, and therefore, plaintiff was liable for violating the Code. The ALJ fined plaintiff \$400 plus \$40 in administrative costs.

¶ 11 Plaintiff filed a timely complaint for administrative review in the circuit court of Cook County. In his specification of errors, plaintiff asserted that strong wind continuously blows trash to the fence, and the trash enters into his yard through a gap between the bottom of the gate and the ground that is 8 inches high and 12 feet long. Plaintiff also stated that Earnest Young keeps the yard clean inside and out every day. The circuit court affirmed DOAH's decision.

¶ 12 On appeal, plaintiff challenges DOAH's finding, arguing that the accumulation of garbage was beyond his control because it was blown onto his property by the wind. Plaintiff also argues that the City failed to prove that he did not take reasonable measures to clean his property in a timely manner.

¶ 13 The City responds that the ALJ's finding was not against the manifest weight of the evidence where the photographs plainly show garbage accumulated on plaintiff's property. The

City points out that the ALJ rejected plaintiff's argument that all of the garbage was blown onto his property by the wind. The City further notes that accumulation on a single day constitutes a violation of the Code. It also asserts that there is no merit to plaintiff's argument that he has since taken steps to prevent garbage from accumulating because subsequent remedial measures are not relevant to the condition of the property on May 7, 2015, the date in question.

¶ 14 Initially, we observe that plaintiff has failed to comply with many of the requirements for appellate briefs delineated in Supreme Court Rule 341(h) (eff. Jan. 1, 2016) and Rule 342 (eff. Jan. 1, 2005). Plaintiff's "brief" consists of a two-page letter addressed to this court with copies of four photographs attached. Most notably, plaintiff has failed to present a cohesive legal argument, and his brief is completely devoid of citation to any legal authority. Based on plaintiff's noncompliance with these rules, his appeal is subject to dismissal. *Marzano v. Department of Employment Security*, 339 Ill. App. 3d 858, 861 (2003). However, because the issue is apparent and we have the benefit of a cogent appellee's brief (see *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001)), we choose to entertain the appeal (see *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)).

¶ 15 We also note that one of the photographs in plaintiff's brief is not included in the record on appeal. Our review is confined to the issues, arguments and evidence that were presented before the administrative agency. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278-79 (1998). We are therefore precluded from considering this particular photograph because it is not properly before this court and cannot be used to supplement the record. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024 (2003).

¶ 16 This court reviews the final decision of the administrative agency, here DOAH, rather than that of the circuit court. *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 13. Under the administrative law, an agency's factual findings and conclusions are held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2014). Consequently, an agency's factual findings will not be overturned 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.*

¶ 17 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.

¶ 18 Section 7-28-710 of the Code provides, in pertinent part, that it is unlawful for any person to "permit to accumulate any garbage or trash in any building, structure or premises so that the same shall afford food or harborage for rats." Chicago Municipal Code §7-28-710(a) (amended Nov. 16, 2011).

¶ 19 Here, we find that DOAH's determination that plaintiff was liable for violating section 7-28-710 of the Code was not against the manifest weight of the evidence. At the hearing, the City presented the notice of ordinance violation and four photographs of plaintiff's property taken by the inspector on the date in question. The notice included the inspector's certification that he

observed the alleged Code violation, *i.e.*, the accumulation of garbage on plaintiff's property. The inspector also certified that the photos truly and accurately depicted plaintiff's property on the inspection date. The photographs show a large amount of garbage strewn along the bottom of the fence for several feet on plaintiff's property. Additionally, the deed and property tax documents established plaintiff's ownership of the property. The notice and photographs presented at the hearing thereby provided sufficient evidentiary support for the ALJ's finding that plaintiff was liable for violating section 7-28-710 of the Code on May 7, 2015. See *Shachter*, 2016 IL App (1st) 150442, ¶ 24 (notice and photographs provided sufficient evidence of violation of the weed ordinance).

¶ 20 Plaintiff's contentions at the hearing were insufficient to undermine the City's evidence and the ALJ's finding that he was liable for the violation. Plaintiff repeatedly argued that the wind blew the garbage onto his property. However, as the ALJ explained, the issue was not how the garbage got onto the property or who put it there. The issue was whether or not there was, in fact, an accumulation of garbage on plaintiff's property. The photographs showed that there was. Plaintiff and his witness testified that the garbage was cleaned from the property every two days. That testimony, however, does not refute the evidence that the accumulation of garbage was there on May 7, 2015. Significantly, plaintiff did not challenge the accuracy of the photographs or provide any evidence showing that he was not liable. Accordingly, we find that the ALJ's finding that plaintiff was liable for the violation was not against the manifest weight of the evidence.

¶ 21 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.