2018 IL App (1st) 180908-U

SIXTH DIVISION
DECEMBER 31, 2018

No. 1-18-0908

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRED L. NANCE, JR.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 17 M6 11523
	)	
VILLAGE OF EAST HAZEL CREST, ILLINOIS,	)	Honorable
	)	Carrie E. Hamilton,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justice Harris concurred in the judgment.
Presiding Justice Delort dissented.

ORDER

¶ 1 *Held*: The hearing officer's finding of liability for a red-light camera violation was not against the manifest weight of the evidence.

¶ 2 The *pro se* plaintiff-appellant, Fred L. Nance, Jr., appeals the circuit court's order dismissing his complaint for administrative review of a hearing officer's finding of liability for a red-light camera violation pursuant to section 13-101 of the East Hazel Crest Municipal Code (East Hazel Crest Municipal Code § 13-101 (adopted July 22, 2009)) (the Village code) and section 11-306(c)(3) of the Illinois Vehicle Code (625 ILCS 5/11-306(c)(3) (West 2016)) (the

Illinois Code). For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 This is an action for administrative review of a determination by the Village of East Hazel Crest (the Village). The plaintiff received a Notice to Appear at Civil Hearing from the Village, dated September 15, 2017 (the notice). The notice was addressed to "Fred Nance" and was mailed to the plaintiff's address. It detailed a red-light camera violation, pursuant to the Village code, by a Honda Accord registered to the plaintiff. The notice ordered the plaintiff to either appear for an administrative hearing on October 5, 2017 or "plead liable" and pay the $100 fine prior to the hearing.

¶ 5 On October 5, 2017, the plaintiff appeared for the administrative hearing before a hearing officer. Prior to calling the plaintiff's case, the hearing officer stated to everyone in the room:

> "I'm the hearing officer appointed by the villages of East Hazel Crest and Thornton. And today we're going to be holding hearings concerning municipal code violations within those two villages. It's my duty to preside over these hearings, hear testimony, and to accept evidence, and then make a determination as to whether or not I believe the code has been violated. *** Any defense that you have needs to be presented today. After I hear from everyone I need to hear from, I'll make a determination as to whether or not I believe the code has been violated. If I believe it has, in most instances, I'm going to issue a fine. *** When your name is called, please step up to the podium. You're not going to be sworn in

individually, but you have to realize that everything you say is being recorded, just like I'm being recorded right now. Please just tell the truth, the whole truth, and nothing but the truth."

¶ 6 The hearing officer then called the plaintiff's case, and the following exchange took place:

"[HEARING OFFICER:] Have you had an opportunity to look at your video?

[PLAINTIFF:] I haven't looked at the video. Just the pictures.

[HEARING OFFICER:] Okay. Do you want to look at the video?

[PLAINTIFF:] Yes.

[HEARING OFFICER:] All right.

(Playing video.)

Okay. The light is red and you didn't come to a stop.

[PLAINTIFF:] Well, I think I did stop.

[HEARING OFFICER:] I don't think anybody else in this room thinks you stopped.

[PLAINTIFF:] Well, they're not part of my case.

[HEARING OFFICER:] I know they're not, but I am. I don't think you stopped. But any other defense?

[PLAINTIFF:] Ah, no. Oh (inaudible) I had – you already said that – I had the Illinois statute for being able to stop in Illinois because of both sides. So I took pictures.

***

[HEARING OFFICER:] Yeah, you can – you can turn right. *** That's – that's very legal here. It's just you have to come to a complete stop.

[PLAINTIFF:] I want – but I want to appeal this decision. But I do want to say – I want to put it on the record that is there – you said there are two other officers – two other people reviewed this?

[HEARING OFFICER:] That's correct.

[PLAINTIFF:] And you saw it? Is there an affidavit for that? Because I want the affidavit.

[HEARING OFFICER:] I don't – I don't have it in front of me, no. *** All I have is your citation.

[PLAINTIFF:] Well, I want – okay. Well I want to put it on the record. Whatever the fine is I want a [stayed] fine until the appeal process is over. And that is your decision. You don't have to do it. But I'd like to take care of it (inaudible) court.

***

[HEARING OFFICER:] The fine will stand. It's not going to be stayed.

[PLAINTIFF:] It's not going to be stayed? Okay. Great. I want to see the affidavit supporting the last maintenance on that traffic control signal. *** That traffic control signal has been out for some time. It's been disrupted.

> [HEARING OFFICER:] You have to do that through a Freedom of Information Request through the Village of East Hazel Crest.
>
> ***
>
> [HEARING OFFICER:] You'll get [a copy of my order] in the mail and then you can take it to the Circuit Court of Cook County in Markham. You know how to do it."

¶ 7 Subsequently, the plaintiff received a notice in the mail with the hearing officer's order finding him liable for the red-light camera violation and imposing a $100 fine pursuant to the Village code.

¶ 8 The plaintiff then filed a complaint for administrative review in the circuit court of Cook County, challenging the hearing officer's order. He later filed a document titled "motion for leave to file a supplement complaint," with an attached "supplement complaint."[1] He also filed a motion for leave to file additional exhibits.[2] On February 5, 2018, the trial court entered an order denying both motions.

¶ 9 On March 1, 2018, the plaintiff filed a specification of errors[3] with a motion in support and attached exhibits. On April 3, 2018, the trial court agreed with the finding of liability by the hearing officer and entered an order dismissing the plaintiff's complaint for administrative review. This appeal followed.

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[1] Although erroneously titled "supplement complaint," it appears that the motion, in substance, sought leave to file an *amended* complaint with an amended complaint attached.

[2] The motion sought to introduce one exhibit: a copy of a letter the plaintiff had mailed to several government officials alleging that the Village and the hearing officer had engaged in racial discrimination during his hearing.

[3] A specification of errors is a document listing the alleged errors that occurred before the administrative agency which would require the court to reverse the agency's decision. 735 ILCS 5/3-108(a) (West 2016).

¶ 10 ANALYSIS

¶ 11 As an initial matter, we note that we have jurisdiction to review this case, as the plaintiff filed a timely notice of appeal following the trial court's final judgment on April 3, 2018.[4] Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017). We reject the Village's argument that we lack jurisdiction to consider the trial court's February 5, 2018 order denying the plaintiff's motion for leave to file a "supplement complaint" and his motion for leave to file additional exhibits because the plaintiff only listed the April 3, 2018 order in his notice of appeal. Although a notice of appeal must list and specify the judgment from which the appeal is taken (*McGath v. Price*, 342 Ill. App. 3d 19, 32 (2003)), a notice of appeal is to be liberally construed and an appeal from a subsequent final judgment will draw into question all prior non-final rulings and final but non-appealable orders that produced the judgment. *In re Marriage of King*, 336 Ill. App. 3d 83, 86 (2002), *aff'd*, 208 Ill. 2d 332 (2003). See also *Taylor v. Peoples Gas Light & Coke Co.*, 275 Ill. App. 3d 655, 659 (1995) (a notice of appeal need not designate a particular order to confer jurisdiction, as long as the order which is specified directly relates back to the judgment or order from which review is sought; an unspecified judgment is reviewable if it was a step in the procedural progression leading to the judgment specified in the notice of appeal). As the trial court's February 5, 2018 order denying the plaintiff's motions was part of the procedural progression of the case that led to the April 3, 2018 final judgment, we have jurisdiction to review that order.

[4] The plaintiff filed a timely amended notice of appeal two days after filing his original notice of appeal, correcting the caption in his original notice of appeal.

¶ 12 The plaintiff's brief purports to identify 17 separate issues on appeal.[5] However, the majority of the issues listed are frivolous and insufficiently briefed (*e.g.*, "whether a trial court is mandated to follow Illinois Statutes in its ruling" and "whether municipalities in Cook County are mandated to follow current Illinois Statutes"). Moreover, most of the issues raised by plaintiff are forfeited, as they were not raised before the hearing officer (*e.g.*, "whether it is mandatory for an Administrative Law Judge to swear a person in, individually, for testimony before conducting an Administrative Hearing" and "whether an Illinois traffic Notice of Violation with the wrong registered owner's name on it is valid"[6]). Issues not raised before the administrative agency, even constitutional issues that the agency lacks the authority to decide, are forfeited by the party failing to raise the issues. *Board of Education, Joliet Township High School Dist. No. 204 v. Board of Education, Lincoln Way Community High School Dist. No. 210*, 231 Ill. 2d 184, 205 (2008).

¶ 13 A number of his other arguments are inappropriate because they concern rulings by the trial court, not the hearing officer. For example, the plaintiff argues that the trial court erred in citing to an unpublished Rule 23 order in its reasoning, in failing to consider his specification of errors, and in denying his motion for leave to file a "supplement complaint" and motion for leave

[5] The plaintiff's arguments on appeal are repetitive, and at times, are rambling and incoherent. We note that, notwithstanding *pro se* status, it is an appellant's burden to articulate a coherent argument for our review in accordance with Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017). *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). We nonetheless, in the interest of justice, attempt to discern and address plaintiff's arguments.

[6] The plaintiff argues he did not forfeit the issue of whether the notice used the wrong name because he attempted to raise that issue before the hearing officer, and the hearing officer refused to accept any documents demonstrating that his legal name is "Fred L. Nance, Jr.," not "Fred Nance" as was listed on the notice. He claims that the transcript from the hearing is incomplete and does not demonstrate those parts of the hearing because the court reporter "missed" them or did not "pick[] them up" as "court reporters don't get everything." However, there is no evidence to support this claim. Even though there are two parts of the transcript where the plaintiff's comments are "inaudible," those parts are brief and clearly relate to his other arguments.

to file additional exhibits. However, as will be discussed *infra*, on an administrative review matter, this court reviews the administrative agency's decision, not the trial court's decision or analysis. *Engle v. Department of Finance & Professional Regulation*, 2018 IL App (1st) 162602, ¶ 28; *Jankovich v. Illinois State Police*, 2017 IL App (1st) 160706, ¶ 35. Thus, we need not consider those issues.

¶ 14 For the reasons above, we have determined the scope of our review is limited to the following issue: whether the hearing officer's finding of liability was contrary to the manifest weight of the evidence presented. The plaintiff's arguments on this issue are that the Illinois code allows vehicles to turn right at red lights, which is what he did, and that is he entitled to an affidavit from the technician who reviewed the videotaped footage of his violation, which he did not receive.

¶ 15 On administrative review, this court reviews the administrative decision rather than the trial court's decision. *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 13. A case on administrative review involves 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 hearing officer'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 hearing officer's penalty imposed. *Id*. Thus, the hearing officer'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)).

¶ 16 The plaintiff has not presented any evidence to contradict the hearing officer's finding that he violated the Village code. The plaintiff's primary argument is that the Illinois code

allowed him to turn right at a red light. However, while the Illinois code does allow right turns at red lights, it requires vehicles to come to a *complete stop* at the red light before turning. Section 13-101 of the Village code provides: "It shall be a violation of this article for a vehicle to disregard a traffic control device or 'turn on red' in violation of Section 11-306 of the [Illinois] code." East Hazel Crest Municipal Code § 13-101 (adopted July 22, 2009). And section 11-306(c)(3) of the Illinois code provides that "vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right *** *after stopping* ***. *After stopping*, the driver shall yield the right of way to any vehicle in the intersection ***." [Emphasis added.] 625 ILCS 5/11-306(c)(3) (West 2016).

¶ 17 The hearing officer noted this complete stop requirement to the plaintiff, and pointed out to him, *after watching the videotape*, which plaintiff also viewed, that the plaintiff did not come to a complete stop before turning right at the red light. And the hearing officer is the finder of fact who reviews the evidence and resolves any possible conflicts. *Khan v. Department of Healthcare & Family Services*, 2016 IL App (1st) 143908, ¶ 30. On appeal, the plaintiff does not argue that he did, in fact, come to a complete stop at the red light before turning. Moreover, the plaintiff failed to include the videotape or any pictures of the violation in the appellate record, which weighs against him. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) (the appellant has the duty to provide a complete record, and any doubts which may arise from the incompleteness of the record will be resolved against the appellant).

¶ 18 The plaintiff further contends that we should reverse the hearing officer's finding because he was entitled to receive an affidavit from the technician who reviewed the videotaped footage

of his violation.[7] The plaintiff claims that the hearing officer acknowledged the existence of such an affidavit during his hearing, but that the hearing officer did not have it in front of him and told the plaintiff he would have to file a FOIA request to obtain it.

¶ 19 We are not persuaded by this argument. Although the hearing officer did state that he did not "have [the affidavit] in front of [him]," there is nothing in the record to support that there was, in fact, an affidavit related to plaintiff's violation. The plaintiff relies upon *Brown v. City of Chicago*, 2011 IL App (1st) 111046-U[8], in which this court affirmed that the City of Chicago's municipal code requires the technician who reviewed an automated-camera traffic violation to provide a certification of their review. *Id*. ¶ 11. However, the *Brown* case involved the *City of Chicago's municipal code*, not *the Village code*, which has no such requirement. There is also no such requirement in the Illinois code. Consequently, we reject this argument and hold that the hearing officer's finding of liability for a red-light camera violation was not against the manifest weight of the evidence.

¶ 20 We next consider whether the findings of fact provide a sufficient basis for the penalty imposed. The Village code orders the registered owner of a vehicle involved in a red-light camera violation be subjected to a $100 fine. East Hazel Crest Municipal Code § 13-112 (adopted July 22, 2009). That is the fine amount imposed against the plaintiff, and we note that he has not raised any arguments regarding the fine amount. Considering our analysis affirming the hearing officer's finding that the plaintiff committed a red-light camera violation, and considering that the plaintiff is the registered owner of the vehicle involved in the violation, there

[7] We note that the plaintiff alternates between arguing that he is entitled to an affidavit from the technician *who reviewed the videotaped footage in his case* and arguing that he is entitled to an affidavit from the technician *who performed maintenance on or inspected the cameras used in his violation.*

[8] We note that this case is an unpublished order, which is inappropriate to cite to and is not binding on this court. Ill. S. Ct. R. 23 (eff. April 1, 2018) (an unpublished order is not precedential and may not be cited by any party).

is a sufficient basis for the $100 fine imposed. Accordingly, the hearing officer's order of liability and a $100 fine was not unreasonable or arbitrary. We affirm the circuit court's order dismissing the plaintiff's complaint for administrative review.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.

¶ 24 JUSTICE DELORT, dissenting:

¶ 25 Drivers who are found liable following an automated traffic law violation hearing may seek judicial review of that adverse determination pursuant to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.* (West 2016). Section 3-108(b) of the Illinois Administrative Review Law requires the municipality which conducted the hearing to file an answer with the circuit court consisting "of the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it * * *." 735 ILCS 5/3-108(b) (West 2016). Section 11-208.3(b)(4) of the Illinois Vehicle Code, in turn, explains the "entire record" requirement in the particular context of municipal administrative adjudication hearings. 625 ILCS 5/11-208.3(b)(4) (West 2016). The law directs that the hearing "shall be recorded", which implies the maintenance of either an audio recording or written transcript of the adjudication hearing and its inclusion, along with copies of all evidence and exhibits, in the administrative record.

¶ 26 As the majority explains, the hearing officer for the Village of East Hazel Crest specifically referred to a video recording produced by the red-light camera and, upon viewing it in the open hearing in Nance's presence, stated: "Okay. The light is red and you didn't come to a stop." See *supra* ¶ 6. The video was the key evidence supporting the hearing officer's finding

that Nance committed a red-light violation. But the Village of East Hazel Crest did not include a copy of the video in the administrative record it filed pursuant to the two statutes cited above. Moreover, the record is not certified by anyone claiming to be the keeper of the village's records. The record consists of just a few pages: a cover sheet signed by the village's attorney (who is outside counsel and therefore cannot certify as the keeper of the village's records), a computer-produced notice of violation including three still photographs of such poor quality they are utterly useless, a notice to appear, and a notice of findings which is not signed by the hearing officer and does not even identify who the hearing officer was. The notice of findings, to make things worse, incorrectly tells the recipient that to "appeal" to the circuit court, he must "pay the appropriate state mandated filing fees," which ignores the fact that an indigent circuit court litigant may obtain a waiver of filing fees. The notice of filing does state: "A copy of the Red Light Camera Video and the Administrative Hearing of Plaintiff's case will be handed to the judge in open court to be made part of the file."

¶ 27 The parties have presented exhaustive materials to this court, but nowhere do they show that a properly certified video recording of the incident was ever filed with the circuit court as part of the statutorily required administrative record, so that the court could make a proper determination whether the hearing officer's finding was against the manifest weight of the evidence. This was error.

¶ 28 Allowing municipalities to establish their own administrative hearing departments and adjudicate ordinance violations through self-appointed hearing officers formed the basis of due process challenges in both state and federal courts to the municipal administrative adjudication system. See, *e.g.*, *Van Harken v. City of Chicago*, 103 F.3d 1346 (7th Cir. 1997) (*Van Harken I*); *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972 (1999) (*Van Harken II*). Both the state and

federal courts rejected these challenges and upheld the system, finding there were sufficient safeguards to protect the rights of defendants. *Van Harken I*, 103 F.3d 1351-55; *Van Harken II*, 305 Ill. App. 3d at 977-986. In particular, the *Van Harken II* court noted the statutory requirement that the municipality's hearing officer must be a licensed attorney for at least three years and "successfully complete a formal training program" including instruction on procedural rules, orientation to the codes applicable to various subject areas, observation of administrative hearings, and "participation in hypothetical cases, including rules on evidence and issuing final orders." *Van Harken II*, 305 Ill. App 3d at 980; 65 ILCS 5/1-2.2.40 (West 2016). The recording requirement is clearly an additional safeguard as it ensures that the circuit court can conduct a complete review of what transpired at the adjudication hearing. These two safeguards—the qualifications and training of the hearing officer and the recordation of the hearing—differentiate administrative review of municipal adjudications from, for instance, review of circuit court judgments by appellate courts. Both are crucial protections against the potential that the municipality, and its hearing officers, might act in their own self-interest, and both guarantee that the circuit court can undertake a plenary review of what occurred at the hearing.[9]

¶ 29 The majority faults Nance for not including a copy of the video in the record on appeal. See *supra* ¶ 17. I agree with the majority that it was Nance who had a duty to file a complete record on appeal. But the fact remains that it was the village's job to prepare a complete administrative record in the first place. Nance should not, and cannot, be faulted for filing a record on appeal which did not contain something the village should have itself placed in its own administrative record. Although our court system's electronic-filing protocols are primarily

[9] Some of the text in this dissent originally appeared in my dissent in *Tobin v. Village of Melrose Park*, 2018 IL App (1st) 17-1115-U, ¶ 38. Nance apparently came across that unpublished Rule 23 order and quoted liberally from it in his brief.

structured to accommodate filings of documents in PDF format, they also provide that non-PDF items such as a video DVD can be filed over-the-counter in their original format.

¶ 30 Also, while I agree with the majority that the failure to swear in witnesses was not a fatal error in the context of this case, I note that merely admonishing witnesses to tell the truth is a poor practice and should be discontinued. When the call is large, the defendants can be initially sworn in on the record as a group, and some process can be used to identify the unsworn latecomers and swear them in individually. Because of the hearing officer's sloppiness, no witness who lied at the hearing could be prosecuted for perjury—the witnesses were never sworn to tell the truth in the first instance. I would take this case as an opportunity to instruct municipalities that they must conduct hearings in strict compliance with the structure which our legislature established to ensure a fair process for motorists.

¶ 31 Since the Village of East Hazel Crest provided no properly certified record of the evidence which the hearing officer viewed and relied on, the circuit court should have vacated the hearing officer's determination order and remanded the matter to conduct a properly recorded hearing. I respectfully dissent.