

2011 Ill. App. (2d) 101333-U  
No. 2-10-1333  
Order filed September 8, 2011

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  
SECOND DISTRICT

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DENNIS KING,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No.    10-MR-240
	)	
VILLAGE OF ALGONQUIN,	)	Honorable
	)	Thomas A. Meyer,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

ORDER

*Held:* The trial court properly dismissed plaintiff's complaint in administrative review.

¶ 1 Plaintiff, Dennis King, appeals an order of the circuit court of McHenry County dismissing his complaint for administrative review of an order of defendant's (the Village of Algonquin) Administrative Hearing Division. Plaintiff was found liable for violating a traffic control signal in a proceeding originating from defendant's Automated Red Light Enforcement Program (see Algonquin Municipal Code §41.16 (amended 2010); 625 ILCS 5/11-208.6, 306 (West 2010)). We find none of plaintiff's arguments persuasive. Accordingly, we affirm.

¶ 2 Before turning to the merits of this appeal, we note that defendant has failed to file a brief before this court. In such circumstances, we conduct review by applying the principles set forth by our supreme court in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). Issues that can be easily decided without the aid of an appellee brief may be addressed on the merits. *Talandis Construction Corp.*, 63 Ill. 2d at 133. Conversely, when an issue cannot be easily resolved, the trial court may be reversed where the appellant demonstrates *prima facie* error. *Talandis Construction Corp.*, 63 Ill. 2d at 133. *Prima facie* is defined as “ ‘at first sight, on the first appearance, on the face of it, so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary.’ ” *Talandis Construction Corp.*, 63 Ill. 2d at 132, quoting *Harrington v. Hartman*, 142 Ind. App. 87, 88-89, 233 N.E.2d 189, 191 (1967). In this case, the arguments advanced by plaintiff are relatively straight forward, and we will review them on the merits as we usually do.

¶ 3 Plaintiff first argues that the trial judge committed “fraud on the court” by stating he “considered any motions, evidence and argument presented.” Specifically, plaintiff contends that the trial judge failed to consider his various medical conditions or his belief that the traffic signal was malfunctioning and it “was never [his intent] to run the red light.” The trial court did not err in failing to consider this evidence. Section 41.16 of the Algonquin Municipal Code (Algonquin Municipal Code § 41.16 (amended 2010)) was adopted pursuant to section 11-208.6 of the Illinois Vehicle Code (Code) (625 ILCS 5/11-208.6 (West 2010)). Section 11-208.6 incorporates section 11-306 (625 ILCS 5/11-306 (West 2010)), which defines the violation at issue here as follows: “[V]ehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection,

or if there is no such crosswalk, then before entering the intersection, and shall remain standing until an indication to proceed is shown.” 725 ILCS 5/11-306 (West 2010). Notably, neither intent nor any other mental state is an element of this offense. Compare 720 ILCS 5/12-3 (West 2010) (“A person commits battery if he or she *knowingly* without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” (Emphasis added.)). Thus, the evidence cited by plaintiff in support of this argument was not relevant to determining whether plaintiff was liable for the violation for which he was cited. Accordingly, the trial court did not err by declining to consider it.

¶ 4 Plaintiff next contends that the village attorney falsely interposed a claim that plaintiff did not file his complaint for administrative review within the applicable statutory period. Plaintiff begins by asserting that courts have “ ‘wide discretion’ to *pro se* litigants.” We are unaware of any such principle (plaintiff provides no citation to legal authority in support) and point out that *pro se* litigants are generally required to comply with the same rules that attorneys must follow. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) (“Further, we note that *pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys.”).

¶ 5 Moreover, our review of the record indicates that the village attorney had a firm basis for interposing that defense. The Administrative Review Law provides, in pertinent part, “Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.” 735 ILCS 5/3-103 (West 2010). In this case, the decision issued on June 30, 2010, and the summons is dated September 8, 2010, well after the

35-day period had passed. It is true that this requirement is not jurisdictional and that a plaintiff may be allowed to proceed if he or she establishes that good-faith attempts were made to comply with the statute. *Brazas v. Property Tax Appeal Board*, 309 Ill. App. 3d 520, 527 (1999). Further, we recognize that the record contains a copy of a letter dated July 30, 2010, that states “Please find enclosed Documents that are made a part of this letter; as follows: \*\*\* One (1) original and three (3) copies of ‘Summons In Administrative Review.’ ” However, the letter is not file stamped, and the referenced enclosures are not included. At most, then, this letter would raise a question of fact as to good faith, and the village attorney was free to argue otherwise. Accordingly, we see nothing fraudulent in the village attorney’s actions. Rather, a question of fact existed, and the trial court resolved it against plaintiff.

¶ 6 We also note that plaintiff asserts fraud in the village attorney’s actions concerning several photographs generated by the automated red light enforcement system. However, on reviewing the record, it is apparent to us that the parties simply disagreed as to their interpretations of this evidence. It is, of course, the role of the trier of fact to resolve conflicts in the evidence and draw reasonable inferences therefrom. *Morgan v. Department of Financial and Professional Regulation*, 388 Ill. App. 3d 633, 658 (2009). That the trier of fact did not agree with plaintiff does not establish that anyone committed fraud.

¶ 7 Plaintiff also complains of what he terms an *ex parte* communication. According to plaintiff, the village attorney sent a personal letter to the trial judge. However, plaintiff concedes that “Counsel sent [plaintiff] the attached copy of this *ex parte* communication.” It is true that *ex parte* communications are improper. *People v. Alexander*, 136 Ill. 2d 1047, 1052 (1985). Nevertheless, it is also true that an *ex parte* communication is a “communication between counsel and the court

when opposing counsel is not present.” Black’s Law Dictionary 240 (7th ed. 1999). As plaintiff was provided with a copy of the letter, the communication did not take place without plaintiff’s knowledge. Plaintiff also points out that the “personal letter *was not recorded on the Docket.*” (Emphasis in original.) This does not make the letter an *ex parte* communication.

¶ 8 We now turn to plaintiff’s final claim. He asserts that he has been subjected to two punishments for the same crime and that this constitutes a double jeopardy violation. See U.S. Const., amend V. In this case, a civil penalty of \$100 was imposed for failing to comply with a traffic signal, and \$40 in court costs were also assessed. Plaintiff represents that an agent of the village (through its agent) has been demanding payment of \$240, the extra \$100 presumably being imposed pursuant to section 11-208.6(j) of the Code (625 ILCS 5/11-208.6(j) (West 2010)), which provides for “an additional penalty of not more than \$100 for failure to pay the original penalty in a timely manner.” This is not a double jeopardy violation. Quite simply, the two purported punishments were imposed for different things, namely, plaintiff’s disregard of a traffic signal and plaintiff’s failure to pay his initial penalty in a timely manner. We are somewhat puzzled, however, by the fact that defendant appears to have imposed what is essentially a late fee even though this case is still pending and wonder whether this was an oversight by the defendant or perhaps its agent that oversees the collection of such penalties. Nevertheless, such an oversight does not rise to the level of a double jeopardy violation, though defendant, of course, retains the ability to rectify this apparent problem.

¶ 9 In light of the foregoing, the judgment of the circuit court of McHenry county is affirmed.

¶ 10 Affirmed.