2015 IL App (1st) 14-1630-U

THIRD DIVISION
June 24, 2015

No. 1-14-1630

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

CHARLOTTE A. SEIDEL and ROBERT A. SEIDEL, Plaintiffs-Appellants, v. JESSE WHITE, personally and in his official capacity as Secretary of State of Illinois; PETER FRICANO, Hearing Officer, Department of Administrative Hearings; ANN L. SCHNEIDER, personally and in her official capacity as Secretary, Illinois Department of Transportation; JOHN WEBBER, personally and in his official capacity as Interim Director, Division of Traffic Safety, Illinois Department of Transportation; and KRISTI LAFLEUR, personally and in her official capacity as Executive Director, Illinois State Tollway Highway Authority, the Interested Party, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. 12 CH 35566 The Honorable Diane J. Larsen, Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court
Presiding Justice Pucinski and Justice Hyman concurred in the judgment

ORDER

¶ 1 *Held*: The administrative agencies at issue had the authority to proceed against the plaintiffs and the administrative decision was not against the manifest weight of the evidence.

¶ 2 The circuit court affirmed the administrative decision, made pursuant to the Illinois Safety and Family Financial Responsibility Law of the Illinois Vehicle Code (625 ILCS 5/7-100

et seq. (West 2012)) (Safety Law), holding that plaintiffs' licensing privileges were suspended, and security money was due, after they damaged an Illinois interstate guardrail while driving. Plaintiffs now argue the agencies involved in this case lacked statutory authority to proceed and the administrative decision was against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff Charlotte Seidel, 19, was driving her father's car 70 mph in a 55 mph-zone on the Illinois interstate when another vehicle cut in front and braked. Charlotte slowed but due to nerves then drove across three traffic lanes into a guardrail, damaging it. Plaintiff Robert Seidel, Charlotte's father and the vehicle's owner, did not have car insurance (collectively, the Seidels). The Illinois Department of Transportation (Department) evaluated the guardrail damage at $2,475, stating a security in that amount was required, and informed the Seidels that it had certified them as "an uninsured motorist" to the Secretary of State (Secretary) for possible license/registration suspension. Where, as here, the Department concludes a security is required due to an uninsured vehicle accident resulting in property damage of more than $500, it forwards the relevant information to the Secretary who then has the task of determining whether "there is reasonable possibility of a civil judgment" against the driver/owner for the damage. 625 ILCS 5/7-201.2, 7-205; 625 ILCS 5/11-406(a) (West 2012).[1]

¶ 5 In this case, the Secretary made such a preliminary finding, thus determining that if the Illinois State Toll Highway Authority (Tollway), as guardrail owner, were to file a lawsuit against the Seidels for the damage, it would likely garner a judgment of $500 plus. The Secretary then notified the Seidels that their driving privileges would be suspended unless they paid the fee or alternatively requested a hearing. See 625 ILCS 5/7-205(a) (West 2012). The

[1] Security and suspension will not apply if the driver/owner has adequate liability insurance. 625 ILCS 5/7-202 (West 2012).

Seidels chose the latter, and a hearing before a hearing officer took place revealing the above-stated facts. See 625 ILCS 5/7-211 (West 2012). Robert, an attorney, represented his daughter and himself, *pro se*. The hearing officer determined Charlotte was at fault for driving too fast, failing to properly control her vehicle, and thereby damaging the guardrail. Her father was also liable based on agency principles. The hearing officer determined a judgment exceeding $500 against the Seidels was reasonably possible and, as a result, recommended suspending Charlotte's license and driving privileges, as well as Robert's vehicle registration and plates. See 625 ILCS 5/7-205 (West 2012). The Secretary adopted these findings of fact and conclusions of law and ordered suspension of the Seidels' licensing privileges, effective August 31, 2012. The Seidels filed a complaint for administrative review in the circuit court, and the court affirmed the administrative decision.

¶ 6 ANALYSIS

¶ 7 The Seidels timely appealed and now challenge the judgments below. When a party appeals the decision of an administrative agency, we review the decision of the agency and not that of the circuit court. *Boom Town Saloon, Inc. v. City of Chicago*, 384 Ill. App. 3d 27, 32 (2008). Factual rulings will be reversed only if against the manifest weight of the evidence. *Heabler v. Illinois Dept. of Financial and Professional Regulation*, 2013 IL App (1st) 111968, ¶ 17. Questions of law, however, are reviewed *de novo*, while mixed questions of law and fact are reviewed under the clearly erroneous standard. *Kouzoukas v. Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 463 (2009).

¶ 8 In this case, on August 31, 2012, the Secretary suspended the Seidels' license/registration, but the Seidels nonetheless claim they paid the required security deposit of $2,475 (see 625 ILCS 5/7-211 (West 2012)). The Secretary does not now contest this payment posted and that the

Secretary thus retains the security deposit in treasury. That payment apparently resulted in lifting of the license suspension. *Id.* Under the Safety Law, security money is to be used to satisfy any legal judgment against the driver/owner arising out of the accident. 625 ILCS 5/7-214 (West 2012). We question whether any such lawsuit was filed and whether the Seidels are in fact entitled to the return of their security money due to the passage of time, rendering this issue moot. See *Id.*; *Goodman v. Ward*, 241 Ill. 2d 398, 404 (2011) (case is moot where subsequent events make granting effectual relief impossible).

¶ 9 Nonetheless, to the extent this issue is not moot and the Secretary still retains the security, we address only those claims to the best we can discern them that are not forfeited or those claims challenging the administrative authority of the agencies involved.[2] See *Cinkus v. Village of Stickney Municipal Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212-13 (2008) (when a party fails to raise an argument, issue, or defense before an administrative agency, it is procedurally defaulted and the party cannot raise it for the first time on appeal); 92 Ill. Adm. Code 1001.250 (2002) (if petitioner cannot present preponderance of evidence at the hearing exempting petitioner from purview of statute, officer must enter order of suspension); *but see Geneva Community Unit School Dist. No. 304 v. Property Tax Appeal Board*, 296 Ill. App. 3d 630, 633 (1998) (where the authority of an administrative body is in question, the determination of the scope of its power and authority is a judicial function, not a question to be finally determined by the administrative agency itself).

¶ 10 The Seidels first challenge the applicability of the Safety Law to their case. The Safety Law authorizes collection of security money when an uninsured vehicle accident results in property damage to "any one person" of more than $500 (625 ILCS 5/7-201 (West 2012)). The

[2] Not all of the Seidels contentions are entirely clear. For example, the Seidels take five pages in their appellants' brief arguing the circuit court erred in dismissing the Department and Tollway as parties from this lawsuit, but then claim any dismissal was harmless error because the Secretary adequately represented those parties' positions.

Seidels contend the Tollway is not a "person" within the meaning of the Safety Law and the Tollway is barred from suing for the guardrail damage, thereby gutting the Secretary's finding that the Seidels could be held liable in a court of law for the damages. Under the Safety Law, a "person" is "Every natural person, firm, copartnership, association or corporation." 625 ILCS 5/1-159, 7-100 (West 2012).

¶ 11 The Secretary responds that the Tollway is a "corporation" and therefore a "person" within the meaning of the Safety Law. For the reasons to follow, we agree. The Tollway is an administrative state agency with broad authority over the construction, operation, regulation, and maintenance of the toll highways for the public welfare and safety. 605 ILCS 10/1 (West 2012); see also 5 ILCS 100/1-20 (West 2012) (defining an "agency"). Under the Toll Highway Act, the Tollway has "all powers necessary or appropriate" to carry out its aforementioned legislative purpose. 605 ILCS 10/1 (West 2012). For example, the Tollway can contract and be contracted with, acquire, hold and convey personal and real property or any interest therein, use its corporate seal, and hire or discharge employees, all the while maintaining regulatory authority over the tollway system. 605 ILCS 10/3, 8 (West 2012). Under the direction of the Attorney General, it also appoints attorneys. 605 ILCS 10/8 (West 2012). The Tollway is thus statutorily organized and empowered to act as a body corporate in order to fulfill its duties and responsibilities. *Lynch v. Illinois State Toll Highway Authority*, 252 Ill. App. 3d 632, 634 (1993). Given its administrative and financial autonomy, the Tollway maintains a corporate existence and is considered a governmental corporation. *Id*. at 634-35. The Tollway therefore fits within the definition of "person" under the Safety Law. This conclusion is strengthened by the Statute on Statutes, which contains statutory construction rules to be applied unless contrary to the manifest intent of the legislature or repugnant to the statute. 5 ILCS 70/1 (West 2012).

Under the Statute on Statutes, "person" may "extend and be applied to bodies politic and corporate as well as individuals." 5 ILCS 70/1.05 (West 2012). We believe finding the Tollway is a "person" under the Safety Law is consistent with the legislature's intent to ensure compensation to all individuals and entities suffering loss or damage from at-fault drivers. See *Guerrero v. Ryan*, 272 Ill. App. 3d 945, 951-52 (1995).

¶ 12 The Seidels' reliance on *Board of Education of City of Chicago v. A,C, and S, Inc.*, 131 Ill. 2d 428 (1989), is therefore misplaced. In *A,C, and S*, the Supreme Court noted the definition of "person" in the Consumer Fraud Act included "corporation (domestic and foreign)." The court noted, however, that given the parenthetical language of "domestic and foreign," the word "corporation" could not mean governmental body or a body politic. *Id*. at 468-69. Thus, the school district was not a "person" under the Consumer Fraud Act. *Id*. at 468-69. There is no such limiting language in this case, and according to our research, *A,C, and S* appears to be narrowly tailored for the Consumer Fraud Act. The Seidels' contention fails.

¶ 13 Given the Tollway's corporate existence, it likewise had the capacity to sue for damages to its property. Although the Toll Highway Act does not explicitly say the Tollway can file suit, it is implied in the legislature's broad grant of authority to the Tollway. See also *City of West Chicago v. County of DuPage*, 67 Ill. App. 3d 924, 926 (1979) (municipality had implied authority to sue and be sued to effectuate purposes for which it was created); see *e.g.*, *Illinois State Toll Highway Authority v. DiBenedetto*, 275 Ill. App. 3d 400 (1995). Moreover, the Attorney General has the authority to pursue lawsuits on the Tollway's behalf. See 15 ILCS 205/4 (West 2012); see also 605 ILCS 10/8 (West 2012).

¶ 14 The Seidels next contend the statute applies only to multi-vehicle car accidents, citing section 7-201 of the Safety Act (625 ILCS 5/7-201 (West 2012). Here, consistent with the

statute, there was property damage to "any one person" (i.e. the Tollway). We conclude Seidels' argument is contrary to the plain language of the statute, and we decline to read into the statute any limitations or exceptions. See *People ex rel. Dept. of Professional Regulation v. Manos*, 202 Ill. 2d 563, 568 (2002).

¶ 15 For the reasons stated, the Safety Law was properly applied and administered in this case, and the Tollway had the authority to sue for damage to its guardrail property. To the extent the Seidels challenge the level of the property damage, security amount, or the Secretary's preliminary finding, they waived these issues by failing to raise them before the administrative agency. See *Cinkus*, 228 Ill. 2d at 212-13. We likewise conclude the Seidels waived their due process argument by failing to raise it below. See *Id.*; *Board of Education, Joliet Township High School District No. 204 v. Board of Education, Lincoln Way Community High School District No. 210*, 231 Ill. 2d 184, 205 (2008) (usually any issues not raised before the administrative agency, even constitutional ones, are forfeited).

¶ 16 The Seidels also raise several jurisdictional matters. Because we have an independent duty to consider jurisdiction, we address the issues. See *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 11. The Seidels argue the Department did not certify the Seidels and the security amount to the Secretary within 30 days after "compiling sufficient information" regarding the accident, as required under the Safety Law. See 625 ILCS 5/7-201.2 (West 2012). The accident was on May 12, 2011, and the certification to the Secretary was dated March 19, 2012. The Seidels argue due to the nine-month stretch in between the two dates, the Secretary lost jurisdiction over the case. Nothing in the record establishes that the Department "compiled" the necessary information on the actual day of the accident, as the Seidels want us to assume. Because the appellant has the burden to present a sufficiently complete record, we must construe

any resultant ambiguity against the Seidels. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *Village of Mundelein v. Bogachev*, 2011 IL App (2d) 100346, ¶ 30.

¶ 17 Moreover, even if the Department did not timely file certification, that is of no moment because the statutory language requiring such action is directory and therefore any lack of compliance does not affect jurisdiction. See *People v. Robinson*, 217 Ill. 2d 43, 51-52, 56 (2005) (commands to government officials on procedure are usually directory, meaning failure to comply with such procedure will not invalidate the governmental action); see also *People v. Delvillar*, 235 Ill. 2d 507, 517 (2009) (same); *cf. Walsh v. Will County Adult Detention Facility*, 2015 IL App (3d) 140246, ¶ (statutory language mandatory, rather than directory, where right under statute would be injured with directory reading).

¶ 18 The Seidels argue alternatively that the Secretary scheduled the hearing some days after that prescribed in the statute. See 625 ILCS 5/7-205(a) (West 2012). Again, this matter involves directory language that does not affect jurisdiction.

¶ 19 The Seidels finally contend the Secretary's decision was against the manifest weight of the evidence, which occurs only if the opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). To avoid suspension, the Seidels were required to rebut the Secretary's preliminary finding, that it was reasonably possible they would be liable in a court of law for damaging the guardrail, with proof by a preponderance of evidence. See 92 Ill. Adm. Code 1001.250 (2002). They failed.

¶ 20 While Charlotte stated that she crossed three lanes of traffic to avoid a collision with the car in front of her, she also testified she was unsure whether she had lost control of her vehicle, which she had previously been driving 15 mph over the speed limit. Charlotte further testified she ran into the guardrail because she was nervous and wanted to get off the interstate. The

police report submitted into evidence stated Charlotte hit the guardrail because she lost control of her vehicle due to bad brakes, although she claimed not to remember the state of the brakes at the hearing. See *Colonial Inn Motor Lodge, Inc. v. Gay*, 288 Ill. App. 3d 32, 42-43 (1997) (motorist obliged to use due care to avoid driving his car into building); 92 Ill. Adm. Code 1001.240(b) (2002) (negligence law applies in the hearings). The police report and the Department's findings, also entered in evidence,[3] established there was damage to the guardrail. Charlotte's testimony that she did not see any damage does not necessarily rebut that evidence. Thus, the Seidels failed to prove it was more likely than not that a court of law would not find Charlotte liable for the guardrail damage. See *In re N.B.*, 191 Ill. 2d 338, 343 (2000) (preponderance of the evidence is proof that makes the condition more probable than not).

¶ 21 CONCLUSION

¶ 22 The decision of the circuit court affirming the administrative decision is affirmed.

¶ 23 Affirmed.

[3] The Secretary submitted five exhibits into evidence, including the property damage report by the Department and the police report. The Seidels did not object to their admission. Moreover, such a hearing need not be conducted under the strict rules of evidence, and accident reports are admissible. See 92 Ill. Adm. Code 1001.230 (2002).