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2015 IL App (3d) 140333-U

Order filed February 25, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

DENNIS D. BALLINGER,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Peoria County, Illinois.
	)	
v.	)	Appeal No. 3-14-0333
	)	Circuit No. 13-MR-363
CITY OF PEORIA,	)	
	)	Honorable
Defendant-Appellee.	)	Kevin R. Galley
	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* A circuit court's order affirming on administrative review a hearing officer's decision in a code enforcement proceeding was upheld because the hearing officer's finding that the appellant violated the city building code was not against the manifest weight of the evidence.

¶ 2 The circuit court entered an order affirming the decision of the administrative hearing officer for the defendant, the City of Peoria, which found housing code violations at a property

owned or controlled by the plaintiff, Dennis D. Ballinger, and ordered Ballinger to make repairs. Ballinger appealed, and we affirm.

¶ 3

#### FACTS

¶ 4

By letter dated January 28, 2013, Ballinger was informed by the code enforcement inspector of the City of Peoria that an inspection had been made at property owned or controlled by him, 908 West Third Street in Peoria, on January 23, 2013, and violations of the Housing Code of the City of Peoria (Housing Code) had been found. The letter informed the plaintiff that a hearing was scheduled for March 19, 2013, regarding the violations. Attached to the letter was a code violation report, specifically listing violations of section 304.6 of the Housing Code, peeling fascia and soffits, and section 304.7 of the Housing Code, damaged fascia throughout and damaged soffits throughout. The letter, the code violation report, and a summons were mailed to the plaintiff on February 6, 2013.

¶ 5

A hearing was held on March 19, 2013. The order indicates that Ballinger appeared, but there was no transcript of the hearing, or bystander's report, provided on appeal. According to the order, the hearing officer found that the alleged code violations did exist and ordered the plaintiff to repair the fascia and soffits and prepare the property for paint by April 19, 2013.

¶ 6

The order from the April 23, 2013, hearing indicates that Ballinger did not appear. The hearing officer ordered an inspector's review of the property. Ballinger's attorney appeared at the hearing on May 14, 2013, where the hearing officer again ordered that the repairs be completed, this time by June 14, 2013. At that hearing, which was transcribed, Ballinger's attorney contended that Ballinger had sold the property contract for deed. The hearing officer asked if the contract had been recorded, but counsel did not know. Ballinger appeared by counsel at the June 18, 2013, hearing, which was also transcribed. According to the City, the

ordered repairs had not been made to the property. Ballinger offered no evidence to show that the repairs had been made. The hearing officer ordered Ballinger to pay \$1,500.00 in fines.

¶ 7 Thereafter, Ballinger filed a complaint for administrative review pursuant to section 3-108(a) of the Code of Civil Procedure. 735 ILCS 5/3-108(a) (West 2012). Ballinger contended that the repair order was entered without any evidence that he owned the property or that any violations existed on the property. Ballinger asked that the circuit court reverse the findings of the hearing officer and remand with directions to dismiss the citation.

¶ 8 The circuit court held a hearing on the complaint for administrative review. The circuit court reviewed with the parties the various hearing dates and the evidence presented regarding the code violations. The circuit court acknowledged Ballinger's claim that he had sold the property, but noted that the sales contract was not recorded so Ballinger still had an interest in the property. The circuit court found that sufficient due process was afforded to Ballinger and affirmed the decision of the hearing officer. Ballinger appealed.

¶ 9 ANALYSIS

¶ 10 Ballinger argues that the circuit court erred in affirming the decision of the hearing officer. He contends that the letter from the housing code inspector, along with the document attached to the letter describing the violations, was not sufficient to apprise him of the charges brought against him and was not sufficient evidence of any violation. Since there was no transcript of the first two hearings before the hearing officer, Ballinger argues that the circuit court could not make a determination of the sufficiency of the evidence. The City argues that its *prima facie* case was based upon the code violation report, which was sufficient evidence to support the hearing officer's decision.

¶ 11 Upon administrative review, this court reviews the administrative agency's decision and not the circuit court's determination. See *XL Disposal Corp., Inc. v. Zehnder*, 304 Ill. App. 3d 202, 207 (1999). Upon review, an agency's findings of fact are held to be *prima facie* true and correct, and will be affirmed unless the court concludes that they are against the manifest weight of the evidence. *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 427 (1992). A hearing officer's decision is not against the manifest weight of the evidence if there is any evidence in the record that fairly supports the decision. *Leong v. Village of Schaumburg*, 194 Ill. App. 3d 60, 65 (1990).

¶ 12 Charges in administrative hearings do not need to be as precise as court pleadings; the charges need only be specific enough to enable the party to intelligently prepare a defense. *Brija v. Board of Fire & Police Commissioners of Village of Dolton*, 202 Ill. App. 3d 363, 365 (1990). In this case, the letter informed Ballinger that the code enforcement inspector found code violations at 908 West Third Street. The letter referenced the attached list of violations, which referenced the same address and the same case number. The code violation report listed the violations, specifically, peeling fascia and soffits and damaged fascia and soffits throughout, and referenced specific provisions of the Housing Code. It is clear that the letter and the attached code violation report were sufficient to apprise Ballinger of the charges brought against him.

¶ 13 The code violation report was also sufficient evidence of the Housing Code violations. See 65 ILCS 5/11-31.1-7 (West 2012) (the hearing officer shall accept any evidence relevant to the code violation, and the strict rules of evidence are not applicable). There is no indication in the record that Ballinger offered any evidence at any of the hearings, or requested that the hearing officer issue a subpoena to the code inspector. See City of Peoria Code § 32.4 (adopted Dec. 11, 2012) (the hearing officer has the power to issue subpoenas directing witnesses to

appear upon the request of the parties). It is Ballinger's burden, as the appellant, to present a sufficiently complete record to support his claims of error, and any doubts arising from an incomplete record are resolved against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). While the hearing officer had a duty to preserve and authenticate any transcript or record of the hearing, see 65 ILCs 5/11-1(d)(3) (West 2012), Ballinger has not cited to any authority that imposes a duty on the hearing officer to create the audio recording.

¶ 14 Since the hearing officer's finding that Ballinger violated the building code was not against the manifest weight of the evidence, we affirm.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Peoria County is affirmed.

¶ 17 Affirmed.