

No. 1-15-0275

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**

RYAN AYDELOTT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	
)	No. 14 M1 450150
CITY OF CHICAGO DEPARTMENT OF)	
ADMINISTRATIVE HEARINGS and CITY OF)	
CHICAGO ANIMAL CARE AND CONTROL)	
COMMISSION,)	Honorable
)	George F. Scully,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: The determination of the ALJ is affirmed where the evidence supports the finding that the dog bit without provocation, and the decision was not arbitrary or capricious.

¶ 1 Plaintiff, Ryan Aydelott, appeals the order of the circuit court on administrative review affirming the administrative law judge's (ALJ) determination that plaintiff's dog is a dangerous animal. On appeal, plaintiff contends (1) the ALJ used an incorrect definition of "provocation" (2) the ALJ's finding was against the manifest weight of the evidence; and (3) he was prejudiced when defendant City of Chicago Animal Care and Control Commission (CACC) failed to follow its procedures. For the following reasons, we affirm.

¶ 2 JURISDICTION

¶ 3 The trial court entered an order affirming the ALJ's determination on January 27, 2015. Plaintiff filed his notice of appeal that same day. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. May 30, 2008) governing appeals from final judgments entered below.

¶ 4 BACKGROUND

¶ 5 On November 27, 2013, Maria Hodapp¹ was bitten by plaintiff's dog as she was jogging on Washington Boulevard in Chicago. The CACC received information about the incident and the executive director ordered an investigation. The investigation was assigned to Inspector Diane Brady who compiled a report on the incident. The report stated that Ms. Hodapp and her husband were jogging on the sidewalk near the corner of Homan and Washington when they approached plaintiff and his dog, Nordstrom, coming from the opposite direction. Plaintiff moved off the sidewalk with Nordstrom, who was leashed, to let the joggers pass. Ms. Hodapp stated that soon after she passed plaintiff, Nordstrom "grabbed her leg from behind" and held on for "about 10 seconds." She sustained "three nickel to dime sized injuries

¹ The briefs and transcript contain various spellings of the victim's last name. The inspector's report and the victim's affidavit to the CACC refer to her as "Maria Hodapp." Therefore, this order refers to the victim as Ms. Hodapp.

and a laceration requiring six stitches" to the back of her left leg. In the report, plaintiff stated that he was walking Nordstrom near Washington and Homan when he saw the joggers "running toward him and his leashed dog." He moved onto the grass and had Nordstrom heel next to him on the grass. Plaintiff stated that "the joggers got too close" and believed Nordstrom "felt threatened or startled" when he grabbed Ms. Hodapp's leg. He also stated that Nordstrom was 9 or 10 years old and "is very obedient and has never done anything like this before." In the report, Inspector Brady concluded that based on verbal testimony by Ms. Hodapp and plaintiff, and written statements from Ms. Hodapp and her husband, Nordstrom was "dangerous" at the time of the investigation. The executive director agreed and ordered plaintiff to comply with seven requirements set forth in sections 7-12-050(c)(1) – (6), and (c)(8) of the Chicago Municipal Code (Code) (amended Nov. 19, 2008). The executive director did not order that Nordstrom be humanely destroyed.

¶ 6 Plaintiff appealed and requested an administrative hearing. At the hearing, Ms. Hodapp testified that on November 27, 2013, she and her husband Brian were jogging on a sidewalk when they approached plaintiff and Nordstrom coming toward them. Plaintiff said "Hello" as they passed, and they said "Good morning." Ms. Hodapp stated that they were about a foot away from plaintiff and Nordstrom when they passed by, and that no part of her body touched the dog as she passed him. Right after they passed the dog, Ms. Hodapp was pulled to the ground by Nordstrom, who had bitten her in the back of her left leg above her knee. She fell to the ground and the dog had her leg in his mouth for about 10 seconds. No one had a cell phone on them at the time, so at Ms. Hodapp's request plaintiff left with Nordstrom to get a cell phone and then returned and called 911.

¶ 7 Brian Hodapp testified that he was jogging with his wife on November 27, 2013, when they passed plaintiff and his dog. He and his wife were jogging on the sidewalk; she was on his left, and "the dog was to her left and then the owner and then the grass." He and his wife were jogging at a speed "slightly" faster than walking. Brian stated that as they passed, plaintiff and Nordstrom were "[a]t least one foot" away. He "heard a scream and turned around and saw the dog biting [his] wife." She was on the ground and her leg was in the air "due to the dog attached and biting." Plaintiff "was bending down on one knee with his hands on the dog" as if he were trying to get Nordstrom to release. Brian stated that the dog held on to his wife for "10 to 15 seconds." He asked plaintiff if he could get a cell phone and after plaintiff left to do so, Brian ran to a gas station across the street to call 911. Two men approached him along the way and Brian used their phone to call 911. A few minutes later an ambulance arrived and transported his wife to the hospital.

¶ 8 Plaintiff testified that on November 27, 2013, he took Nordstrom for a walk. He saw the joggers approaching and they made eye contact. Before they passed each other, plaintiff moved off the sidewalk. Plaintiff stated that the joggers "were moving pretty quickly" and he heeled Nordstrom to his right side on the grass, so that plaintiff was between Nordstrom and the joggers. Plaintiff noticed that "the joggers kind of spread out a little bit more" and he started to move further to the other side of the sidewalk. He testified that the joggers "ended up, of course, a bit too close for my comfort and the dog's comfort, to the point where shoulder – caught on the shoulders, like jackets touched," and Nordstrom "came around and grabbed Ms. [Hodapp]." When asked whether Ms. Hodapp actually made contact with him, plaintiff responded, "I remember specifically feeling the strings brushed by when it happened." Plaintiff

stated that he was fearful that Ms. Hodapp and her husband would run into him. He stated that he told the inspector what happened and about his fears.

¶ 9 Plaintiff also called Curtis Scott, a professional dog trainer, to testify. Scott compiled a report based on a 90-minute behavior assessment he conducted on Nordstrom along with a one-hour "obedience intensive training." Scott concluded that Nordstrom "did not show any aggressive tendencies" and had a "low mark" on the anxiety assessment. He believed Nordstrom was "very balanced" and with additional training could achieve higher scores. He concluded that when Nordstrom saw the joggers approaching, he "had fear" and as a dog would have reacted in one of three ways: "flight, freeze, or fight" except that the flight option was taken away since he was on a leash. Scott did not think Nordstrom was "an aggressive dog."

¶ 10 Inspector Brady testified that she found Nordstrom to be a dangerous animal because he "bit and injured a human being without provocation." She explained that "the victim *** was not assaulting or abusing or tormenting [Nordstrom] in any way." In closing argument, plaintiff's counsel argued that Nordstrom acted with provocation in that a tort was being committed on plaintiff and on Nordstrom. Counsel argued that when they saw plaintiff and Nordstrom approaching, Ms. Hodapp and her husband did not run in "a single file" or give plaintiff "extra room or even being polite and courteous in making sure there was enough room for everyone, they didn't do that." As a result, plaintiff "was afraid" and moved Nordstrom to the side but the joggers took up that space too. Counsel contended that plaintiff was "assaulted by the joggers and his dog was threatened."

¶ 11 The ALJ determined that it was "unreasonable" for a dog to "behave in this manner" and affirmed the executive director's decision. The ALJ found that although plaintiff claimed Nordstrom was provoked, "[t]here was no assault which requires some sort of intent. There

was no abusive behavior against the dog." Plaintiff brought an action for administrative review and the trial court affirmed the ALJ's decision. Plaintiff filed this timely appeal.²

¶ 12

ANALYSIS

¶ 13 In an appeal from the trial court's determination on administrative review, this court reviews the decision of the agency and not that of the trial court. *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 13. Plaintiff contends that the ALJ relied on an incorrect definition of "provocation" in interpreting the Code, and that the evidence presented did not support the finding that Nordstrom is a dangerous animal. The applicable standard of review depends upon whether the issue is a question of fact or a question of law. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2007). "Rulings on questions of fact will be reversed only if against the manifest weight of the evidence." *Id.* However, we review questions of law *de novo*. *Branson v Department of Revenue*, 168 Ill. 2d 247, 254 (1995).

¶ 14 Plaintiff first contends that in finding that Nordstrom is a dangerous animal under the Code, the ALJ applied an erroneous definition of "provocation." The interpretation of a municipal ordinance follows the same rules that govern statutory construction, which is a question of law reviewed *de novo*. *Ford Motor Company v. Chicago Department of Revenue*, 2014 IL App (1st) 130597, ¶ 5. In construing a statute, courts must ascertain and give effect to legislative intent. *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 556 (1999). The statutory language, given its clear and plain meaning, is the best indicator of the legislature's intent. *Ford Motor Company*, 2014 IL App (1st) 130597, ¶ 5.

² Although the city issued multiple citations to plaintiff, the only issue on appeal is whether the ALJ erred in determining that Nordstrom is a dangerous animal.

¶ 15 Section 7-12-020 of the Code defines a dangerous animal as "any animal which bites, inflicts injury on, kills or otherwise attacks a human being or domestic animal without provocation on any public or private property." Chicago Municipal Code § 7-12-020 (amended Nov. 19, 2008). The section further provides that:

" 'provocation means that the threat, injury or damage caused by the animal was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the animal, or was tormenting, abusing, or assaulting the animal, or was committing or attempting to commit a crime." Chicago Municipal Code § 7-12-020 (amended Nov. 19, 2008).

¶ 16 The Code clearly sets forth three circumstances in which an animal is provoked. The parties agree that Ms. Hodapp and her husband did not torment, abuse or assault Nordstrom. However, plaintiff contends that Nordstrom was provoked under the first circumstance because Ms. Hodapp "never refuted" that she committed a tort by making "direct physical contact" with plaintiff "to the point where shoulder – caught on the shoulders," and the Code defines provocation as any "other tort" occurring "where the animal owner is standing (or otherwise located)."

¶ 17 We disagree. Under section 7-12-020, provocation occurs when the victim at the time of the attack "was committing a willful trespass or other tort upon the premises occupied by the owner of the animal ***." Elsewhere in the Code, "premises" is variously defined as "a lot or a part of a lot, a building or a part of a building" (Chicago Municipal Code § 11-12-010 (added June 27, 1990)), and "any building, structure, enclosure, place, or premises ***" (Chicago Municipal Code § 5-4-090 (added June 27, 1990)). Therefore, a plain reading of this language refers to committing torts such as willful trespass or other tort upon the premises, not just any

tort as plaintiff argues. Since plaintiff does not allege that the victim was committing such a tort at the time of the incident, this definition is inapplicable.³

¶ 18 The third circumstance in which an animal is provoked under the Code is when the victim "was committing or attempting to commit a crime." Chicago Municipal Code § 7-12-020 (amended Nov. 19, 2008). Plaintiff argues that he "was not only physically threatened, but also physically harmed by" Ms. Hodapp, and therefore the evidence shows Nordstrom was provoked when Ms. Hodapp made contact with him as she passed ("shoulder – caught on the shoulders"). Whether the evidence supports an agency's decision is a question of fact. *Marconi*, 225 Ill. 2d at 534. We will reverse the agency's rulings on questions of fact only if they are against the manifest weight of the evidence. *Id.* "An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992).

¶ 19 According to the investigator's report and the testimony of Ms. Hodapp and Brian, they were jogging at a slow pace and about a foot away when they passed plaintiff and Nordstrom on the sidewalk. Although Ms. Hodapp did not explicitly state that no contact was made, she implied it when she stated they were a foot apart. In addition, Brian testified that when he and Ms. Hodapp passed plaintiff and Nordstrom, Nordstrom was positioned between plaintiff and Ms. Hodapp. It is reasonable to infer from this testimony that there was no contact between

³ Plaintiff also argues, without supporting authority, that he was prejudiced because the inspector did not know the definition of "tort" and therefore her determination that Nordstrom acted without provocation must be in error. Since we have determined that no such tort occurred in this case, whether the inspector understood the meaning of the word "tort" in the Code is irrelevant and in any event did not prejudice plaintiff.

Ms. Hodapp and plaintiff. None of the witnesses in the report, including plaintiff, stated that contact occurred between Ms. Hodapp and plaintiff prior to the biting incident.

¶ 20 The ALJ found that although plaintiff claimed Nordstrom was provoked, "[t]here was no assault which requires some sort of intent. There was no abusive behavior against the dog." The ALJ determined that it was "unreasonable" for a dog to "behave in this manner" and affirmed the executive director's finding that Nordstrom was a dangerous animal under the Code. The evidence in the record supports, and we therefore affirm, the ALJ's determination here.

¶ 21 Plaintiff disagrees, arguing that he was fearful because Ms. Hodapp and Brian came toward him and Nordstrom at a fast pace. He argues that from Nordstrom's point of view, the joggers "fanned out to fill the space [plaintiff] had created" when he moved to the side, further intimidating the dog. Plaintiff testified that he, not Nordstrom, was closest to Ms. Hodapp when she passed by and he alleged that Ms. Hodapp made contact as she jogged past him. In further support of his contention that Nordstrom was provoked, plaintiff presented the testimony of his expert, Curtis Scott, who concluded without dispute that Nordstrom "did not show any aggressive tendencies" and had a "low mark" on the anxiety assessment.

¶ 22 The factfinder, however, is free to accept or reject expert testimony in whole or in part. *People v. Tara*, 367 Ill. App. 3d 479, 489 (2006). Also, in reviewing an agency's factual findings, this court does not weigh the evidence or substitute its judgment for that of the agency. *Marconi*, 225 Ill. 2d at 534. The "mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings." *Abrahamson*, 153 Ill. 2d at 88. If evidence in the record supports the agency's decision, a court should affirm that decision. *Commonwealth Edison Co. v. Property Tax Appeal Board*, 102 Ill. 2d 443, 467 (1984).

¶ 23 Plaintiff next argues that the ALJ's determination should be overturned because he failed to follow a determination made in a prior dog-biting incident that the victim provoked the dog. That incident involved a young boy who ran up to a dog from behind seeking to pet the dog and, according to eyewitnesses, startled and grabbed the dog. We initially note that this case was never brought before the ALJ for consideration at the hearing. Generally, issues not raised during the administrative hearing are waived for review. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 328 (2009). Furthermore, "an administrative agency is not absolutely bound by its prior determinations." *Illinois Council of Police v. Illinois Labor Relations Board*, 404 Ill. App. 3d 589, 596 (2010). An agency may adjust its standards and policies based on experience, so long as these adjustments are not arbitrary or capricious. *Id.* at 596-97. "Agency action is arbitrary and capricious if the agency: (1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 505-06 (1988). Sudden and unexplained changes in policy or practice "have often been considered arbitrary." *Id.* at 506. The supreme court cautioned that "[t]he scope of review is narrow and the court is not, absent a 'clear error of judgment' [Citation], to substitute its own reasoning for that of the agency." *Id.* We find that plaintiff's mere contention that the ALJ should have found provocation here when the agency made that determination in a prior incident which lasted "seconds," where "the dog was leashed and controlled," and where the boy "running from behind to pet the dog" caused it to react on "pure instinct," does not meet *Greer's* standard for arbitrary and capricious agency action.

¶ 24 Plaintiff also contends that this court should reverse the ALJ's determination because the inspector did not interview two eyewitnesses, failed to observe Nordstrom, showed a bias against plaintiff by claiming he was uncooperative, relied on photos only from the complaining witnesses, issued citations based upon "guess[es]" and stated that even if her report contained incorrect information it would not change her recommendation. In addition, plaintiff claims that "highly relevant sections" of the transcript contained testimony that was described as "inaudible" and the transcript is incomplete.

¶ 25 It is plaintiff's burden, as appellant, to present a sufficiently complete record of the proceedings to support his claim of error on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Furthermore, plaintiff's contention is not supported by analysis or citations to authority as required by Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). Regarding the "inaudible" portions of the testimony, plaintiff does not show how he was prejudiced by the gaps representing "highly relevant" testimony. See *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 848-49 (2007) (record complied with administrative review law where, although the transcript contained inaudible portions, plaintiff failed to demonstrate how he was prejudiced by the defect). Therefore, plaintiff's additional contentions do not require reversal of the ALJ's decision.

¶ 26 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.