2016 IL App (1st) 150280

SIXTH DIVISION
April 15, 2016

Nos. 1-15-0280 & 1-15-0304 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SYED IJAZ HUSSAIN SHAH,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	Nos. 13 M1 626164
	)	13 M1 626165
	)	
CITY OF CHICAGO DEPARTMENT OF	)	
ADMINISTRATIVE HEARINGS,	)	Honorable
	)	Freddrenna M. Lyle,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

O R D E R

¶ 1 *Held*: We confirmed the decisions of the City of Chicago Department of Administrative Hearings which denied plaintiff's motions to vacate default findings of liability and imposition of fines and costs for violations of municipal ordinances.

¶ 2 This consolidated appeal arises from administrative proceedings in which, *pro se* plaintiff-appellant, Syed Ijaz Hussain Shah, twice was found in default and fined for violations of municipal ordinances involving the care of his property. The circuit court of Cook County affirmed the decisions of the City of Chicago (City) Department of Administrative Hearings

(DOAH) denying plaintiff's motions to set aside the default findings of liability and fines. On appeal, plaintiff argues that his motions to vacate the defaults were denied in error because: he missed the DOAH hearings which resulted in the defaults due to illness; he did not receive notice of the entry of the defaults; in "several" other "cases," the DOAH "heard the cases and granted the hearing" after the conclusion of the 21-day period for seeking vacation of defaults; and he did not own the property at issue. We confirm the decisions of the DOAH and affirm the judgments of the circuit court.

¶ 3 Appeal Number 1-15-0280

¶ 4 On June 11, 2012, the City's Department of Streets and Sanitation (Department) inspected an open lot located at 2215 S. Keeler Avenue in Chicago (the property) finding a number of violations of the Municipal Code of Chicago (Code), including: weeds greater than 10 inches growing on the property (7-28-120(a) (eff. Nov. 16, 2011)); failure to keep the property free of refuse (7-28-740 (eff. Nov. 16, 2011)); and failure to provide a fence around the property (7-28-750(a) (eff. Nov. 16, 2011)).

¶ 5 On October 22, 2012, the Department mailed an administrative notice of ordinance violation to plaintiff as the owner of the property based on the June 11, 2012, inspection. The notice was sent to three addresses in Chicago: 3148 W. Marquette Road; 4026 N. Sawyer Avenue; and 6316 N. Maplewood Avenue. The notice informed plaintiff that a hearing was set for November 15, 2012, on the violations before the DOAH, and that failure to either "appear for your hearing or mail in your payment *** may result in a judgment being entered against you."

¶ 6 Plaintiff appeared in person before the DOAH on November 15, 2012, and again on December 13, 2012. He also filed a written appearance on both dates, listing his address as 4026

N. Sawyer, Chicago. On December 13, the matter was continued to January 17, 2013, to allow plaintiff to appear personally and present evidence in support of his claim that he did not own the property. The administrative law officer (ALO) expressly instructed plaintiff that it was mandatory he appear on that date. Plaintiff stated that he understood.

¶ 7 On January 17, 2013, plaintiff failed to appear. The ALO found that the Department made a *prima facie* showing of plaintiff's violations of municipal ordinances and plaintiff failed to appear to rebut the *prima facie* showing. A written order of default was entered against plaintiff and he was assessed a total of $2,440 in fines and costs. The clerk of the DOAH certified that, on January 29, 2013, the order was mailed to plaintiff at the same three addresses to which the notice of violation was sent. The notice of default, which was mailed with the order, informed defendant that he had 21 days from the mailing date to file a petition with the DOAH to vacate the default "for good cause."

¶ 8 Nine months later, on October 24, 2013, plaintiff filed a *pro se* motion to set aside the default. The motion was set for a hearing on November 8, 2013. Plaintiff's written appearance filed on that date listed his address as 512 Ingraham Avenue, Calumet City. At the hearing before an ALO, plaintiff argued that the default should be set aside because he was ill "during that time," and that he had not received the notice of default. The City submitted into evidence a copy of plaintiff's driver's license showing his address as 4026 N. Sawyer Avenue. Plaintiff first denied, but then confirmed this was his address. The ALO noted that the order of default had been mailed to that address.

¶ 9 Plaintiff also showed the ALO a mental capacities evaluation, which stated that plaintiff was "having anxiety, fatigue [and] shortness of breath," and a Blue Cross Blue Shield record of a

surgery. Although the ALO reviewed the documents, he declined to make them part of the record finding that plaintiff could not make a showing of "good cause" for his failure to appear because his motion to vacate had not been made within 21 days of the mailing of the notice of default. Plaintiff again stated that he did not receive the notice of default and argued that, despite the fact that his name and address were on the notice, "sometimes" the City makes a "mistake," or might "not send" the default notice.

¶ 10 The ALO denied plaintiff's motion to set aside the default, finding the notice of default was sent to an address reasonably calculated to reach plaintiff. Finally, the ALO found that there was no evidence that the United States Postal Service (USPS) had not delivered the notice of default.

¶ 11 On December 13, 2013, plaintiff filed a *pro se* administrative review action in the circuit court seeking reversal of the denial of his motion to vacate the default. The complaint listed plaintiff's address as 4026 N. Sawyer Avenue. The matter was dismissed for want of prosecution for plaintiff's failure to appear on November 25, 2014. On December 30, 2014, after vacating the dismissal, the circuit court affirmed the decision of the DOAH. On January 7, 2015, plaintiff filed a motion to reconsider, which the circuit court denied. Plaintiff timely appealed.

¶ 12 Appeal Number 1-15-0304

¶ 13 On September 11, 2012, the Department conducted a second inspection of the property and found that the same violations of the Code continued to exist.

¶ 14 On January 7, 2013, plaintiff was sent an administrative notice of ordinance violation based on the September 11, 2012, inspection. The notice was mailed to plaintiff at 6316 N. Maplewood Avenue and 4026 N. Sawyer Avenue. The notice informed plaintiff that an

administrative hearing as to the violations would be held on January 28, 2013, and that a failure to either "appear for your hearing or mail in your payment *** may result in a judgment being entered against you."

¶ 15 Plaintiff did not appear at the January 28, 2013 hearing. The ALO found that the City had made a *prima facie* showing of guilt, entered a default order against him, and assessed fines and costs totaling $2,440. The order was certified as mailed on February 4, 2013. The notice of default informed plaintiff that he had 21 days from the stamped mailing date to file a petition with the DOAH to vacate the default for "good cause."

¶ 16 On November 15, 2013, plaintiff filed a *pro se* motion to set aside the default. The motion and plaintiff's written appearance listed the Sawyer address. A hearing was held on the motion on December 13, 2013. Plaintiff stated that he had not received notice of the January 28, 2013, hearing or of the default order. Plaintiff acknowledged that he receives mail at the Sawyer address.

¶ 17 Plaintiff then stated that he did not own the property. The City provided the ALO with a copy of a quitclaim deed which was recorded in November 2008 and showed that the property had been transferred from Yahya Hussain to Syed Shah. An attachment to the deed stated that the tax bill for the property should be mailed to Syed Shah at the Sawyer address. Plaintiff denied that he was Syed Shah, asserting that he was Syed Ijaz Hussain Shah. Additionally, plaintiff made contradictory statements as to whether or not Yahya Hussain was his son, and whether or not the property had been quitclaimed to him.

¶ 18 Ultimately, the ALO denied the motion to set aside the default. In doing so, the ALO found that plaintiff had failed to prove that he did not own the property and had failed to provide a "reason or defense" to the untimely filing of the motion to set aside the default.

¶ 19 On December 13, 2013, plaintiff filed a *pro se* action for administrative review in the circuit court and listed the Sawyer address as his residence. The action was dismissed for want of prosecution when plaintiff failed to appear on November 25, 2014. On December 14, 2014, the circuit court vacated the dismissal order and affirmed the decision of the ALO. Plaintiff filed a motion for reconsideration on January 22, 2015, which the circuit court denied.

¶ 20 On January 27, 2015, plaintiff timely appealed and his two appeals were consolidated.

¶ 21 This court reviews the decision of the DOAH under the Illinois Administrative Review Law (65 ILCS 5/1-2.1-7 (West 2014)), and the Code (§ 2-14-102 (added Apr. 2, 1998)). "The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2014). The standard of review depends on the question which is presented. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006). Determinations of questions of fact "will be reversed only if against the manifest weight of the evidence." *Id.* at 532. We review a question of law under a *de novo* standard. *Id.* Under any standards of review, the plaintiff seeking administrative review bears the burden of proof. *Id.* at 532-33. We review the decision of the administrative agency and not the decision of the circuit court. *Id.* at 531.

¶ 22 Section 2-14-108(a) of the Code states:

> "An administrative law officer may set aside any order entered by default and set a new hearing date, upon a petition filed within 21 days after the issuance of the order of

> default, if the administrative law officer determines that the petitioner's failure to appear at the hearing was for good cause or, at any time, if the petitioner establishes that the petitioner was not provided with proper service of process." Municipal Code of Chicago § 2-14-108(a) (added April 29, 1998).

¶ 23 In appeal number 1-15-0280, the notice of the entry of a default was mailed on January 29, 2013, and plaintiff filed a motion to vacate the default on October 24, 2013, nearly ten months later. In appeal number 1-15-0304, the notice of the entry of a default was mailed on February 4, 2013, and plaintiff filed a motion to vacate on November 15, 2013, over nine months later. Both motions to vacate the defaults were filed more than 21 days after the mailings of the orders of default.

¶ 24 On appeal, plaintiff argues that he failed to appear at the DOAH hearings at which the defaults were entered because of illnesses. At the hearing on the motion to vacate in appeal number 1-15-0820, plaintiff presented documents to support this contention. However, the ALO denied admission of the documents because a good cause showing may only be made within 21 days of the issuance or mailing of the order of default under section 2-14-108(a). We find the circuit court's interpretation of section 2-14-108(a) was not erroneous.

¶ 25 In support of this argument on appeal, plaintiff has attached to his initial brief mental capacities evaluations from his employer as to his inability to work because of an "adjustment disorder." However, those documents were not included in the record on appeal, and cannot be considered by this court. *Babich v. River Oaks Toyota*, 377 Ill. App. 3d 425, 430 (2007). Further, on administrative review, we are limited to "the administrative record, and, therefore, we may not hear new or additional evidence in support of, or in opposition to, the decision of the

administrative agency." *Marconi*, 225 Ill. 2d at 533 (citing 735 ILCS 5/3-110 (West 2002)); *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill. 2d 533, 538 (2006)).

¶ 26 Plaintiff also attached to his brief, DOAH orders entered against members of his family finding ordinance violations. He argues that the DOAH, in these other proceedings, vacated defaults after 21 days. Again, we may not consider these orders as they were not part of the administrative record or the record on appeal. Additionally, these orders do not include any factual background or show that there were defaults entered in these matters which were vacated after 21 days. Thus, this argument fails.

¶ 27 Plaintiff further argues that he had no notice of the entries of the defaults. However, plaintiff testified that his address was 4026 N. Sawyer Avenue, and that he receives mail at that address. Plaintiff listed this address on various court documents and his driver's license shows this address. The record on appeal reveals that the notices of ordinance violation and the notices of entries of the defaults were sent to the Sawyer address. *El Sauz, Inc. v. Daley*, 328 Ill. App. 3d 508, 519-20 (2002) (service by regular mail is reasonably calculated to provide actual notice of an administrative order). Plaintiff asserts that it is possible that the notices of default were not actually sent by the DOAH, nor delivered to him by the USPS. His failure to support his claims with evidence is fatal. *In re Alexander R.*, 377 Ill. App. 3d at 557 ("it is usually the appellant's burden to affirmatively demonstrate error from the record"). Therefore, we find the decisions of the ALO rejecting plaintiff's lack of notice claims were proper.

¶ 28 Finally, in appeal number 1-15-0304, plaintiff argues that he did not own the property. However, the City presented evidence of plaintiff's ownership of the property, including a copy

of a recorded quitclaim deed. At the hearing on his motions to vacate, plaintiff presented only confusing and contradictory testimony that he was not the owner of the property. The ALO's conclusion that plaintiff had failed to show he was not the owner of the property was supported by the manifest weight of the evidence.

¶ 29 For the reasons stated above, we confirm the decisions of the DOAH denying plaintiff's motions to vacate the default orders finding he violated municipal ordinances and imposing fines and costs, and affirm the judgments of the circuit court of Cook County.

¶ 30 DOAH confirmed; circuit court affirmed.

¶ 31 Affirmed.