2017 IL App (1st) 162872-U

FOURTH DIVISION
September 28, 2017

No. 1-16-2872

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CASEY LARSON, Plaintiff-Appellant, v. THE CITY OF CHICAGO, a municipal corporation, and CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 16 M1 625679 Honorable Joseph M. Sconza, Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Burke and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff lacks standing to seek review of an administrative judgment entered against his father in a tow hearing.

¶ 2 Plaintiff Casey Larson (Plaintiff) appeals the circuit court's dismissal of his complaint seeking administrative review of a default judgment against plaintiff's father, Eric Larson (Larson), by the City of Chicago's Department of Administrative Hearings (DOAH). The case arises out of a parking citation issued to a vehicle registered to Larson that was parked in a tow

zone. Plaintiff filed a motion in the DOAH to set aside the default judgment, but the motion was denied for lack of standing because plaintiff was not the registered owner and lacked written authorization from the registered owner to proceed at an administrative hearing. Plaintiff sought administrative review in the circuit court, but his complaint was dismissed on the motion of defendant City of Chicago (the City) because plaintiff lacked standing. On appeal, plaintiff argues that the DOAH erred in denying his motion to set aside the default judgment because (1) he was the person "entitled to possession" of the subject vehicle under the Chicago Municipal Code, and (2) he did not receive proper service of process for the hearing in the DOAH.

¶ 3 On March 17, 2016, the City towed a 2000 Jeep Grand Cherokee, registered to Larson, which had been parked near 2123 West Augusta Boulevard in Chicago. The following day, plaintiff went to the impound lot at 701 North Sacramento Boulevard in Chicago and paid the towing and storage fees of $190, but was unable to retrieve the vehicle without the registered owner's authorization. On March 19, 2016, Larson signed a notarized "Authorization to Retrieve Vehicle" form, which stated that plaintiff was authorized to retrieve the vehicle from the impound lot. The form included a provision stating, "My agent is authorized to request a Post Tow Hearing," and to indicate a response by circling "Yes" or "No." No response was indicated for this provision. Plaintiff subsequently retrieved the vehicle.

¶ 4 In April 2016, plaintiff, through counsel, sent a letter to the City requesting a post tow hearing. The letter stated that plaintiff was the son of the registered owner, Larson, and he was entitled to the use and possession of the vehicle. The letter requested that all correspondence related to the hearing be sent to his attorney. Plaintiff attached the authorization to retrieve vehicle form and the receipt for payment of the tow fees paid in cash that listed Larson's name and address. According to plaintiff, the notice for the hearing was sent to Larson as the registered

owner. On June 15, 2016, plaintiff's attorney inquired about the status of the hearing and was informed that the hearing occurred on May 6, 2016, and a default judgment was entered against Larson. Plaintiff filed a motion to set aside the default judgment entered against Larson. The DOAH hearing officer subsequently denied the motion to set aside the default, finding that plaintiff did not have standing because he was "not the registered owner and does not have written authorization from the registered owner."

¶ 5 In July 2016, plaintiff filed a complaint for administrative review in the circuit court of the DOAH ruling. The City filed a motion to dismiss the complaint under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)), arguing that plaintiff was not a proper party to the administrative review case because he was not a party in the DOAH proceeding. On September 23, 2016, the circuit court granted the City's motion to dismiss finding that plaintiff lacked standing to bring the action. The dismissal was a final judgment appealable under Supreme Court Rule 303. On October 24, 2016, within 30 days of that final judgment, plaintiff filed his notice of appeal.

¶ 6 This appeal followed in compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, this court has jurisdiction of this appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 7 On appeal, plaintiff first argues that that he has standing to set aside the default judgment because he was a party of record to the administrative proceedings. The City maintains that plaintiff was not a party of record in the administrative proceedings, his father was. The City points out that the default judgment was entered against Larson, not plaintiff, who was not named in the order.

¶ 8 Generally, when a party appeals the circuit court's decision on a complaint for administrative review, the appellate court's role is to review the administrative decision rather than the circuit court's decision. *Siwek v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 324 Ill. App. 3d 820, 824 (2001). However, in the instant case, the circuit court concluded that plaintiff lacked standing to bring the complaint for administrative review and granted the City's motion to dismiss. Thus, we review the dismissal of plaintiff's complaint.

¶ 9 A motion for involuntary dismissal pursuant to section 2-619(a) admits the legal sufficiency of the complaint, but raises defects, defenses, or other affirmative matter which avoids the legal effect or defeats a plaintiff's claim. 735 ILCS 5/2-619(a) (West 2010). An "affirmative matter" under section 2-619(a)(9) is "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004). We review the section 2-619 dismissal of a complaint *de novo*. " *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55.

¶ 10 " '[S]tanding requires some injury in fact to a legally cognizable interest ***.' " *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 6 (2010) (quoting *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999)). "Under Illinois law, lack of standing is an affirmative defense, which is the defendant's burden to plead and prove." *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010) (citing *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 22-23 (2004); *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004); *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988)). "Where a plaintiff lacks standing, the proceedings must be dismissed because the lack of standing negates the plaintiff's cause of

action." *Sierra Club v. Office of Mines & Minerals of Department of Natural Resources*, 2015 IL App (4th) 140405, ¶ 22 (citing *Wexler*, 211 Ill. 2d at 22).

¶ 11 The Administrative Review law is a departure from the common law and "the procedures established therein must be followed." *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 349-50 (2006). "Section 3-102 of the Administrative Review Law mandates that parties to a proceeding before an administrative agency shall be barred from obtaining judicial review of the agency's administrative decision unless review is sought 'within the time and in the manner' provided by the statute." *Id.* (quoting 735 ILCS 5/3-102 (West 2002). "In Illinois, a long-standing general rule exists that 'administrative review is limited to *parties of record* before the administrative agencies and then only when their rights, duties or privileges are adversely affected by the decision.' " (Emphasis in original.) *Sierra Club*, 2015 IL App (4th) 140405, ¶ 27 (quoting *Board of Education of Roxana Community School District No. 1 v. Pollution Control Board*, 2013 IL 115473, ¶ 20).

¶ 12 Plaintiff contends that he was a party of record in the DOAH because the Chicago Municipal Code permits a tow hearing to be requested by "[t]he owner or other person entitled to possession of a vehicle seized and impounded." Chicago Municipal Code § 2-14-135 (added Nov. 18, 2009). Plaintiff asserts that he was a "person entitled to possession" of the subject vehicle registered to Larson. Plaintiff argues that section 2-14-135 does not require written authorization from the registered owner establishing that another individual is "entitled to possession," and the DOAH read an additional requirement into the code. We disagree.

¶ 13 The record on appeal contains the authorization to retrieve vehicle form notarized by Larson which authorized plaintiff to retrieve the vehicle from the tow lot on behalf of Larson, but the form did not grant plaintiff authorization to request a tow hearing. The form provided for

such authorization to be granted, but no response was given by Larson. This form supports the DOAH's finding that plaintiff needed documentation that he was "entitled to possession" and authorized under the municipal code to participate in a tow hearing. Since the form does not include this authorization, it fails to support plaintiff's claim that he was entitled to possession within the meaning of the municipal code and authorized to request the tow hearing. Plaintiff further relies on his own assertions through his attorney's request for the hearing that he is a person entitled to possession of the vehicle, but these statements are not sufficient to establish plaintiff's claim and we reject these unsupported statements.

¶ 14 We also point out that the DOAH judgment was entered against Larson, not plaintiff. Plaintiff has no liability under the judgment, and we are not persuaded by plaintiff's contention that he paid the towing fees and thus, his rights were affected. We observe that the receipt for payment of the towing fees in the record lists Larson's name and address and does not name plaintiff. Since the proceedings in the DOAH named Larson, the proper party to contest the judgment was Larson, not plaintiff. Plaintiff has failed to establish that he was a party of record in the DOAH proceedings and that there was an adverse judgment entered against him. Accordingly, the circuit court properly concluded that plaintiff lacked standing to file a complaint for administrative review.

¶ 15 Finally, plaintiff has failed to cite any authority to support his interpretation of "entitled to possession" under section 2-14-135 of the municipal code, which provides, "The owner or other person entitled to possession of a vehicle seized and impounded pursuant to Section 9-92-030 of this Code may request a hearing before the department of administrative hearings." Chicago Municipal Code § 2-14-135 (added Nov. 18, 2009). Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of

the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Moreover, it is well-settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990).

¶ 16 Nevertheless, we disagree with plaintiff's broad interpretation of the phrase "entitled to possession." According to plaintiff, "entitled to possession" means any individual with permission to use a car registered to another person. However, our review of the municipal code indicates that the phrase is limited in scope. Section 9-92-060(a) states "The superintendent of police or the commissioner of streets and sanitation shall safely keep any vehicle impounded pursuant to Section 9-92-030 until such vehicle shall have been repossessed by the owner or person legally entitled to possession thereof or otherwise disposed of as provided in the traffic code." Chicago Municipal Code § 9-92-060 (amended Dec. 12, 2007). Section 9-92-070 provides for notice to owners of impounded vehicles and states that notice will be sent to owners and other persons who are "legally entitled to possession of such motor vehicle by reason of an existing conditional sale contract having a lien as chattel mortgagee, or any other reason." Chicago Municipal Code § 9-92-070 (amended Dec. 4, 2002). Further, section 9-92-080(a) governs the procedure used by plaintiff in retrieving the towed vehicle. That section states:

> "Unless a vehicle is held pursuant to applicable state, federal or any other law, or a court order or warrant that authorizes the continued impoundment of the vehicle, the owner or other person entitled to possession of a vehicle impounded pursuant to Section 9-92-030 may obtain immediate release of the vehicle by paying

> the full amount of the applicable towing and storage fees, as provided in subsection (b), plus all amounts due for outstanding final determinations of parking, standing, compliance, automated traffic law enforcement system or automated speed enforcement system violations incurred by the owner, including all related collection costs and attorney's fees authorized under Section 1-19-020. Regardless of whether the owner or other person entitled to possession obtains immediate release of the vehicle through making full payment, such person may request a hearing before the department of administrative hearings to be held in accordance with Section 2-14-135 of this Code." Chicago Municipal Code § 9-92-080(a) (amended Nov 16, 2016).

¶ 17 The operation of section 9-92-080(a), as we already discussed generally above, did not allow plaintiff to retrieve the vehicle without the signed and notarized authorization of Larson, the owner. Section 9-92-080(a) does not recognize a person who drives a vehicle owned by his father as a person entitled to possession. It follows likewise that section 2-14-135 was not intended to apply to individuals like plaintiff without authorization from the owner, which was not given here.

¶ 18 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County dismissing plaintiff's complaint for lack of standing.

¶ 19 Affirmed.