2017 IL App (1st) 163329-U
No. 1-16-3329

THIRD DIVISION
December 27, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEMNA PARVINI, Plaintiff-Appellee, v. The CITY OF CHICAGO, Department of Administrative Hearings, and The City of Chicago, Commission on Animal Care and Control, Defendants-Appellants.	))))))))))	Appeal from the Circuit Court of Cook County. No. 16 M1 450131 The Honorable Lisa A. Marino, Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin in the judgment.

ORDER

¶ 1 *Held:* Department's finding that dog is a dangerous animal was not against the manifest weight of the evidence.

¶ 2 Following a hearing, the City of Chicago Department of Administrative Hearings (Department) found that a dog owned by plaintiff, Lemna Parvini, is a "dangerous animal" as defined by section 7–12–020 of the Chicago Municipal Code (the Code) (Chicago Municipal Code § 7–12–020 (amended Nov. 16, 2016)). Plaintiff sought administrative review of the Department's decision in the circuit court of Cook County. The circuit court reversed the

decision and the City now appeals. For the reasons that follow, we reverse the circuit court and affirm the Department's decision.

¶ 3 I. BACKGROUND

¶ 4 Following an investigation by the City's Commission on Animal Care and Control (CACC) of two incidents, one between plaintiff's dog and a dog owned by Samuel Rivera, on December 7, 2015, and one between plaintiff's dog and Joseph Sells' dog on February 1, 2016, plaintiff received a letter of determination from the executive director of CACC that her dog is a "dangerous animal." Plaintiff appealed the determination to the Department of Administrative Hearings. On April 7, 2016, the Department held a hearing regarding that determination before an Administrative Law Judge (ALJ), which affirmed the CACC's determination. Plaintiff was then represented by counsel.

¶ 5 The following evidence was presented at the April 2016 hearing. Samuel Rivera testified that on December 7, 2015, he and his Yorkshire terrier, Romeo, were waiting for the service elevator in the building where they live, at 1130 South Michigan Avenue, Chicago, to go outside for a walk. Romeo was on a leash. When the elevator door opened, Rivera saw plaintiff with her dog, Mitiya, who was also on a leash, in the elevator. As he and his dog entered, before the elevator door closed, Mitiya lunged at Romeo, grabbed him by his head and started viciously twirling Romeo in the air. Mitiya had Romeo in her mouth and would not let go. Rivera dropped down to pry Mitiya's mouth off of Romeo. During the incident, Mitiya bit Rivera's hand.

¶ 6 A neighbor, Sam Patel, heard the incident while inside his apartment. He came into the hall and, being in the medical field, took a look at Rivera's hand and told him to go to the hospital. Rivera went to the emergency room to have his wound cleaned and was informed he would need to take antibiotics. Because the injury to his hand resulted from a dog bite, the

emergency room was required to contact the police. Two officers arrived at the hospital to take a report. After he was released from the emergency room, Rivera took Romeo to an animal hospital where personnel cleaned all of the dog's wounds. Rivera had to have a bandage on his hand for over a week. At a follow-up veterinary visit, Romeo was tested for rabies, which was negative, and his wounds were checked.

¶ 7 Joseph Sells testified that on January 10, 2016, he was in his apartment at 1000 North LaSalle Street, Chicago, and heard his dog, Fry, a Dachshund, in the hallway in distress. When he went into the hallway, he saw his girlfriend, Malorie Jaffef carrying Fry. Jaffef told Sells that plaintiff's dog just tried to attack Fry, but because both dogs were on leashes they were separated very quickly. Sells saw someone down the hall and was not sure who it was. He did, however, recognize plaintiff's dog because it had one ear dyed pink, and she was the only dog in the building with an ear that was dyed. Sells noticed several small nips on his dog's neck that were bleeding, but because the nips were small the incident was not reported to anyone.

¶ 8 Sells also testified that on February 1, 2016, at approximately 7:40 p.m., he was in the hallway of his building with his dog on a leash. He heard the elevator open and he turned in time to see plaintiff's dog, not on a leash, lunge at his dog. Plaintiff's dog bit his dog on the leg. Sells had to kick plaintiff's dog in order to separate them. He was sure the person with the dog was plaintiff, because she lived across the hall from him and he had seen her "dozens of times." He knew plaintiff's first name was "different" and when he asked plaintiff what her first name was, she responded "Sara." He knew that was not correct. Plaintiff also stated that she did not live in the apartment across from Sells but lived in another one down the hall. He also knew that was not correct. Once inside his apartment, Sells heard activity in the hall, looked out through a peephole, and saw plaintiff entering her apartment across the hall. He took his dog to an animal

hospital, where it underwent surgery and received stitches and a draining tube which was inserted for eight days. Sells also reported the incident to the building management.

¶ 9 Jaffef testified that on January 10, 2016, she was bringing Sells' dog back from a walk and saw plaintiff in the hallway with her dog. Plaintiff's dog "came at [Sells'] dog." Both dogs were on leashes and Jaffe was able to separate the dogs and pick up Sell's dog. She was positive that plaintiff was the person in the hallway, having met plaintiff when she moved in and "who lived in the apartment across the hall."

¶ 10 Cheryl Edgecomb, an investigator with the CACC, investigated plaintiff's case and made the determination that plaintiff's dog is a dangerous animal. She testified that she had conducted in excess of 100 dangerous dog investigations. In investigating the incidents regarding plaintiff's dog, Edgecomb spoke with plaintiff, Rivera, and Sells. She also reviewed written reports submitted by them and Patel. Edgecomb admitted that she did not give great weight to Patel's report because he admitted he did not see the incident, but he did state "that he saw Ms. Parvini apologizing for the incident" and "based on his being an M.D. he believed the injury to Mr. Rivera's hand was caused by her dog versus the victim's dog." Edgecomb interviewed the building managers in the two buildings where the incidents occurred. She also looked at veterinary records. Her investigation did not include an observation of plaintiff's dog "because it does not come into play with the definition of a dangerous dog. I am not the one to behaviorally analyze any animal. It's based on whether or not this animal has attacked." Edgecomb found that plaintiff's dog was the biter dog in the December 7, 2015 and February 1, 2016, incidents "which were almost identical and involved victim dogs that had different owners and lived in different buildings and did not know each other."

¶ 11 Plaintiff testified on her own behalf that on December 7, 2015, when Rivera and his dog entered the elevator, his dog jumped at her dog, Mitiya, a West Highland terrier mixed breed, making the first contact. His dog bit her dog next to its eye. At that time, the dogs got into a fight and were biting each other. She acknowledged that her dog grabbed the head of Rivera's dog with its teeth. She also stated that her dog did not bite Rivera on the hand but that his own dog bit him. She never saw Patel after the incident.

¶ 12 Regarding January 10, 2016, plaintiff testified that her dog was not in a biting incident. According to plaintiff, at the time of the incident, she was in Detroit at an auto show. She left on the 9th and returned on the 11th. Plaintiff displayed her American Express auto show passport for the 10th of January. She stated that her dog was not at her apartment, but was staying with a friend who lived on Rush Street; however, she did not know the exact address. Plaintiff also stated that her dog did not have an ear that was dyed pink.

¶ 13 Plaintiff additionally testified that her dog was not involved in a dog bite incident at 7:40 p.m. on February 1, 2016. She and her dog were in their apartment at that time and she left at 7:45 to meet a friend for dinner in the neighborhood. Plaintiff testified that she was misidentified and that there were several dogs that resembled hers, who lived in the building at 1000 North LaSalle, and one lived on her floor. In support, she submitted several photos that she had taken of people with dogs that she claimed looked similar to hers, indicating they were residents of the building. Plaintiff stated that she had never seen Sells until the hearing.

¶ 14 Plaintiff further testified that she invited Edgecomb to observe her dog but that she never did so. Additionally, plaintiff testified that on March 20, 2016, Daniel McClory, president and training director of Bark Avenue Daycare, performed a behavioral assessment of plaintiff's dog. Plaintiff was able to read a portion of the assessment at the hearing, which stated that her dog

was a social and stable dog and would be an excellent candidate for canine therapy programs. McClory also described how a dog became a therapy dog, stating that the testing is very stressful and demanding on the dog. Plaintiff explained that as a therapy dog, she would take her dog to hospice to help with the elderly and to other areas to help children with disabilities.

¶ 15 Walter Volks testified that he was a friend of plaintiff's and that he drove her to Detroit on January 10, 2016, and that he was with plaintiff in Detroit on January 10th and 11th. He had watched plaintiff's dog on several occasions without incident. He had also been with plaintiff and her dog on other occasions and had not seen plaintiff's dog act violently towards another dog.

¶ 16 Penelope Ann Curran testified that she was a friend of plaintiff's and had taken care of plaintiff's dog five or six times. She never saw plaintiff's dog get in an incident with another dog.

¶ 17 In addition to the above testimony, the document from the behavioral assessment, a Therapy Dog International certification and a letter from plaintiff's veterinarian were admitted into evidence. The veterinarian stated that plaintiff's dog was very friendly, showed no signs of aggression towards any of his staff and would be an excellent therapy dog. Plaintiff presented four letters purporting to be from different people stating that they had met plaintiff's dog and the dog was friendly and would not bite another dog. The ALJ did not allow these into evidence because they were not "under oath."

¶ 18 The ALJ upheld the determination that plaintiff's dog is a dangerous animal under the Code. The ALJ stated that this case relied on the definition in the ordinance for determining what a dangerous dog is. The ALJ made credibility determinations and heard evidence of detailed accounts of the witnesses and denials from plaintiff. The ALJ also made specific credibility determinations that plaintiff had "holes" in her testimony regarding where her dog was on January 10, 2016, and the time she was in her apartment on February 1, 2016. The ALJ found

that the photos submitted by plaintiff "in no way resembled [plaintiff's] dog." The ALJ stated that, despite the documents from people who knew the dog and never saw it bite another dog, the ALJ did believe that plaintiff's dog bit another dog. The ALJ concluded that the evidence satisfied the requirements of the definition of "dangerous animal" and emphasized plaintiff's acknowledgment that during the December 7, 2015, incident her dog "latched onto the head of Mr. Rivera's dog." The ALJ stated that the "two incidents were at two separate locations, two separate people that don't even know each other and so they would have no reason to all of a sudden come up with a story made up about this particular dog." The ALJ found that the CACC completed a thorough investigation, and they "obtained as much documents, photographs, witness statements, interviews as they possibly could before they came to this conclusion about the dog in this case." The ALJ concluded that the City met its burden of proof and ordered plaintiff to comply with sections 7–12–050(c)(1) through (6) and (c)(8) of the Code. Chicago Municipal Code § 7–12–050(c)(1)–(6), (c)(8) (amended Nov. 16, 2016). These sections require, *inter alia*, that the owner securely confine the dangerous animal indoors, that it be muzzled when out of doors, that the owner procure and maintain liability insurance sufficient to cover claims arising from the dog's conduct, and that the animal complete obedience training.

¶ 19 Plaintiff, proceeding *pro se*, filed a complaint in the circuit court seeking administrative review. On November 29, 2016, the court entered a written order reversing the ALJ's decision. In its order, the court stated that the record makes clear that the ALJ's decision to allow the testimony about the behavior of plaintiff's dog in situations other than the biting incidents at issue "was really a pro forma step in order to make a record." The court reasoned that "throughout the record the ALJ's focus was on whether or not it was more likely than not that the individual bite incidents actually occurred and not whether or not it is more likely than not that

plaintiff's dog is a dangerous dog." The court also stated that it is an issue of the dog's overall temperament and demeanor, not the dog's behavior at a specific time and location. The court held that "there is a requirement that the administrative law judge consider the behavior before and after the specific incidents. She could reach the same determination, but it must be considered."

¶ 20 II. ANALYSIS

¶ 21 The City assigns error to the circuit court's reversal of the ALJ's decision. This court's review of the Department's decision is governed by the Administrative Review Law (735 ILCS 5/3–101 *et seq*. (West 2014)). See Chicago Municipal Code § 2-14-102 (added Apr. 29, 1998). On appeal, we review the administrative decision rather than the circuit court's decision. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007). Before proceeding, we note that the standard of review to be applied to the agency's decision turns on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact. *Board of Education of City of Chicago v. Illinois Education Labor Relations Board,* 2014 IL App (1st) 130285, ¶ 19.

¶ 22 The City asserts that the standard of review in this case is whether the agency's determination is against the manifest weight of the evidence. Plaintiff disagrees and merely offers that the manifest weight standard applies to review of questions of fact, and not to questions of law. We agree with plaintiff that review of an agency's conclusion on a question of law is *de novo*. *Cinkus v. Village of Stickney Municipal Officers Electoral Board,* 228 Ill. 2d 200, 210 (2008). However, in this case, the issue is whether the Department accorded the proper weight to the evidence presented. Thus, we agree with the City that the applicable standard of review here is manifest weight.

¶ 23 Upon administrative review, the function of both the trial and the appellate court is limited to determining whether the findings and conclusion of the administrative agency are

against the manifest weight of the evidence. *Gumma v. White*, 345 Ill. App. 3d 610, 614 (2003). Our sole function is to ascertain whether the final decision of the administrative agency is just and reasonable in light of the evidence presented. *Berry v. Edgar*, 192 Ill. App. 3d 455, 459 (1989). If there is anything in the record that fairly supports the action of the agency, the decision is not against the manifest weight of the evidence and must be sustained upon judicial review. *Id.* Reversal is only appropriate where the opposite conclusion is clearly evident. *Id*.

¶ 24 Section 7-12-020 of the Code sets out five criteria under which an animal can be found to be a "dangerous animal." As relevant to this case, a dangerous animal is defined 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.

¶ 25 According to the circuit court, the ALJ failed to consider evidence of plaintiff's dog's behavior on occasions other than the biting incidents in determining that the dog is a dangerous animal. Although there is some indication that the ALJ did not give this evidence much weight, the record reflects that the evidence was allowed, heard and considered. We are mindful that it is not the role of this court to reweigh the evidence, even if we might have weighted any one factor more heavily than another. See *Abrahamson v. Illinois Department of Professional Regulation,* 153 Ill. 2d. 76, 88 (1992).

¶ 26 The City argues that the ALJ allowed a significant amount of evidence related to the overall temperament of plaintiff's dog. We agree with the City. The record reflects that the ALJ considered the three separate incidents of aggressive behavior by plaintiff's dog and found this dispositive of whether her dog is a dangerous animal under the ordinance. Simply put, if there is evidence of record that supports an administrative agency's determination, it must be affirmed. *Id.*; *Kimball Dawson, LLC v. City of Chicago Dep't of Zoning*, 369 Ill. App. 3d 780, 786 (2006).

Based on our review of the record, we conclude, as we must, that the ALJ's determination that plaintiff's dog is a dangerous animal is not against the manifest weight of the evidence.

¶ 27 *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 Ill. App. (1st) 131735, a case upon which plaintiff heavily relies, although instructive, does not require a different result. In *Wortham,* an administrative review action, the plaintiff's three Rottweilers were found to be dangerous animals following an administrative hearing. At the hearing there was testimony regarding the incident in question, an attack by the plaintiff's three dogs on another dog. There was also testimony regarding a prior dog-bite incident involving one of the plaintiff's dogs and another dog. Besides testimony, written statements from the plaintiff's veterinarian and 20 residents from the plaintiff's neighborhood were admitted into evidence. The ALJ affirmed the determination that the dogs were dangerous animals under the ordinance. The ALJ found that despite the letters from residents of the neighborhood, the plaintiff could not control her dogs that "attacked at least two animals." The plaintiff appealed. The appellate court determined that the Code authorizes the executive director of CACC to determine whether a particular animal "is a dangerous animal, rather than whether it was a dangerous animal at one specific moment in the past. The determination of whether an animal is a dangerous animal, therefore, depends on all of this animal's behaviors rather than the animal's behavior in one particular instance. This is the reason that plaintiff was allowed to submit letters into evidence from her veterinarian and residents in her neighborhood attesting to the dogs' behavior and plaintiff's ability to control her dogs." The court determined that the prior dog-bite incident "was relevant to the determination of whether" the dog was a "dangerous animal." *Id.* at ¶ 22. The court reasoned that the focus of the administrative hearing was on the incident involving all three

of the plaintiff's dogs, and the evidence about that incident was sufficient to uphold the ALJ's determinations that all three of the plaintiff's dogs were dangerous animals. *Id. at* ¶ 24.

¶ 28 The *Wortham* court indicated that consideration of a dog's overall behavior is pertinent, nevertheless, it found that evidence of other incidents of aggression were more relevant to the determination of whether an animal is dangerous. *Id*. Similarly, here, the ALJ allowed evidence relating to the behavior of plaintiff's dog on occasions other than the incidents described herein. Plaintiff was allowed to submit into evidence a Therapy Dog International certification and a letter from her veterinarian. Plaintiff was also allowed to read into evidence portions of the behavioral analysis taken at her request from someone of her choosing, and that document was allowed into evidence. There was also testimony from two people who had numerous positive interactions with plaintiff's dog. Thus, we believe that the Department considered the totality of the evidence presented in reaching its determination. Notwithstanding the evidence of the generally good temperament of plaintiff's dog, the same dog bit one person and two dogs. On that basis, the ALJ found that plaintiff's dog is a dangerous animal within the meaning of the ordinance.

¶ 29 We note lastly plaintiff’s contention that the ALJ’s failure to consider her evidence was arbitrary and capricious. Citing *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462 (1988), as authority, plaintiff argues that the ALJ acted arbitrarily and capriciously by not following the factors outlined in *Greer*, refusing to admit and to weigh her proffered evidence and, by failing to follow its own ordinance and the decision in *Wortham*.

¶ 30 We have already addressed the Department's consideration of the evidence presented as well as the effect of the holding in *Wortham* on this case and need not revisit those issues. Briefly, in *Greer,* our supreme court was asked to review a decision made by the Illinois Housing

Development Authority ("Authority") to fund proposed rehabilitation development project was arbitrary and capricious. 122 Ill. 2d 462 (1988). Significantly, on the issue of reviewability, the Authority asserted that judicial review of its discretionary exercise of authority was precluded by its status as a body corporate and politic, as distinct from an administrative agency which performs quasi-adjudicatory functions. *Id.* at 495. In response, the court concluded that review of the Authority's decision would be tested, not in the same manner as are administrative matters which generate a formal record, but instead, for its arbitrariness. See *id*. at 501-502.

¶ 31 Here, the Department, sitting as an adjudicative body, made findings of fact and generated a formal record of proceedings which, unlike in *Greer*, makes possible our review of whether the Department's determination is supported by the evidence. Plaintiff misperceives the import of the arbitrary and capricious standard in the context of administrative review. Accordingly, not only is her reliance on *Greer* misplaced, but so also is her attempted application of the arbitrary and capricious standard of review to the Board's adjudication of the issues presented. Having determined that the Department's determination that plaintiff's dog is a dangerous animal is not against the manifest weight of the evidence, we need not, indeed, we may not consider the Department's finding further.

¶ 32 III. CONCLUSION

¶ 33 Based on the foregoing reasons, the judgment of the circuit court of Cook County is reversed, and we affirm the decision of the Department.

¶ 34 Circuit Court reversed; Department affirmed.