2018 IL App (1st) 171863-U

No. 1-17-1863

Order filed September 28, 2018

Third Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LAVELDA TAPLEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS and CITY OF CHICAGO DEPARTMENT OF STREETS AND SANITATION,	)	No. 17 M1 1450042
	)	Honorable
Defendants-Appellees.	)	Joseph M. Sconza,
	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke concurred in the judgment.
Justice Gordon concurred in part and dissented in part.

ORDER

¶ 1 *Held*: When the parties agree that record does not indicate that plaintiff was notified, pursuant to Chicago Municipal Code, of impoundment of her vehicle, the order denying her motion to set aside default judgment as untimely must be reversed and cause remanded for further proceedings.

¶ 2 *Pro se* plaintiff LaVelda Tapley appeals from an order of the circuit court affirming a decision of the City of Chicago Department of Administrative Hearings (DOAH), denying her motion to set aside a default judgment. On appeal, plaintiff contends, and the City of Chicago concedes, that the order denying her motion to set aside the default judgment should be reversed and this cause remanded for further proceedings, because plaintiff never received notice that her vehicle was impounded. We agree with the parties and reverse and remand.

¶ 3 The record reveals that on September 13, 2014, a vehicle registered to plaintiff was impounded by defendant the City of Chicago Department of Streets and Sanitation. An "Owner Notification," dated September 18, 2014, and addressed to plaintiff at 431 Hoxie Avenue in Calumet City, stated that the "owner of record" could request a preliminary impoundment hearing to determine whether there was probable cause for the continued impoundment of the vehicle. The notification stated that a request for a preliminary hearing must be made within 15 days of the impoundment. The notice further stated that plaintiff could request a "Full Hearing" before the DOAH within 15 days of the mailing date of the notice. The record also contains owner notifications sent to addresses on West 100th Street, South Western Avenue, and West 61st Street in Chicago.

¶ 4 On October 22, 2014, a hearing was held by the DOAH. Neither plaintiff nor a City of Chicago representative appeared. An administrative law judge (ALJ) entered a default judgment finding plaintiff liable for penalties and storage and towing fees in the amount of $3,475. The "Findings, Decisions & Order" (default judgment) stated that plaintiff had 21 days from the mailing date to file a motion to set aside or void the default judgment for good cause. The default judgment also stated that "[y]ou may have more than 21 days if you can show you were not

properly served with the violation notice." The default judgment was addressed to plaintiff at 431 Hoxie Avenue in Calumet City.

¶ 5 On January 25, 2017, plaintiff filed a *pro se* motion to set aside the default judgment. A hearing was held on January 27, 2017. There, plaintiff testified that the West 100th Street address belonged to her husband and that she had left her husband. She further stated that 431 Hoxie was her mother's address and that she did not "receive any mail there." Plaintiff indicated that she was notified "this year" about the impoundment. The ALJ then stated that vehicle impoundment matters were brought against the registered owner of the vehicle, and that plaintiff was responsible for the actions of the person driving her vehicle. The ALJ further stated that there was a "time limit" to filing a motion to set aside the default judgment, and that plaintiff was "more than a couple of years late." The ALJ noted that "everything" was sent to "the proper addresses as of record with the Secretary of State." The ALJ therefore concluded that plaintiff's motion to set aside the default judgment was "untimely by a couple of years" and denied it.

¶ 6 On February 6, 2017, plaintiff filed a petition for administrative review in the circuit court, alleging that she "never received anything" from the City of Chicago pertaining to the impoundment. The circuit court affirmed the denial of the motion to set aside the default judgment. Plaintiff now appeals *pro se.*

¶ 7 When, as here, a party appeals following the entry of judgment by the circuit court on administrative review, "it is the decision of the administrative agency, not the judgment of the circuit court, which is under consideration." *Provena Covenant Medical Center v. Department of Revenue,* 236 Ill. 2d 368, 386 (2010). The case at bar presents a mixed question of law and fact, that is, the "historical facts are admitted or established, the rule of law is undisputed, and the

issue is whether the facts satisfy the statutory standard." *Id.* at 387. We review a mixed question of law and fact under the clearly erroneous standard. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998).

¶ 8 Pursuant to Chicago Municipal Code section 2-14-108:

> "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. If the petition is granted, the administrative law officer shall proceed with a new hearing on the underlying matter as soon as practical." See Chicago Municipal Code, § 2-14-108 (added Apr. 29, 1998).

¶ 9 Here, it is undisputed that plaintiff's vehicle was impounded in September 2014, a default judgment was entered in October 2014, and that plaintiff's January 2017 motion to set aside the default judgment was denied as untimely. Although plaintiff's motion to set aside the default judgment was filed more than 21 days after it was entered, she contends that she "never received any mail pertaining to the vehicle that was impounded."

¶ 10 Chicago Municipal Code section 2-14-132(2) states that "[w]ithin 10 days after a vehicle is seized and impounded, the department of streets and sanitation or other appropriate department shall notify by certified mail the owner of record ***, of the owner's right to request a hearing before the department of administrative hearings to challenge whether a violation of this code for which seizure and impoundment applies has occurred." See Chicago Municipal Code, § 2-14-132(2) (amended Nov. 17, 2010).

¶ 11 Before this court, the City of Chicago concedes that the record does not contain proof of service pursuant to section 2-14-132(2) of the Chicago Municipal Code—that is, there is nothing in the record indicating that notice of the impoundment was sent to plaintiff via certified mail. See *Id.* ("[w]ithin 10 days after a vehicle is seized and impounded, the department of streets and sanitation or other appropriate department shall notify by certified mail the owner of record ***, of the owner's right to request a hearing"). We agree with the City of Chicago that the record does not contain proof of service via certified mail. Consequently, plaintiff's motion to set aside the default judgment may not be untimely pursuant to section 2-14-108 of the Chicago Municipal Code. See Chicago Municipal Code, § 2-14-108 ("An administrative law officer may set aside any order entered by default and set a new hearing date, *** at any time, if the petitioner establishes that the petitioner was not provided with proper service of process."). Accordingly, we reverse the denial of plaintiff's motion to set aside the default judgment and remand for further proceedings in accordance with section 2-14-108. See i*d.* ("If the petition is granted, the administrative law officer shall proceed with a new hearing on the underlying matter as soon as practical.").

¶ 12 Reversed and remanded.

¶ 13 JUSTICE GORDON, concurring in part and dissenting in part:

¶ 14 I agree with the majority that this case must be reversed, but I would not remand this case for a further hearing; I would vacate the order of the administrative law judge and dismiss the administrative proceedings. It is undisputed that the record of the administrative proceedings does not contain proof of service via certified mail to plaintiff. In fact, plaintiff was never mailed a notice of the impoundment pursuant to section 2-14-132(2) of the Chicago Municipal Code.

Due process requires such a notice, which was not sent here. On October 22, 2014, the date that this case was set before the administrative law judge, that individual became the prosecutor and the judge in the same proceedings when neither party showed up. The administrative law judge entered a default judgment, finding plaintiff liable for penalties, storage, and towing fees in the amount of $3,475 even though neither plaintiff nor an attorney or representative for the City of Chicago appeared and thus no evidence was offered or received into evidence. The administrative law judge was both the judicial officer hearing the case and the representative for the City of Chicago, wearing both hats. However, the plaintiff who is handling this case *pro se* makes no constitutional argument about the manner in which the judgment was entered and we need not decide this case on constitutional grounds because section 2-14-132(2) of the municipal code mandates the following:

> "Within 10 days after a vehicle is seized and impounded, the department of streets and sanitation or other appropriate department shall notify by certified mail the owner of record *** of the owner's right to request a hearing before the department of administrative hearings to challenge whether a violation of this code for which seizure and impoundment applies has occurred or, if the impoundment is pursuant to Section 9-92-035, whether the subject vehicle is eligible for impoundment under that section." Chicago Municipal Code § 2-14-132(2) (amended Nov. 17, 2010).

¶ 15 Plaintiff's vehicle was impounded on September 13, 2014, and it is undisputed that no such notice was ever mailed or personally served on plaintiff. If the case is to be remanded back to the administrative law judge, it should be remanded with directions to vacate the judgment, dismiss the case, and return the vehicle to plaintiff without assessing any storage or other fees or

costs. To allow the city the discretion to send a notice more than four years later and assess fees for storage and fines would be unconscionable.