2019 IL App (1st) 180132-U

No. 1-18-0132

Order filed September 11, 2019

Third Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| KELLY KING, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Cook County. |
| | ) | |
| v. | ) | No. 16 CH 14273 |
| | ) | |
| COOK COUNTY DEPARTMENT OF REVENUE, | ) | Honorable |
| | ) | Celia G. Gamrath, |
| Defendant-Appellee. | ) | Judge, presiding. |

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

**ORDER**

¶ 1 *Held*: Affirmed. Finding that appellant failed to pay required tax is supported by record.

¶ 2 Plaintiff Kelly King appeals the circuit court's order affirming the final decision of the Cook County Department of Administrative Hearings that she owed a $175 non-retailer use tax. On appeal, Ms. King contends she paid "all that was required," and that the Cook County Department of Revenue (the Department) failed to provide any documents "other than a bill statement [which] is not proof that plaintiff" owed the tax. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Ms. King purchased a vehicle from a private seller in March 2012. After she registered the vehicle, the Department notified her that she owed $175 in non-retailer use tax pursuant to section 74-597 of the Cook County Code. In 2016, the Department cited Ms. King for nonpayment and summoned her to an administrative hearing.

¶ 5 At the hearing, Ms. King's father, Marcus Lewis, claimed Ms. King was not given notice of the tax. He said Ms. King purchased the vehicle in 2012, sixteen or seventeen days after "the law went into effect," and "paid all the fees that were supposed to be paid at the time of transfer" at a currency exchange. He stated that this proceeding was "the only time [that] we ever heard" about the non-retailer use tax. The Department's counsel then explained, "for the record," that from 2012 to 2013, "soon" after a vehicle was registered, the Department would send out a "use tax return form" to the buyer. If the tax wasn't paid, a "precollection letter" was sent, and the buyer might begin receiving phone calls regarding payment. Lewis and Ms. King claimed that Ms. King did not receive these notices.

¶ 6 Brandi Watson, a business manager with the Department, identified the first notice sent to Ms. King on August 14, 2013. This notice was addressed to plaintiff at "4211 S Langley Town House," notifying Ms. King she owed $175 pursuant to the Cook County Use Tax on "Non-Retailer Transfers of Motor Vehicles." The notice specifically stated:

> "Please Note: All monies collected at the time of registration were paid to the Illinois Department of Revenue. The Cook County Non-Retailer Use Tax was NOT collected at the time of your transaction and is due to Cook County."

¶ 7 Watson explained that the August 2013 notice was generated after the Department received a record from the State of Illinois indicating that a vehicle purchased in a "private-party transaction" had been registered. Watson then identified a second notice, dated October 4, 2013. The second notification was sent because payment had not been made. These notifications were sent out as a "courtesy to let the individual know that they would have taxes due on the car because they bought it from an individual." Because the Department did not receive a response, the matter was sent to collection.

¶ 8 Lewis pointed out that the two notices did not include Ms. King's complete address. The administrative law judge (ALJ) hearing the case agreed and ruled, for that reason, that Ms. King should be relieved of the penalties, interest, and court costs but *not* the obligation to pay the tax otherwise due on the transaction. So Ms. King still owed the $175 non-retailer use tax but none of the interest or penalties.

¶ 9 Ms. King filed a *pro se* complaint for administrative review, alleging that "all fees were paid of time of sale," and that she did not owe anything further. She also filed a *pro se* specification of errors asking that the suit "be dismissed" in her favor because the Department failed to provide "the transaction from the currency exchange to show definitively" that she did not pay the non-retailer use tax.

¶ 10 The circuit court entered a written order affirming the determination that Ms. King owed the $175 tax. The court was not persuaded that the Department had the burden to prove that Ms. King did not pay tax, as it would require the Department to prove a negative. And the court noted that Ms. King provided no proof that she did, in fact, pay the tax. The court further explained

that, despite Ms. King's argument to the contrary, payment of the *state* tax did not eliminate her obligation to pay the *county* non-retailer use tax.

¶ 11 Ms. King appeals.

¶ 12 ANALYSIS

¶ 13 Only Ms. King filed a brief before this court. But because the record is simple and the claimed error readily susceptible to review, we may consider this case on the merits without the benefit of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp*., 63 Ill. 2d 128, 133 (1976).

¶ 14 Having said that, our review of this matter has been hindered by Ms. King's failure to comply with Supreme Court Rule 341 (eff. May 25, 2018), which "governs the form and content of appellate briefs." *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. Although she is a *pro se* litigant, "parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 7.

¶ 15 Rule 341(h) provides that all briefs should contain a statement of "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment," and an argument "which shall contain the contentions of the appellant and reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(6), (7) (eff. May 28, 2018). We would note that the approved form from the Illinois Supreme Court, on which Ms. King wrote her brief, likewise advises her both of the relevant supreme court rule and the need to cite to specific pages of the record.

¶ 16 Ms. King did not comply with that rule. Her statement of facts, thorough as it was, is a narrative of the events and the proceedings before the ALJ and the circuit court but without a single citation to the record, requiring us to search for this information. Her argument contains no citation to legal authority whatsoever. We have the discretion to reject her appeal on this basis alone. See *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 43. We choose not to do so, however, and will address her claim on the merits.

¶ 17 In an appeal from an administrative proceeding, we review the decision and reasoning of the administrative agency, not of the circuit court. See, *e.g.*, *Board of Education of Waukegan Community Unit School District 60 v. Illinois State Charter School Commission*, 2018 IL App (1st) 162084, ¶ 80. The standard of review depends on the nature of the issue. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). For example, questions of law are reviewed *de novo*, meaning we give no deference to the trial court's ruling and conduct an independent review. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009).

¶ 18 But for pure questions of fact, we will affirm an agency's factual findings unless they are against the manifest weight of the evidence. *Woods v. Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 16. That means we will reverse those findings only if the opposite conclusion is clearly evident. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). We deem the agency's findings *prima facie* true and correct. 735 ILCS 5/3-110 (West 2016); *Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002). We do not substitute our own judgment for that of the agency on questions of credibility

or conflicts in the evidence. *City of Belvidere*, 181 Ill. 2d at 205; *Woods*, 2012 IL App (1st) 101639, ¶ 16.

¶ 19 The record contains ample and undisputed evidence that Ms. King engaged in a transaction—the private sale of the automobile—that triggered this county use tax. Ms. King never disputed the applicability of the county use tax to this transaction. The Department likewise submitted undisputed evidence that it received a notice from the State of Illinois of the private car sale triggering that county use tax, which prompted the Department to issue notices to Ms. King to pay that county tax. (Ms. King disputed whether she received these notices, to be sure, but did not object to the admission of these documents demonstrating this tax liability.)

¶ 20 At the administrative hearing, Ms. King (represented by her father) almost exclusively argued that Ms. King was never told about this county use tax, because she never received any notice of it until the Department issued the summons to appear at the administrative hearing. But Ms. King prevailed on that point; the ALJ agreed with her that the notices had not been properly sent, because the mailings hadn't included her specific apartment number. That's why the ALJ ruled that Ms. King should not be charged any interest or penalties for late payment of the tax. As to the issue of notice, in other words, Ms. King won, and she received the appropriate relief—a waiver of any late fees or charges.

¶ 21 But as the ALJ properly noted, whether Ms. King received proper notice of the county tax is a different question than whether Ms. King owed the tax in the first place. The imposition of the county use tax was automatically triggered by operation of law, based on the sale of the automobile between private parties. See Cook County Code of Ordinances, § 74-597(a)(1) ("a tax is imposed upon the privilege of using in the County any motor vehicle that is acquired by

purchase, gift or transfer …"). Ms. King's county use tax obligation, in other words, accrued the moment she bought that car; it was not dependent on the county giving her notice of that tax obligation.

¶ 22 And while Ms. King argues on appeal that there is no evidence that she failed to pay that tax, she offered nothing on this point at the administrative hearing. The only substantive challenge Ms. King made was to the lack of notice, on which she prevailed. True, her father stated for the record that Ms. King had paid all applicable fees, including the county use tax. But Ms. King never testified at the hearing; she never stated under oath that she paid that tax.

¶ 23 On the other hand, there was competent evidence at the hearing that Ms. King did not pay it. For one thing, the ALJ took notice of the fact that, at the time of these events, the state and county did not yet have an agreement by which the state would collect the use tax for the county at the time of the car's registration. As the Department's counsel explained, because no intergovernmental agreement was in place at that time in 2012, car buyers were notified "soon thereafter" that they owed the new tax. So when the car was registered with the state—when Ms. King paid her fees to the state of Illinois at the currency exchange—the state would have no reason (or authority) to ask her to pay the county use tax.

¶ 24 And that notion was corroborated by the Department's evidence, principally through Brandi Watson, the manager of the Department's debt and vehicle finance unit that assesses these use taxes. Watson confirmed that the Department received notice of the automobile sale from the state, which prompted the Department to send the notices to Ms. King. The notice itself, admitted into evidence (without objection) as a business record, and the contents of which Watson confirmed, demonstrated that the state did not collect the county use tax at the time of

the car's registration. And as a matter of simple logic, if the state had already collected the county use tax at the time Ms. King registered with the state, the state would not have sent that notice of the car sale to the county—it would have sent the county the tax proceeds, the $175—and the county would have had no reason to ask Ms. King to pay it a second time.

¶ 25 We say again that our review of factual findings is deferential. The ALJ found that Ms. King did not pay the county use tax. We can only reverse that finding if the opposite conclusion is clearly evident. *City of Belvidere*, 181 Ill. 2d at 205. Given that Ms. King offered no evidence that she paid that tax, and in light of competent evidence at the administrative hearing that she did not, we have no basis to overturn the ALJ's factual finding.

¶ 26 As such, the final decision of the Department of Administrative Hearings, finding that Ms. King owed $175 in county use taxes, was supported by the evidence. The circuit court correctly affirmed that decision.

¶ 27 CONCLUSION

¶ 28 The judgment of the circuit court, affirming the decision of the administrative agency, is affirmed.

¶ 29 Affirmed.