2019 IL App (1st) 181091-U

No. 1-18-1091

Order filed March 22, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FRED L. NANCE, JR.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 17-M1-625771
CITY OF CHICAGO, a municipal corporation, and	)	
CITY OF CHICAGO DEPARTMENT OF	)	
ADMINISTRATIVE HEARINGS,	)	Honorable
	)	Patrice Ball-Reed,
Defendant-Appellees.	)	Judge, Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: This Court affirms Department of Administrative Hearings' decision finding plaintiff liable for an automated speed enforcement system violation.

¶ 2 Plaintiff Fred L. Nance, Jr. appeals *pro se* from an order of the circuit court of Cook County affirming the City of Chicago's Department of Administrative Hearings' (the Department) decision finding him liable for speeding in violation of section 9-101-020 of

Chicago's Municipal Code (Chicago Municipal Code § 9-101-020 (amended May 6, 2015)) (Municipal Code) and section 11-208.8 of the Illinois Vehicle Code (625 ILCS 5/11-208.8 (West 2016)) (Vehicle Code). On appeal, plaintiff contends that the Department's hearing violated: (1) section 11-208.3(b)(2) of the Vehicle Code (625 ILCS 5/11-208.3(b)(2) (West 2016)) because the violation notice listed his car make as "OTHR", and (2) his due process rights because the Department did not provide him with a written copy of the technician certificate before or during the hearing. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 At 2:20 p.m. on July 23, 2017, an automated speed enforcement camera recorded a speeding vehicle registered to plaintiff at 1111 North Humboldt Drive in Chicago driving 41 miles per hour (mph) in a posted 30 mph speed limit area. A speed enforcement violation notice addressed to "Fred Nance" was issued from the City of Chicago (the City) on August 13, 2017, mailed to plaintiff's address and mandated a $100 fine. The violation notice indicated that plaintiff was speeding within a designated "park safety zone" in violation of section 9-101-020 of Chicago's Municipal Code (Chicago Municipal Code § 9-101-020 (amended May 6, 2015)). Under the section captioned "Plate / State / Type / Vehicle Make," the violation notice listed the vehicle's license plate number, state where issued, "Pas" (passenger) and "OTHR" (other). The violation notice also included three photos of the vehicle taken by the automated enforcement camera: two photos displaying the vehicle at various distances with text indicating a 41-mph speed, and a close-range photo of the vehicle's license plate and an "H."

¶ 5 Plaintiff contested the ticket and appeared *pro se* at a hearing before the Department on September 20, 2017. At the hearing, the administrative law judge (ALJ) read the violation

notice's contents and vehicle's recorded speed into the record. He also read the cited vehicle's license plate number and asked plaintiff whether that was his registration. Plaintiff replied, "[b]elieve so sir." The ALJ next read a certification from two city technicians who reviewed the recorded images and made the following findings: (1) the automated speed enforcement system recorded the vehicle at 1111 North Humboldt Drive within a safety zone based on its proximity to Humboldt Park located at 1401 North Humboldt Drive in Chicago;[1] (2) there was a 30 mph posted speed limit; (3) the automated speed enforcement system was authorized to operate at the violation time and date; (4) the system was calibrated on July 21, 2017; and (4) on July 23, 2017, the cited vehicle violated section 9-101-020 of the Municipal Code (Chicago Municipal Code § 9-101-020 (amended May 6, 2015)).

¶ 6 The ALJ then asked whether plaintiff had any defenses to present. Plaintiff responded that the violation notice violated section 11-208.3(b)(2) of the Vehicle Code (625 ILCS 5/11-208.3(b)(2) (West 2016)), which requires the vehicle's make to be specified, because the violation notice listed his vehicle's make as "other." Plaintiff next contended that he should have received an affidavit certifying the technician certificate from the Department prior to the hearing.

¶ 7 The ALJ responded that a violation notice satisfied the make requirement "as long as the City [provided] documentation identifying the make of the vehicle and the license plate number." The ALJ noted that the violation notice contained the vehicle's make, which was a Honda, and

[1] A park safety zone is a designated area within one-eighth of a mile from the nearest property line of a park. 625 ILCS 5/11-208.8(a) (West 2016). The automated system may only record violations during the hours a park is open and it is enforced seven days a week with a 30 mile per hour urban speed limit as mandated by § 9-12-070 of the Municipal Code (Chicago Municipal Code § 9-12-070(a) (amended Apr. 26, 2006)) and section 208.8(a-5)(ii) of the Vehicle Code (625 ILCS 5/11- 208.8 (a-5)(ii) (West 2016)).

displayed the vehicle's license plate number, which plaintiff confirmed to be his registration at the start of the hearing.

¶ 8 The ALJ further stated that no statute required the Department to provide plaintiff with a copy of the technician certificate, which is why he read the findings into the record. The ALJ also stated that if plaintiff wanted a copy, he would need to make a Freedom of Information Act (FOIA) request for it. Plaintiff responded, "I'm supposed – the standard and procedure of due process violation by not providing that affidavit [sic]." Plaintiff indicated that a judge in another courtroom told him that he needed to get an affidavit from the ALJ. The ALJ reiterated that he was not required to provide plaintiff with a copy of the certification and offered to show plaintiff the certification. Plaintiff then physically reviewed the document.

¶ 9 After plaintiff reviewed the certification, the ALJ concluded that the violation notice was sufficient to comply with the requirements of section 11-208.3 of the Vehicle Code (625 ILCS 5/11-208.3 (West 2016)), that plaintiff's statements were insufficient to overcome the City's evidence, and found plaintiff liable for the violation.

¶ 10 On October 3, 2017, plaintiff filed an administrative review complaint in the circuit court of Cook County seeking review of the Department's order. On February 26, 2018, he filed a motion for continuance and a "motion for leave to file a specification of errors" with exhibits. The motion for specification of errors contended that: (1) the violation notice did not list the make of his car; (2) the name on the violation notice was incorrect based on his registration; and (3) his due process rights were violated during the Department's hearing because he was entitled to a copy of the technician certificate and did not receive one. The record does not indicate whether plaintiff's motion was granted or denied, but the court allowed the City to file a response

to plaintiff's motion and set the matter for hearing. After a hearing on April 23, 2018, the circuit court entered a written order affirming the Department's decision and staying the $100 fine until the resolution of an appeal. This timely appeal followed.

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiff raises various contentions, including that: (1) the ALJ violated his due process rights by not providing him with a copy of the technician certificate during the administrative hearing; (2) the violation notice did not specify the vehicle's make as required by section 11-208.3(b)(2) of the Vehicle Code (625 ILCS 5/11-208.3(b)(2) (West 2016)); (3) he was not in a safety zone at the time of the alleged violation; (4) his violation notice contained the incorrect registrant's name; (5) the ALJ and the circuit court violated and misapplied various sections of the Illinois Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2016)) (Administrative Review Law) and the Vehicle Code (625 ILCS 5/11 *et seq.* (West 2016)); and (6) the technician certificate was invalid because it did not list the vehicle's speed, report recent radar validation tests and contained a prestamped signature.

¶ 13 When reviewing an administrative decision on appeal, we review the decision of the administrative agency, not the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). The standard of review depends on the presented question. We review questions of fact under the manifest weight of the evidence standard and questions of law *de novo* and the plaintiff carries the burden of proof on administrative review. *Marconi*, 225 Ill. 2d at 532-33.

¶ 14 A. Violation of Illinois Supreme Court Rule 341(h)(7)

¶ 15 We initially note that plaintiff's brief violates Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) for failing to support his arguments with authority, nor did he cite to the pages of the record relied on. The argument section of the appellant's brief must contain "the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on ***." Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). "Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone." *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 43. A plaintiff with a brief that does not adhere to Rule 341(h)(7) forfeits those arguments. *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 36.

¶ 16 Although plaintiff appears *pro se*, it is the appellant's burden to present coherent arguments for this court to review. *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 425 (2005). Therefore, to the extent that plaintiff's brief does not conform with Rule 341(h)(7), his arguments that: (1) the Department and the circuit court violated and misapplied sections 11-208.6, 208.9, 1201.1 and 1306 of the Vehicle Code (625 ILCS 5/11-208.6, 208.9, 1201.1, 1306 (West 2016)) and sections 3-101, 108, 110, and 111 of the Administrative Review Law (735 ILCS 5/3-101, 108, 110, 111 (West 2016)); (2) the violation notice was insufficient to conform with section 11-208.3(b)(2) of the Vehicle Code (625 ILCS 5/11-208.3(b)(2) (West 2016)); and (3) the Department violated his substantive due process rights during the hearing, are forfeited. However, we will address those issues that we can ascertain from plaintiff's brief.

¶ 17 B. Waiver

¶ 18 Plaintiff raises several issues for the first time on appeal that were not raised at the administrative hearing. "No new or additional evidence in support of or in opposition to any

finding, order, determination or decision of the administrative agency shall be heard" by the reviewing court. 735 ILCS 5/3-110 (West 2016). Any issues or defenses not raised at the administrative hearing are waived on review. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212–13 (2008).

¶ 19 Accordingly, plaintiff's newly raised contentions that: (1) he was not in a designated safety zone under section 11-208.8 of the Vehicle Code (625 ILCS 5/11-208.8 (West 2016)); (2) the technician certificate was invalid to show that he committed a violation because it did not report plaintiff's speed or whether the system's lidar equipment radar had undergone weekly validation, and it contained a pre-stamped signature; (3) this court must determine whether "shall" is mandatory or directive as used in section 11-208.3(b)(2) of the Vehicle Code (625 ILCS 5/11-208.3(b)(2) (West 2016)); and (4) the violation notice incorrectly lists his name as "Fred Nance," are waived. See 735 ILCS 5/3-110 (West 2016); *Ranquist v. Stackler*, 55 Ill. App. 3d 545, 549 (1977).

¶ 20 Further, although the plain error rule may be applied in civil cases, this is not a proper case to invoke it. *Palanti v. Dillon Enterprises, Ltd.*, 303 Ill. App. 3d 58, 66 (1999). The application of plain error in civil cases is very rare; applied only where there was an egregious error so prejudicial that it denied the complaining party a fair trial (*Reed v. Ault*, 2012 IL App (2d) 110744, ¶ 33) and substantially impaired the integrity of the judicial process itself (*Baumrucker v. Express Cab Dispatch, Inc.*, 2017 IL App (1st) 161278, ¶ 55). Plaintiff has made no such argument or showing. Additionally, even if we considered the issues and found errors, they are not the type of egregious errors required to trigger the application of the plain error

doctrine in civil cases. *Arient v. Shaik,* 2015 IL App (1st) 133969, ¶ 39. As such, we will honor the procedural default.

¶ 21 C. Remaining Issues

¶ 22 Accordingly, there are two issues remaining for our review: (1) whether the violation notice sufficiently complied with the Vehicle Code's requirements, and (2) whether plaintiff's procedural due process rights were violated because he was not provided with a written copy of the technician certificate before or during the hearing.

¶ 23 1. Standard of Review

¶ 24 On review, an administrative agency's findings and conclusions on questions of fact are deemed to be *prima facie* true and correct (735 ILCS 5/3-110 (West 2016)) and an evidentiary ruling is against the manifest weight of the evidence only if the opposite conclusion is clearly evident (*Abrahamson v. Illinois Department of Professional Regulation,* 153 Ill. 2d 76, 88 (1992)). It is not the reviewing court's function to reweigh evidence and it will only consider whether there is sufficient evidence in the record to support the agency's findings. *Abrahamson,* 153 Ill. 2d at 88. The mere fact that the opposite conclusion might be reasonable or that a reviewing court might have ruled differently will not justify reversal of the agency's findings. *Abrahamson,* 153 Ill. 2d at 88.

¶ 25 2. Sufficiency of the Violation Notice

¶ 26 Plaintiff contends that the violation notice is insufficient to assess liability because it failed to specify the make of his vehicle as mandated by section 11-208.3(b)(2) of the Vehicle Code, which requires a violation notice to specify the vehicle's make "if the make is available and readily discernible." 625 ILCS 5/11-208.3(b)(2) (West 2016). However, while plaintiff does

not make a fully coherent argument on this issue in his brief, we understand his argument to be that the violation notice fails to comply with section 208.3(b)(2) because it lists the vehicle's make as "other." Additionally, plaintiff raised this argument at the Department's hearing before the ALJ. We will therefore determine whether the ALJ's finding that the violation notice sufficiently complied with the statute was contrary to the manifest weight of the evidence. *Ehlers v. Jackson County Sheriff's Merit Comm'n*, 183 Ill. 2d 83, 89 (1998).

¶ 27 Here, plaintiff is correct that the typed portion of the violation notice lists the make of the vehicle as "other." However, plaintiff ignores that the violation notice also includes a close range picture of the vehicle, which clearly specifies the make of the vehicle as a Honda. We find that the violation notice complies with the statute through the combination of words and pictures that establish the make of plaintiff's vehicle. Thus, plaintiff's argument is without merit. Moreover, even if plaintiff's contention was correct, we find that the failure of the violation notice to strictly comply with the requirements of section 11-208.3(b)(2) of the Vehicle Code (625 ILCS 5/11-208.3(b)(2) (West 2016)) is not fatal to the violation notice and does not invalidate it. See *Board of Education of Waukegan Community Unit School District 60 v. Illinois State Charter School Commission*, 2018 IL App (1st) 162084, ¶¶ 68-69.

¶ 28 3. Due Process

¶ 29 Plaintiff next contends he was denied procedural due process because the ALJ did not provide him with a written copy of the technician certificate before or during the Department's hearing. Section 11-208.3 of the Vehicle Code (625 ILCS 5/11-208.3 (West 2016)) governs administrative hearings for automated speed enforcement violations.

¶ 30 Whether a party has been denied procedural due process is a question of law which we review *de novo*. *Majid v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 2015 IL App (1st) 132182, ¶ 32. Procedural due process for an administrative hearing is having notice and the opportunity to be heard in a meaningful time and manner. *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, ¶ 16 (citing *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 570-71 (2010)). Procedural due process in an administrative hearing gives the accused the right to present evidence and argument, to testify, to inspect evidence offered against him, and impartiality in rulings upon the evidence. *Bartlow*, 399 Ill. App. 3d at 571-72. While a "statute itself generally affords all of the process that is due" (*Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 34), an administrative hearing must provide these minimum guarantees to ensure a "fair and impartial hearing" (*Bartlow*, 399 Ill. App. 3d at 572).

¶ 31 Here, plaintiff's procedural due process argument is without merit. The record reflects that plaintiff was mailed notice of the violation and given an opportunity to contest the violation with a hearing at the Department. During the hearing, the ALJ recited the City's evidence, read the findings from the technician certificate, gave plaintiff an opportunity to physically inspect it, and allowed him to testify and present his arguments against the violation. The ALJ addressed plaintiff's defenses during the hearing, stated that there was no section of the statute that required the City to produce the technician certificate prior to or during the hearing, before finding him liable for the violation and assessing a $100 fine. Plaintiff does not contend that he was denied these minimum rights to due process as required by section 11-208.3 of the Vehicle Code. 625 ILCS 5/11-208.3 (West 2016). Accordingly, we find that plaintiff's procedural due process rights were not violated.

¶ 32 Moreover, plaintiff cites to no section of the statute that entitles him to a written copy of the technician certificate, nor have we found one. At the hearing, the ALJ told plaintiff that he could make a FOIA request outside of the hearing, but the record does not show that he did so. Additionally, as noted by the City, plaintiff could have also requested a subpoena to compel the City to produce the certificate. See Chicago Municipal Code § 9-100-080(d) (amended Apr. 29, 1998). As there was no statutory requirement for plaintiff to receive a copy of the technician certificate prior to, or during the hearing, plaintiff's due process rights were not violated because he did not receive one.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm the decision of the City of Chicago's Department of Administrative Hearings.

¶ 35 Affirmed.