

No. 1-10-1879

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BARRY RUSTIN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 09 M2 1038
)	
CITY OF EVANSTON,)	Honorable
)	James N. Karahalios,
Defendant-Appellee.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

- ¶ 1 *Held:* Hearing officer correctly found that plaintiff Barry Rustin violated the city of Evanston's snow route parking ban. Circuit court did not err in granting summary judgment for defendant city of Evanston on Rustin's claim that Evanston's enforcement of the ban violated Rustin's constitutional right to due process of law.
- ¶ 2 Defendant Barry Rustin was found by a hearing officer to have violated the City of Evanston's snow route parking ban. He appealed that determination to the circuit court of Cook County, incorporating in that appeal a challenge to the application of the ordinance on due

process grounds. The circuit court affirmed defendant's conviction and granted summary judgment for Evanston on the due process challenge. This appeal ensued.

¶ 3 We first consider Rustin's contention that Evanston failed to establish that he had violated the snow route parking ban. In this administrative review action our review is of the decision of the hearing officer, not the circuit court. *Prato v. Vallas*, 331 Ill. App. 3d 852, 862 (2002). We must determine whether the hearing officer's decision was contrary to the manifest weight of the evidence. *Younge v. Board of Education of the City of Chicago*, 338 Ill. App. 3d 522, 530 (2003).

¶ 4 The ban in question is in effect on certain arterial streets designated as snow routes when two or more inches of snow have fallen within a 24-hour period. No parking is permitted on such streets from 11 p.m. until 6 a.m. It is undisputed that Rustin parked on one of those arterial streets designated as a snow route after two or more inches of snow had fallen and was ticketed at 5:27 a.m. on December 20, 2008. Rustin contended before the hearing officer that the snow on the portion of the street where he parked had been cleared by the time he parked there. But the ordinance does not provide an exception for partially cleared streets. He also contended that when, at 10:30 p.m., he called Evanston's phone line dedicated to advising residents of a snow route parking ban, it had not yet been updated to reflect the ban. Rustin's car was not ticketed until the early morning hours of the next day, and the time he called the snow ban telephone service was not yet within the time parameters of the ban. Accordingly, we find that the hearing officer's finding that Rustin violated this ordinance was not contrary to the manifest weight of the evidence and Rustin was properly fined \$50.

¶ 5 We next consider defendant's claim that the ordinance scheme for alerting the public to a snow route parking ban was so faulty as to violate his right to due process of law under 42 U.S.C. §1983. The parties both filed motions for summary judgment as to this claim. In determining

whether summary judgment should be granted, a court of review looks to the pleadings, depositions, affidavits, and admissions on file in the light most favorable to the non-moving party to determine whether there is a question of material fact remaining and if not whether the moving party is entitled to relief as a matter of law. 735 ILCS 5/2-1005(c) (West 2008). As for Rustin's claim of violation of his right to due process, where, as is the case here, the statute or ordinance does not affect a fundamental constitutional right, the test for whether there has been a violation of substantive due process is the rational basis test. *People v. Williams*, 235 Ill. 2d 178, 205 (2009). A statute or ordinance will be upheld under this test as long as it bears a rational relationship to a legitimate legislative purpose, and is neither arbitrary nor unreasonable. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 307 (2008); *People v. Dabbs*, 239 Ill. 2d 277, 292 (2010). As we have noted, this standard applies to ordinances as well as statutes. *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1099 (2010).

¶ 6 This record contains the interrogatory and deposition of Suzette Eggleston, who at the time in question was the superintendent of Streets and Sanitation for Evanston. She was responsible, among other duties, for overseeing snow ban and snow emergency declarations. Eggleston explained that Evanston employed six different means of alerting its residents to the institution of a snow route parking ban: the sounding of sirens located at various fire stations in Evanston; a telephone snow line which announced the ban to those who called in; an email service which alerted subscribers when the ban was instituted; a notice on Evanston's cable television station; a notice on Evanston's AM radio station; and a notice on Evanston's website home page.

¶ 7 Eggleston also stated in her deposition that a snow route parking ban could be called even when there was not actually two or more inches of snow currently on the ground, when there was a forecast of that amount of snow. Rustin asserts that this policy violated due process because it

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contradicted the information on the street signs which forbade parking when there was actually two or more inches of snow on the ground. The street signs do not indicate that the existence of two or more inches of snow is the only basis for the declaration of a snow route parking ban. Indeed they also list a telephone line for residents to call to be updated as to the existence of such a ban. We find that the need for occasionally instituting the ban in response to a forecast of snow is reasonably related to the legislative purpose of allowing sufficient time for snow plows to clear the streets, and accordingly find no due process violation in this procedure.

¶ 8 Rustin alleges that Evanston's notification policies violate due process because they do not give fair notice of when a snow route parking ban has been declared. We find no merit to this claim given the six different methods listed by Eggleston for notifying residents. Rustin finds fault with some of these individual methods. He notes that Eggleston stated that she believed the sound of the sirens reached the entire city, but she was unaware of any studies documenting this and she had not investigated the matter herself. He states that the telephone snow line is not updated at a set time and has been updated as close in time as five minutes before a snow route parking ban. Finally he states that it is not clear how many people have signed up to be on the email list for notification of the snow route parking ban. The record establishes just one instance when the snow line was updated a mere five minutes before the ban went into effect. Rustin does not deny that the siren alerts most if not all of the city residents, and of course any resident with a computer has the option of signing up for the email list. Again, we find that cumulatively the six different methods of alerting Evanston residents provides them with a fair opportunity to determine that a snow route parking ban has been declared.

¶ 9 Rustin also contends that it is a violation of due process that vehicles may be ticketed for violating the snow route parking ban even after a street has been plowed and is devoid of snow. We do not find in the record any statement or evidence that the ban is extended to situations

when an entire length of a street in Evanston has been cleared of snow. But even if this were the case, Eggleston explained in her deposition that snow plows required a certain width of street in order to be mobile and able to negotiate city streets. It is evident that snow plows might have to navigate from one arterial street to another and therefore there is a rational basis for keeping such streets clear of parked cars during the entire duration of a snow route parking ban.

¶ 10 Rustin's final contention concerning the snow route parking ban is that it violates due process because "it is well known" that the east side of Evanston abuts Lake Michigan, which is known for snow squalls which create snow in and around the lakefront but leave other parts of Evanston untouched by snow. There is nothing in the record to support this statement, nor has Rustin asked this court to take judicial notice of such a situation. Accordingly we find no basis for finding a violation of due process in the alleged fact that the snow route ban does not take into account that snow does not fall evenly throughout Evanston.

¶ 11 For the reasons set forth in this order, we affirm the determination of the hearing officer that Rustin was properly ticketed for parking in a snow route while a snow route parking ban was in effect, and fining him \$50 for that violation. We also affirm the circuit court's grant of summary judgment for Evanston on Rustin's claim of due process violations in Evanston's ordinance scheme for declaring and notifying Evanston residents of snow route parking bans.

¶ 12 Affirmed.