SIXTH DIVISION
December 31, 2014

No. 1-14-0079

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAY F. SHACHTER, Plaintiff-Appellant, v. THE CITY OF CHICAGO, a Municipal Corporation, THE DEPARTMENT OF ADMINISTRATIVE HEARINGS, and THE DEPARTMENT OF STREETS AND SANITATION, Defendants-Appellees.	)))))))))))	Appeal from the Circuit Court of Cook County No. 12 M1 450531 Honorable James M. McGing, Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: In this appeal from an administrative proceeding, we affirmed: (1) the decision of the administrative law officer, finding that plaintiff violated the weed ordinance of the City of Chicago; (2) the circuit court's dismissal of plaintiff's claim seeking a declaration that the weed ordinance was invalid; and (3) the circuit court's denial of plaintiff's request for a declaration that the Department of Administrative Hearings could not hear this matter.

¶ 2 Plaintiff-appellant, Jay F. Shachter, brought the instant action for administrative review against defendants-appellees, the City of Chicago (City), the City's Department of Administrative Hearings (DOAH), and the City's Department of Streets and Sanitation (Department). Plaintiff sought administrative review of a finding by an administrative law

officer (ALO) that he had violated section 7-28-120(a) of the Chicago Municipal Code (Chicago Municipal Code § 7-28-120(a) (amended Nov. 16, 2011)) (weed ordinance), for having weeds greater than 10-inches tall on his property. The circuit court affirmed the ALO's finding that plaintiff violated the weed ordinance, dismissed his claim seeking a declaration that the weed ordinance was invalid, and denied his claim for a declaration that the DOAH could not hear the matter. We confirm the decision of the ALO and affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On June 13, 2012, the Department mailed plaintiff an "ADMINISTRATIVE NOTICE OF ORDINANCE VIOLATION" (notice) to his residence, located at 6424 North Whipple Street in Chicago (property). The notice asserted that an inspection of the property by an employee of the Department revealed weeds "greater than 10 inches in height" were growing on the property in violation of the weed ordinance. The inspector signed the notice and listed a badge number of 389. The notice informed plaintiff that an administrative hearing on the violation would be held on July 31, 2012. Plaintiff was instructed to "bring all relevant evidence and ensure that necessary witnesses are present at your hearing." He was further instructed to notify the Department by phone if he was not the owner of the property and to contact the DOAH with any questions about the administrative proceedings.

¶ 5 On July 31, 2012, John Noble, on behalf of plaintiff, appeared before an ALO sitting in the DOAH, Consumer and Environmental Safety Hearings Division, and requested a continuance of the hearing because plaintiff was out of town. The ALO granted the request and continued the hearing to August 28, 2012.

¶ 6 Plaintiff appeared before the ALO on August 28, 2012. Although he initially indicated he was not ready for the hearing, plaintiff did not seek a continuance at that time. Plaintiff did

present two written motions: (1) a motion to recuse the ALO on the ground that, as an employee of the DOAH, the ALO had a pecuniary interest in the outcome of the hearing; and (2) a motion to dismiss the administrative complaint because the inspector's signature on the notice was not legible, and the inspector was not otherwise identified by name, in violation of section 2-14-074(b) of the municipal code. Chicago Municipal Code § 5.2-14-074(b) (amended Apr. 29, 1998). The ALO denied both motions and commenced the hearing on the violation.

¶ 7 The Department presented into evidence the notice, wherein the inspector, badge number 389, certified that at approximately 10:59 a.m. on the morning of May 2, 2012, an inspection of the property showed weeds more than 10-inches tall were growing on the property in violation of the weed ordinance, and that three photographs attached to the administrative complaint "truly and accurately depict[ed]" the property at the time of the inspection. The photographs were admitted into evidence and showed the condition of the property (photograph numbers 1 and 2); and a sign with the street number "6424," which was on the property (photograph number 3). On the basis of this evidence, the ALO found the Department had "established a *prima facie* case [of] *** the day, the time, [and] the location of the violation [of the weeds ordinance]."

¶ 8 The ALO then provided plaintiff an opportunity to respond. Plaintiff presented a written motion to continue the hearing on the ground that he had not previously "seen any of the evidence" and, therefore, he was "not prepared for a hearing." The ALO denied the motion after finding it was brought "for the purpose[] of delay."

¶ 9 Plaintiff then presented a number of written motions to subpoena witnesses. In his first motion, plaintiff sought to subpoena Anthony Evans and Bob Lee to testify that plaintiff's "plants are not 'weeds.' " The ALO denied the motion.

¶ 10 In his second motion, plaintiff requested to subpoena Julie Sacco and Robert Porter of the North Park Village Nature Center, and George Rotrammel, to testify in support of his contention that the weed ordinance fails to have a rational basis. The motion did not detail the nature of the witnesses' testimony. The ALO denied plaintiff's motion, noting that the purpose of the ordinance "is to maintain a safe and healthy environment and *** having weeds or vegetation running riot does not seem to be in support of that."

¶ 11 Plaintiff then moved to subpoena Ms. Sacco, Mr. Porter, Charles B. Wrenn, the Department's deputy commissioner, and Anish Eapen, "whose testimony is necessary to establish that *** the ordinance has been arbitrarily enforced[.]" Again, plaintiff did not specifically detail what the witnesses' testimony would entail. The ALO denied that motion, explaining to plaintiff that evidentiary matters may be presented without strict adherence to the rules of evidence.

¶ 12 Plaintiff's final motion sought to subpoena the Department's inspector to testify to "*which* plants are the alleged 'weeds,' and which are not." (Emphasis in original.) The ALO denied this motion, again reminding plaintiff he could present his defenses without strictly complying with the rules of evidence.

¶ 13 Plaintiff proceeded to present various arguments challenging the validity of the weed ordinance. Plaintiff maintained that the weed ordinance bore no rational relationship to its intended purpose which, according to plaintiff, was to eliminate rats. He explained that the witnesses he wished to subpoena would have testified that "rodents are not graminivorous," and "do not make their nests in tall grass" but, instead, "live on garbage." Plaintiff stated that the Department's attempt to regulate weeds does not "measurably [a]ffect the population of rats." Plaintiff also argued that the weed ordinance violated due process because the ordinance's

"distinction between plants that are weeds and plants that are not weeds is *** arbitrary," and because it failed to give notice of "what conduct is and is not prohibited." Plaintiff also complained that the ordinance was arbitrarily enforced because the Chicago Park District was "never cited for tall weeds."

¶ 14 As to the condition of his property, plaintiff testified that the plants on his property were not weeds. Plaintiff claimed that he could have brought photographs showing the plants on his property were well-tended. Plaintiff also asserted that the Department's photographs actually show he did maintain his property because there was no trash depicted in the photographs. Plaintiff claimed that a survey would show that "some of the land" in the Department's photographs was, in fact, city property. Plaintiff could not "easily identify every genus and species" of plant shown in the Department's "smudged" photographs, but offered to give the ALO "a guided tour" if the hearing was adjourned for such a purpose.

¶ 15 Finally, plaintiff argued that the Department had not offered any evidence that established he owned the property, therefore, he could not be held liable for any violation of the municipal code. Plaintiff then rested his case.

¶ 16 The ALO reviewed the administrative file and found that it contained a Cook County property detail report showing plaintiff was the owner of, and had paid property taxes on, the property. This evidence, the ALO concluded, established plaintiff owned the property. Plaintiff objected that he had not seen this report. The ALO responded that plaintiff had not contested nor denied his ownership of the property.

¶ 17 After hearing closing arguments, the ALO found that the Department's photograph 2 "seems to show growth of a variety of plants such that there is no apparent organization to them and no apparent effort to tend them ***." The ALO thus entered an order finding the

Department had established, by a preponderance of the evidence, that plaintiff had violated the weed ordinance and imposed the minimum fine of $600, plus $40 in costs, against plaintiff.

¶ 18 Plaintiff filed a three-count complaint in the circuit court against the City, the Department, and the DOAH seeking administrative review of the ALO's decision (count I), and declaratory judgments that the weed ordinance is invalid (count II) and that the DOAH is unfit to hear these matters (count III). Defendants filed an appearance on November 29, 2012, and on December 5, 2012, plaintiff filed a motion to hold defendants in default for failure to file a timely appearance, which was later amended. On December 18, 2012, the circuit court denied the amended motion for default, ordered defendants to answer by March 18, 2013, and ordered plaintiff to file a specification of errors by April 17, 2013. A certified record of the administrative proceedings was filed on March 13, 2013.

¶ 19 In his specification of errors, plaintiff contended, in relevant part, that: (1) his due process rights were violated because he was not given an opportunity to review the evidence against him before the administrative hearing; (2) the ALO wrongly took judicial notice of the tax records showing plaintiff's ownership of the property; (3) the ALO violated his due process rights by denying his various motions without fully reading them; (4) the ALO should have recused himself because he was employed by the DOAH; and (5) the evidence did not support a finding of liability because the Department did not show the height of all the weeds on his property.

¶ 20 On March 18, 2013, defendants moved to dismiss plaintiff's declaratory judgment claims pursuant to section 2-619(a)(4) if the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(4) (West 2012)), on the ground that these claims were precluded by *res judicata* in light of this court's decision in *Shachter v. City of Chicago*, 2011 IL App (1st) 103582 (*Shatchter I*). Plaintiff responded that *res judicata* was inapplicable, and requested sanctions. Plaintiff moved to strike

the Department's answer to his complaint on the ground that the notice of filing for that answer misidentified a defendant as the "City of Chicago Commission on Animal Care and Control." The circuit court denied the motion to strike the answer and granted defendants leave to "correct the scrivener's error on its face *instanter*." On August 28, 2012, the circuit court affirmed the ALO's finding that plaintiff violated the weed ordinance (count I), denied plaintiff a declaration that the DOAH could not hear the matter (count III), and granted defendants' motion to dismiss count II of plaintiff's complaint. Plaintiff's motion to reconsider was denied, and this appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, plaintiff raises a number of challenges to both the administrative and circuit court proceedings, and asserts that the weed ordinance is unconstitutional. We address each of plaintiff's arguments in turn.

¶ 23 I. Administrative Proceedings

¶ 24 We review the final decision of the ALO under the Illinois Administrative Review Law (65 ILCS 5/1-2.1-7 (West 2012)) and the municipal code (Chicago Municipal Code § 2-14-102 (added Apr. 2, 1998)). Judicial review of an administrative decision "shall extend to all questions of law and fact presented by the entire record before the court. *** The findings and conclusions of the administrative agency on questions of fact shall be held *prima facie* true and correct." 735 ILCS 5/3-110 (West 2012).

¶ 25 The standard of review depends on the question which is presented. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006). Determinations of questions of fact "will be reversed only if against the manifest weight of the evidence." *Id*. at 532. We review a question of law under a *de novo* standard, and a mixed question of law and fact is

subjected to a clearly erroneous standard. *Id*. Under any of the standards of review, the plaintiff seeking administrative review bears the burden of proof. *Id*. at 532-33. We review the decision of the administrative agency and not the decision of the circuit court. *Id*. at 531.

¶ 26 Plaintiff was alleged to have violated the weed ordinance, which provides: "All weeds which have not been cut or otherwise controlled, and which exceed an average height of ten inches, are hereby declared to be a public nuisance." Chicago Municipal Code § 7-28-120(b) (amended Nov. 16, 2011). The weed ordinance further provides: "Any person who owns or controls property within the city must cut or otherwise control all weeds on such property so that the average height of such weeds does not exceed ten inches." Chicago Municipal Code § 7-28-120(a) (amended Nov. 16, 2011). A violation of the weed ordinance need only be established by a preponderance of the evidence (Chicago Municipal Code § 2-14-076(i) (amended Apr. 29, 1998)), and "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct" (735 ILCS 5/3-110 (West 2012)). We review these findings to determine if they are against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 534. A finding is against the manifest weight of the evidence "only if the opposite conclusion is clearly evident." *Id*.

¶ 27 In support of the assertion that plaintiff had violated the weed ordinance, the department presented the notice and photos of plaintiff's property at the administrative hearing which were admitted into evidence. The notice includes the inspector's certification that the condition of the property violated the weed ordinance, there were weeds on the property, and that those weeds were "greater than 10 inches in height." The notice was "*prima facie* evidence of the correctness of the facts specified therein." Chicago Municipal Code § 2-14-076(i) (amended Apr. 29, 1998). The two photographs of plaintiff's lawn depicted a variety of vegetation, many of which were

obviously over 10 inches in height. The ALO found that photograph number 2 showed the vegetation was not well maintained. The notice and the photographs presented at the hearing thus provided sufficient evidentiary support for the ALO's finding that plaintiff violated the weed ordinance. Plaintiff's various contentions at the hearing were insufficient to undermine the Department's evidence and the ALO's finding of a violation of the weed ordinance.

¶ 28 Nevertheless, plaintiff also argues the administrative proceedings violated his due process rights because: (1) he had no opportunity to review the Department's evidence prior to the hearing; (2) during that hearing, the ALO improperly denied his request for a continuance on this basis; (3) the ALO took judicial notice of records showing he owned the property; and (4) the ALO denied plaintiff's various motions without fully reading them.

¶ 29 "Due process requires a fair trial before a fair tribunal and applies to both courts and administrative agencies performing adjudicatory functions." *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 426 (citing *Arvia v. Madigan*, 209 Ill. 2d 520, 540 (2004)). The question of whether an administrative hearing complied with the requirements of due process is one of law and is reviewed *de novo*. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 824 (2009). A court will find a due process violation only where there has been a showing of prejudice. *Gonzalez v. Pollution Control Bd.*, 2011 IL App (1st) 093021, ¶ 42.

¶ 30 The evidence against plaintiff consisted of the notice, three photographs, and tax records relating to the property. The notice itself was served on plaintiff and he admitted to receiving it. Thus, plaintiff was fully aware of the notice prior to the hearing. The notice informed plaintiff of the May 2, 2012, inspection of the property, the inspector's determination that there were weeds on the property taller than 10 inches in violation of the weed ordinance, and that photographs were taken during the inspection. The notice further notified plaintiff that the inspector had

certified to the accuracy of the photographs and that the photographs were attached to the original complaint filed at the DOAH. Thus, plaintiff was informed of the existence and nature of the photographs, the inspector's certification of the accuracy of the photographs, and where the photographs could be found. After service of the notice, plaintiff had over two months to prepare for the hearing and seek to review the photographs to prepare his defense. Plaintiff has not established prejudice, and we find no due process violation as to the notice and photographs being admitted into evidence.

¶ 31 Plaintiff also argues that the ALO violated his due process rights by taking judicial notice of the records relating to the property which established his ownership. We disagree.

¶ 32 The Administrative Review Law clearly provides that any "[t]echnical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him or her." 735 ILCS 5/3-111(b) (West 2012); see also *McCleary v. Board of Fire & Police Comm'n of the City of Woodstock*, 251 Ill. App. 3d 988, 993 (1993) ("the appellate court may reverse an administrative ruling only if there is error which prejudiced a party in the proceeding"). Here, these records were part of the administrative hearing file which was before the ALO.

¶ 33 Furthermore, plaintiff was not prejudiced by the ALO's consideration of these documents after the Department had presented its case. The notice informed plaintiff that he could inform the Department prior to the hearing if he was not the owner of the property. Plaintiff has never questioned the veracity of those records. Plaintiff never disputed his ownership of the property before the hearing, nor has he ever done so throughout these proceedings. In fact, during his

presentation at the hearing, plaintiff admitted to tending to the vegetation on the property and exerting control over the property and its landscape. The City's Municipal Code provides that an "owner" of a property is defined to include any "person managing or controlling a building or premises or any part thereof and any person entitled to the control or direction of the management or disposition of a building or premises or of any part thereof." Chicago Municipal Code § 13-4-010 (amended June 12, 2012). Thus, this evidence alone would tend to support a conclusion that plaintiff owned the property, and we find plaintiff's due process rights were not violated when the ALO relied upon the public records in the administrative file.

¶ 34 Plaintiff also complains the ALO violated his due process rights by not fully reading his written motions to continue the hearing, for recusal of the ALO, to dismiss the administrative complaint, and to subpoena witnesses. First, we disagree with plaintiff's contention that it is clear from the record that the ALO read only one of his motions in full, two motions only in part, and the remaining motions not at all. The administrative record contains the written motions, and the transcript of the hearing shows plaintiff was allowed to present each of the motions and that the ALO considered and decided each motion individually.

¶ 35 Further, plaintiff does not argue that the ALO erred in denying these motions on the merits, and therefore he has not established prejudice from any alleged failure to fully read the written motions. Indeed, we do not find any error in the ALO's denials of plaintiff's various motions.

¶ 36 As to the motion to recuse, plaintiff contended that the ALO, as an employee of the DOAH, had a pecuniary interest in the outcome of plaintiff's hearing. However, an administrative hearing officer is presumed "to be objective and capable of fairly judging a particular controversy." *Comito v. Police Board of City of Chicago*, 317 Ill. App. 3d 677, 686

(2000). Plaintiff's motion presented nothing more than the mere possibility of bias, and was therefore insufficient to establish the need for recusal. Id. ("In order to establish bias of an administrative decision maker, a claimant must show more than a mere possibility of bias.") The motion to recuse was properly denied.

¶ 37 Plaintiff's motion to dismiss the administrative complaint argued that the notice violated section 2-14-074(b) of the municipal code (Chicago Municipal Code § 2-14-074(b) (amended Apr. 29, 1998)), because the signature of the inspector was illegible. Section 2-14-074(b) requires that "the issuer of a notice of violation or notice of hearing shall specify on the notice his or her name and department[.]" In *Shachter I,* we found that even if the issuing officer's signature was illegible, the notice was sufficient where it contained the officer's unit and badge number. *Shachter,* 2011 IL App (1st) 103582, ¶ 45. Here, the inspector was identified by his signature, badge number, and employing department. Thus, the ALO properly denied the motion to dismiss here.

¶ 38 The decision regarding plaintiff's motions for a continuance and to subpoena witnesses were within the discretion of the ALO. An administrative officer's " 'decision regarding the conduct of its hearing and the admission of evidence is governed by an abuse of discretion standard and is subject to reversal only if there is demonstrable prejudice to the complaining party.' " *Id.* ¶ 52 (quoting *Matos v. Cook County Sheriff's Merit Board,* 401 Ill. App. 3d 536, 541 (2010)).

¶ 39 Plaintiff's motion for continuance, made after the Department's presentation of its case, was based on plaintiff's contention that he had not previously seen the evidence which had been presented against him. The ALO denied the motion having found it was made for purposes of delay. We find no abuse of discretion in that decision, particularly when: (1) plaintiff was on

notice to bring his evidence and witnesses to the hearing; and (2) he had already been granted a prior continuance.

¶ 40 Plaintiff also moved for the issuance of subpoena for witnesses who would testify: (1) the various forms of vegetation on plaintiff's property were not weeds; (2) the weed ordinance did not serve its intended purpose of eliminating rats; and (3) the weed ordinance was arbitrarily enforced. In addition, plaintiff sought to subpoena the testimony of the inspector who issued the notice.

¶ 41 A party to an administrative proceeding may request that the hearing officer issue subpoenas for witnesses under the Illinois Municipal Code (65 ILCS 5/1-2.1-5(c) (West 2012)), and the city's municipal code (Chicago Municipal Code § 2-14-076(f) (amended Apr. 29, 1998)). Specifically, the city's municipal code provides that "[u]pon the timely request of any party to the proceeding, any person, who the administrative law officer determines may reasonably be expected to provide testimony which is material and which does not constitute a needless presentation of cumulative evidence, shall be made available for cross-examination prior to a final determination of liability." Chicago Municipal Code § 2-14-076(j) (amended Apr. 29, 1998). The city's municipal code further provides that "[t]he administrative law officer may issue subpoenas to secure the attendance and testimony of relevant witnesses and the production of relevant documents. Issuance of subpoenas shall be subject to the restrictions contained in Section 2-14-080." Chicago Municipal Code § 2-14-076(f) (amended Apr. 29, 1998). Section 2-14-080 of the Chicago Municipal Code, in turn, provides that "[a]n administrative law officer may issue a subpoena only if he or she determines that the testimony of the witnesses or the documents or items sought by the subpoena are necessary to present evidence that is *** relevant

to the case; and *** relates to a contested issue in the case." Chicago Municipal Code § 2-14-080(a) (amended Apr. 29, 1998).

¶ 42 As we have stated, under section 2-14-076(j), the ALO may grant a *timely* request to issue subpoenas. We find plaintiff's motions to subpoena witnesses and the inspector, which were made during the hearing and after the Department had made its presentation, were not timely made. The notice gave plaintiff clear warning that he should have his witnesses and evidence present at the hearing to defend against the allegation that he violated the weed ordinance. On this basis alone, we find the ALO did not abuse his discretion by denying the motions for subpoenas.

¶ 43 Further, in *Shachter I*, we made clear that the ALO is not required to grant a request to issue a subpoena. *Shachter*, 2011 IL App (1st) 103582, ¶ 49. In finding that the ALO in that case did not abuse his discretion in denying a request to subpoena the officer who issued the violation notice, we stated:

> "We fail to see how plaintiff was unable to present a defense without the officer's testimony about which specific plants on plaintiff's property were or were not weeds. Plaintiff was free to present testimony and any other evidence of his own to rebut the Department's allegations and evidence, including evidence supporting his assertion that none of the plants on his property were weeds. Indeed, plaintiff did so in part by specifically testifying at the hearing that some of the plants on his property were not weeds but rather were mulberry or elm saplings." *Id*. ¶ 51.

As we did in *Shachter I*, we find the ALO did not abuse his discretion in denying the request to subpoena the inspector here. Similarly, we find no abuse of discretion in denying plaintiff's request to subpoena the witnesses, who purportedly would have testified to the nature of the

vegetation on the property. Plaintiff was free to present his own testimony and evidence, such as photographs, in defense of the allegations that he violated the weed ordinance. The testimony of other witnesses would have been merely cumulative, in violation of the City's municipal code. Chicago Municipal Code § 2–14–076(j) (amended Apr. 29, 1998).

¶ 44 Furthermore, the ALO, in denying plaintiff's motions for the issuance of subpoenas for the witnesses relating to the purpose of the ordinance and its claimed arbitrary enforcement, informed plaintiff he could present those defenses without complying with the rules of evidence. At the hearing, plaintiff testified that the ordinance did not rationally relate to its purported purpose of eliminating rodents and was arbitrarily enforced. He explained that the witnesses he wished to subpoena would support these contentions. Thus, there was no prejudice to plaintiff as to the denial of the motions to issue subpoena as to the validity and enforcement of the weed ordinance.

¶ 45 In sum, we conclude that the evidence sufficiently supported the ALO's decision finding plaintiff violated the weed ordinance and that plaintiff failed to establish his due process rights were violated during the administrative proceedings.

¶ 46 II. Circuit Court Proceedings and Constitutional Challenges

¶ 47 On appeal, defendant also challenges the circuit court's denial of his motions for default and to strike the Department's answer, and further contends that the circuit court erred in dismissing count 2 of his complaint.

¶ 48 We review a ruling to grant or deny a motion for default (*Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 51), and a motion to strike the answer (*Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 422 (1981)), under an abuse of discretion standard. An abuse of discretion will be found where the circuit court " 'acts arbitrarily without the employment of conscientious judgment or if

its decision exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted.' " *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 51 (quoting *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001)).

¶ 49 Plaintiff had the duty, as appellant, to provide a complete record for review of these issues. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). However, the record does not contain transcripts of the proceedings relating to the motions for default and to strike the Department's answer. Without transcripts of the proceedings, or an acceptable alternative from which we may ascertain the basis for the rulings of the court as to these motions, we presume they were properly denied. *Id.*

¶ 50 Plaintiff argues that because defendants filed their appearance late without seeking leave to file the appearance, the circuit court improperly denied his motion for default against defendants. Forfeiture aside, plaintiff has not shown the denial of the motion for default resulted in substantial prejudice and, thus, there was no abuse of discretion in its denial.

¶ 51 Plaintiff also argues that the circuit court erred in failing to strike defendant's answer, with prejudice, because the caption of the notice of filing for the answer showed defendants as "City of Chicago Department of Administrative Hearings" and "City of Chicago Commission on Animal Care and Control," rather than "Department of Streets and Sanitation." The notice of filing for the answer, however, did have the correct circuit court and administrative proceedings numbers, and was properly addressed to plaintiff. Attached to the notice was a certification of the records of the DOAH of the administrative proceedings in this matter, and the entire administrative record itself. The circuit court did not abuse its discretion in refusing to strike the answer for a simple scrivener's error as to one of the defendants in the notice of filing for the answer.

¶ 52 Plaintiff next argues the circuit court erred in granting defendants' motion to dismiss count 2 of his complaint, which sought a declaration that the weed ordinance is invalid. In count 2 of his complaint, plaintiff incorporated those allegations of the first count which alleged the weed ordinance "is inherently vague and subjective," "invites arbitrary enforcement," "has consistently been arbitrarily enforced," and "bears no rational relationship to its intended purpose, or to any aspect of the public health, safety, morals or general welfare." Plaintiff thus requested a declaration that the ordinance was invalid. Defendants moved to dismiss count 2 pursuant to section 2-619(a)(4) of the Code. 735 ILCS 5/2-619(a)(4) (West 2012).

¶ 53 The dismissal of a claim under section 2-619 is subject to *de novo* review. *Nationwide Advantage Mortg. Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 17. Under this standard, a reviewing court does not defer to the reasoning of the trial court. *Id*. ¶ 20. We may affirm the dismissal on any basis appearing in the record. *Williams v. Board of Education of City of Chicago*, 222 Ill. App. 3d 559, 562 (1991).

¶ 54 Defendants, in moving to dismiss count 2, argued the claims therein were barred by our decision in *Shachter I* on principles of *res judicata*.

¶ 55 In *Shachter I*, the plaintiff (who is plaintiff here) was charged, in relevant part, with violating the weed ordinance for having weeds greater than 10-inches tall on his property (which is the same property at issue here). The ALO, after a hearing, found the plaintiff had violated the weed ordinance. On appeal from the circuit court's decision affirming the ALO's findings, the plaintiff challenged the weed ordinance on the same grounds which are raised here. We found the plaintiff had no standing to raise a facial challenge to the ordinance as vague, because the ordinance did not infringe upon his first amendment rights. *Shachter*, 2011 IL App (1st) 103582, ¶ 82-84.

¶ 56 We also found that because the evidence before the ALO had established the plaintiff had tall weeds on his property in violation of the weed ordinance, he could not raise an "'as applied'" challenge to the weed ordinance. *Id*. ¶ 92-93.

¶ 57 We also rejected a claim that the weed ordinance had no rational basis, finding "the City's prohibition on properties containing weeds averaging over 10 inches tall to be rationally related to a legitimate interest in aesthetics." *Id*. ¶ 101.

¶ 58 Although defendants sought dismissal of count 2 on *res judicata* grounds, we find the dismissal was actually proper under the doctrine of *stare decisis*. "The doctrine of *stare decisis* 'expresses the policy of the courts to stand by precedents and not to disturb settled points.' " *Ortiz*, 2012 IL App (1st) 112755, ¶ 28 (quoting *People v. Suarez*, 224 Ill. 2d 37, 49 (2007)). The purpose of the doctrine is to ensure that these points of law will not be lightly overruled. *Ortiz*, 2012 IL App (1st) 112755, ¶ 28. Under principles of *stare decisis*, a circuit court is required to follow the existing precedent of the appellate court of its district. *Jachim v. Townsley*, 249 Ill. App. 3d 878, 882 (1993). The circuit court was therefore bound to follow our decision in *Shachter I*, and we find the dismissal of count 2 was proper.

¶ 59 In so ruling we note that in his reply brief, as he did in his specification of errors below, plaintiff maintains that the weed ordinance was preempted by state law. However, plaintiff did not actually seek to invalidate the ordinance on this basis in count 2 of his complaint, and in any case, he failed to present this argument in his appellant's brief. Where an appellant does not present an argument in his opening brief, the appellant forfeits the issue. *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We will therefore not further address the propriety of the dismissal of count 2 on this basis.

¶ 60 In addition, plaintiff has also failed to raise any argument on appeal as to the circuit court's denial of his request, in count 3 of his complaint, for a declaration that the DOAH's ALO could not hear this matter based on his pecuniary interest in the outcome. Because plaintiff has thus forfeited any challenge to the denial of the requested relief in count 3 (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived ***.")), we also affirm the circuit court's decision to deny declaratory relief as to count 3.

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we confirm the decision of the ALO finding plaintiff in violation of the weed ordinance and we affirm the judgment of the circuit court with respect to plaintiff's requests for declaratory relief.

¶ 63 DOAH's decision confirmed; circuit court affirmed.