Nos. 1-10-0291 and 1-10-0292
(CONSOLIDATED)

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).

FIFTH DIVISION
March 4, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VICTOR MURRAY, Plaintiff-Appellant, v. THE CITY OF CHICAGO, a Municipal Corporation, and THE DEPARTMENT OF ADMINISTRATIVE HEARINGS, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. Nos. 09 M1 625287 09 M1 15174 Honorable William G. Pileggi, Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and Howse concurred in the judgment.

O R D E R

Held: In 1-10-0291, the Chicago Department of Administrative Hearing (Department) decision that plaintiff's vehicle was validly towed was not against the manifest weight of the evidence. The circuit court's decision affirming the Department's decision was affirmed. In 1-10-0292, a tort case, the circuit court affirmed an administrative decision that is not reflected in the record. Consistent with the City's concession in the matter, the circuit court's decision was vacated and the case remanded.

This is a consolidated appeal from the circuit court of Cook County (1-10-0291 & 1-10-0292). In 1-10-0291, plaintiff Victor Murray, *pro se*, challenges the circuit court's affirmance of the Chicago Department of Administrative Hearing (Department) decision upholding the tow of plaintiff's vehicle as valid. In 1-10-0292, plaintiff challenges the circuit court's affirmance of a purported Department decision on his lawsuit for damages, also arising out of the same tow of his vehicle.

The common law record shows that on June 15, 2009, plaintiff's truck was towed after a city worker discovered the vehicle parked within 15 feet of a fire hydrant, in violation of the Chicago Municipal Code (§§9-64-100 (added June 12, 1990), 9-92-030(c) (amended Dec. 2, 2009)). Plaintiff requested a hearing regarding the validity of the tow (violation number 09PT002710).

At the hearing on June 16, 2009, plaintiff, acting *pro se*, admitted that he had parked his truck "about 12 feet back" from the fire hydrant, but claimed that his action was excusable given the nearby parking sign. He asserted that the parking sign was placed within 15 feet of the hydrant, thus indicating that parking was available there, and the yellow line along the curb was faded where he had parked. To illustrate his point, he presented the hearing officer with a drawing of the scene. When the hearing officer offered to continue the case so that plaintiff could obtain relevant photographs, plaintiff declined.

The City argued that there was no requirement to post a sign or paint the curb apprising drivers of the no-parking rule. Plaintiff argued that the signs and markings should have been in the correct place.

The hearing officer concluded that plaintiff had failed to present sufficient evidence to rebut the City's *prima facie* case that the tow was justified. The hearing officer therefore found plaintiff liable for violating the municipal ordinances at issue.

In case 1-10-0291, plaintiff filed a complaint for administrative review of the Department decision in the circuit court. In case 1-10-0292, plaintiff filed a complaint in the circuit court on June 16, 2009, the same day as his administrative hearing. In both complaints, defendant challenged the validity of the tow, but sought different remedies. That is, while defendant sought reversal of the administrative decision in 1-10-0291, in 1-10-0292, plaintiff requested damages for inconvenience, loss of time and "mainly for what shows itself to be a pattern of harassment from meter enforcement officials." In response to the complaint in 1-10-0292, the City filed a motion to dismiss or transfer the complaint to the appropriate division of the circuit court assigned to hear cases for administrative review. The docket sheet and an order of the court indicate that the motion to transfer was granted on July 29, 2009.

The record indicates that the cases were consolidated before

circuit court Judge James McGing. The record in both cases contains an order of the circuit court, dated September 14, 2009, and relating to the June 15, 2009, tow (violation number 09PT002710). Each order shows that the City was to file an answer to plaintiff's complaint and, plaintiff, a specification of errors. The cause in both cases was continued until January 25, 2010. The order in 1-10-0292 adds that plaintiff's motion to file an amended complaint was "entered and continued." The docket sheet shows that the cases were "affirmed" by Judge William G. Pileggi on January 25, 2010.

This consolidated appeal followed. In 1-10-0291, plaintiff requests that we reverse the decision of the circuit court affirming the Department hearing officer. Plaintiff claims that the tow of his vehicle was unjustified, as it was "not consistent with the markings and signage provided by the city of Chicago[.]" As relief, plaintiff requests that this court "require the city of Chicago [to] properly and accurately mark required curb cut parking distance for all city fire hydrants."

In reviewing a final administrative decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2008)) in case 1-10-0291, this court's role is to review the administrative decision rather than the circuit court's decision. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007). Where, as here, the appellant challenges the

administrative agency's findings of fact, the appropriate standard of review is whether that finding and the decision are against the manifest weight of evidence. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Abrahamson*, 153 Ill. 2d at 88.

Here, we cannot say the opposite conclusion is clearly evident. The hearing officer found that plaintiff was liable for the tow of his vehicle because plaintiff failed to rebut the City's *prima facie* evidence that he was illegally parked. See Chicago Municipal Code (§§9-100-030(a) (amended Feb. 10, 2009), 9-100-080(e) (amended April 29, 1998). Indeed, plaintiff admitted to parking within 15 feet of the fire hydrant at issue, which was a violation of the Code's section 9-64-100 and reason to tow the vehicle under the Code's section 9-92-030(c). The hearing officer's decision thus was not against the manifest weight of the evidence.

In his brief, plaintiff also challenges another hearing, which allegedly took place on August 10, 2009, and wherein the administrative officer found plaintiff liable for a ticket violation. However, there is nothing in the record regarding that hearing. More importantly, it is not specified in the notice of appeal, and we thus lack jurisdiction to review the

matter. *Jiffy Lube International, Inc. v. Agarwal*, 277 Ill. App. 3d 722, 726 (1996).

In case 1-10-0292, plaintiff next argues that the City, as part of a pattern of harassment, unjustly issued a number of "unwarranted" parking tickets against him, and he seeks damages therefrom. Plaintiff essentially requests that we vacate the circuit court order and remand the case for further proceedings.

The record reflects that the circuit court affirmed the Department's decision. However, this matter was brought as a tort action, not an administrative review case, and there is nothing in the record demonstrating that the case was presented to an administrative body. The City concedes, and we agree, that this case should be remanded so that the trial court has the opportunity to reach an appropriate disposition with regard to the tort claim.

Based on the foregoing, we affirm the decision of the circuit court of Cook County in 1-10-0291. We vacate the circuit court's order in 1-10-0292, and remand for further proceedings.

No. 1-10-0291, affirmed.

No. 1-10-0292, order vacated and remanded.