SIXTH DIVISION
September 7, 2012

No. 1-10-3523

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

A.R.I. ENTERPRISES, LLC d/b/a THE CAMELOT MOTEL, Plaintiff-Appellant, v. THE CITY OF CHICAGO; THE DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER; PROTECTION; and RAHM EMANUEL, Mayor, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 10 CH 05300 The Honorable Nancy J. Arnold, Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 Held: The revocation of the motel's license is affirmed where the findings underlying the Department's decision to revoke are not against the manifest weight of the evidence.

¶ 2 Plaintiff A.R.I. Enterprises, LLC d/b/a The Camelot Motel (Camelot), challenged by way of a common-law writ of certiorari, the revocation of its city licenses by the Office of the Mayor of the city of Chicago (the City) based on a decision by the Department of Business Affairs and

Consumer Protection (the Department). The Department determined that Camelot violated both a criminal statute (720 ILCS 5/11-17 (West 2002)), and a city ordinance (Chicago Municipal Code § 4-208-080 (added Dec. 9, 1992)), each of which prohibits allowing the use of a motel room for prostitution. The Chicago Police Department conducted a sting operation with an undercover officer posing as a customer seeking to rent a motel room to share with a paid "whore" that accompanied him. In its decision, the Department credited the testimony of the officer over the testimony of the motel clerk and found Camelot permitted the use of its premises for prostitution. The circuit court affirmed. In this appeal, Camelot contends no violations occurred because the motel clerk did not "permit" prostitution within the meaning of the statute and ordinance when the undercover officer never completed the motel's registration procedures and did not receive a room or key. We affirm. The Department found that the motel clerk did not turn away the undercover officer after he announced his intentions of using the room with a prostitute; instead, the clerk repeated the price of a room of $40, which the officer placed on the counter. The Department was free to draw a reasonable inference that the clerk agreed to rent the motel room for purposes of prostitution as the officer declared, which was sufficient to prove both violations.

¶ 3 BACKGROUND

¶ 4 After a sting operation by the Chicago Police, the Department filed several charges against Camelot. The charges alleged that Camelot, through its agent, "permitted prostitution to be conducted upon the licensed premises" in violation of the Municipal Code of the City of Chicago (Municipal Code) and permitted the use of the premises for prostitution in violation of

the Illinois Criminal Code (Criminal Code). On November 20, 2009, the Department held a hearing on the allegations. Chicago Police Officer Michael Iglesias testified regarding his role as the undercover officer in the sting operation. The motel desk clerk, Lorraine Price-Adkins, testified for Camelot. The witnesses gave conflicting versions of their interaction that gave rise to the charges.

¶ 5 Iglesias testified that he entered the Camelot Motel at approximately 8:45 p.m. on March 18, 2009. Iglesias was conducting an integrity check of the motel as part of the prostitution unit of the vice control section of the Chicago Police Department. Female police officer Kim Richmond accompanied Iglesias. Both officers were in plain clothes. Richmond remained outside, but was visible through the glass door leading to the lobby when Iglesias entered and approached the desk. A clerk sat at a desk behind a glass window, which had a small slot at the bottom to pass money and keys. No one else was present in the lobby. Iglesias testified that he asked the clerk, later identified as Price-Adkins, the cost of a room. Price-Adkins stated that it was $40 for 10 hours. According to Iglesias, he replied, "I just picked up this whore and I paid her. Can I get it for less?" He gestured to Richmond outside the door. Price-Adkins repeated her statement that it was $40 for 10 hours. She asked for identification to rent the room. Iglesias placed his driver's license and $40 on the counter. He kept his hand on the license and money as he motioned for Richmond to enter the lobby, which triggered the entry of the enforcement team. According to Iglesias, the team then "took control of the situation."

¶ 6 Price-Adkins testified that she staffed the reception desk in the Camelot lobby on the date in question. She stated that it was motel policy to require a guest to show identification and fill

out a guest registration card in order to rent a room. At around 8:30 or 8:45 p.m., an individual, who was not Iglesias, entered the lobby alone. The individual was in plain clothes and told Price-Adkins that he needed a room for an hour. Price-Adkins replied that the minimum rental period was 10 hours for $40 and that he was required to show identification. The individual repeated that he needed a room only for an hour and placed $40 into the slot on the counter. Price-Adkins repeated that the minimum period was 10 hours and identification was required. The individual stated, "I don't have no ID. I just need a room for an hour because I got this young lady." Price-Adkins again said, "You need some ID." According to Price-Adkins, the individual responded that he would get his identification from his car. The individual turned toward the glass door of the lobby; Price-Adkins could see a woman was standing outside. The individual motioned for the woman to enter, and they conversed quietly in the lobby before exiting together. Price-Adkins could not hear what was said. The two left without showing identification or filling out a guest registration card. Shortly after the two left, three police officers entered the lobby and ticketed Price-Adkins. The officer that wrote the citations resembled Iglesias. Price-Adkins testified that the individual she spoke with at the motel lobby desk did not tell her he was "with a whore." The individual that inquired about a room, however, never produced identification or filled out a registration card and she testified that she did not take the $40 he placed on the counter.

¶ 7 Camelot introduced a copy of the motel's "house rules." One rule announced: "PROPER ID IS NEEDED TO GET A ROOM." Price-Adkins testified that she never, during her employment with the motel, rented a room to anyone that failed to present identification or fill

out a registration card. Both Price-Adkins and Iglesias testified that he never completed a registration card or received a room assignment or key.

¶ 8 The hearing officer issued a written decision. He found Price-Adkins "less credible and reliable" than Iglesias: "It [was] more likely than not that [Price-Adkins] proceeded with the process for renting the room to Iglesias despite his reference to having just paid for a prostitute;" and, "It [was] more likely than not that Iglesias produced his identification and [Price-]Adkins admits that he produced $40.00 for the rental." As to Price-Adkins' claim that Iglesias made no mention of being accompanied by a "whore," the hearing officer reasoned that it would have been "unlikely" for Iglesias not to request a room without mentioning being with a prostitute during an integrity check by vice control. As to Camelot's contention that when the undercover officer never completed the guest registration process, he was never "permitted" the use of the room to establish the violations, the hearing officer disagreed:

> "The fact that no registration card was completed and no key was tendered does not negate the fact that [Camelot] was granting or permitting the use of the motel with knowledge that it was for the purpose of prostitution. Such permission was demonstrated when she continued to offer the room at a particular rate after being told by Officer Iglesias that a prostitute was waiting for him outside."

The hearing officer found that Camelot, by and through its agent, violated section 11-17 ("Keeping a Place of Prostitution") of the Criminal Code (720 ILCS 5/11-17 (West 2002)), and section 4-208-080 of the Municipal Code (Chicago Municipal Code § 4-208-080 (added Dec. 9, 1992)), which renders "[a] licensee *** guilty of maintaining a public disorder when the licensee

or any of the licensee's employees knowingly permit prostitution *** to be conducted upon the premises *** by any person or persons getting a room or rooms from said licensee."[1]

¶ 9 Regarding the issue of sanctions, the hearing officer noted that Camelot was charged in September 2001 with keeping a house of prostitution and, apparently on a separate charge, received a 30-day suspension in October 2001. In the decision of January 19, 2010, the hearing officer concluded that the previous violations made revocation an appropriate penalty. On February 16, 2010, the Office of the Mayor revoked all of Camelot's city licenses, including its license to operate a motel.

¶ 10 Camelot filed a petition for a writ of certiorari with the circuit court of Cook County. The circuit court affirmed. It concluded that the Department's findings were not against the manifest weight of the evidence and that the penalty imposed was not "unreasonable or arbitrary or unrelated to the needs of the agency." The court noted that section 11-17 of the Criminal Code "plainly states that it is violated when permission is given to use the premises for prostitution. There is no requirement that the room actually be rented or that prostitution *** occur." The court explained its ruling upholding the violation of the Municipal Code based on the phrase "getting a room" in the ordinance:

> "The word 'get' *** means [by definition in Webster's Dictionary] to obtain. *** [B]ut the word get is used here as a present active participle, denoting an action that is in progress or one that has not yet been completed. Therefore, the court

[1] The hearing officer also found Camelot violated section 37-1 of the Criminal Code (720 ILCS 5/37-1 (West 2010)), which prohibits "maintaining" a public nuisance. A violation of section 11-17 constitutes a public nuisance under the statute. *Id.*

> determines that this paragraph can be read to mean that a licensee may not grant permission to any person who is in the process of obtaining a room; it is unnecessary that the person actually obtain it."

¶ 11 Camelot filed a motion for reconsideration and for a stay pending appeal, each of which the circuit court denied. Camelot timely appeals.

¶ 12 ANALYSIS

¶ 13 Camelot argues that it violated neither the Criminal Code nor the Municipal Code because Iglesias was never assigned a room or given a key when he failed to complete the registration process. Based on these uncontested facts, Camelot contends that Price-Atkins did not "permit" Iglesias to use the premises of the motel for purposes of prostitution. The City responds that the Department properly found Camelot to have violated both the Illinois statute and the municipal ordinance because Price-Adkins offered to rent a room to Iglesias after he announced he was accompanied by a paid prostitute. According to the City, the offer to rent a motel room for purposes of prostitution was implicit when Price-Adkins told Iglesias the price of the room after she was informed that he was in the company of a "whore."

¶ 14 "[T]he 'standards of review under a common law writ of certiorari are essentially the same as those under the Administrative Review Law.' " *Chicago Title Land Trust Co. v. Board of Trustees of Village of Barrington*, 376 Ill. App. 3d 494, 501 (2007) (quoting Lapp v. Village of Winnetka, 359 Ill. App. 3d 152, 166 (2005)). We review the decision of the administrative agency, not that of the circuit court. *Bertucci v. Retirement Bd. of Firemen's Annuity and Benefit Fund of Chicago*, 351 Ill. App. 3d 368, 370 (2004). "An administrative agency's findings of fact

are deemed *prima facie* true and correct." *Swoope v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 323 Ill. App. 3d 526, 528 (2001). An appellate court should not " 'reweigh evidence or *** make an independent determination of the facts.' " *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010) (quoting *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 234 Ill. 2d 446, 463 (2009)). Under the applicable manifest weight of the evidence standard, we reverse an agency's factual determinations only if the opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992).

¶ 15 State statutes and municipal ordinances are construed under the same rules. *City of Chicago v. Morales*, 177 Ill.2d 440, 447 (1997) ("In construing a municipal ordinance, the same rules are applied as those which govern the construction of statutes."). Our review of the construction of a legislative act is de novo. Provena Covenant, 236 Ill. 2d at 387. However, some deference is owed when "agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent." Provena Covenant, 236 Ill. 2d at 387 n.9. Our primary objective in construing laws is to "ascertain and give effect to the intent of the legislature." People ex rel. Madigan v. Kinzer, 232 Ill.2d 179, 184 (2009). We begin with the statutory language to determine the intent of the legislature. Id. Courts will not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. Solon v. Midwest Medical Records Ass'n, 236 Ill. 2d 433, 441 (2010).

¶ 16 Camelot challenges separately the Department's findings that it violated both the state

statute and the city ordinance regarding the claimed use of its premises for prostitution. As to ordinance violation, Camelot argues that a licensee does not "knowingly permit[] prostitution *** without agreeing to any use of the licensed premises." As to the violation of the criminal statute, Camelot argues "[a] person does not grant or permit the use of a place for purpose of prostitution *** without allowing access to the place."

¶ 17 We find little to distinguish the two arguments; each argues that the undisputed facts show that no "use" or "access" of the premises was ever permitted. Section 4-208-080 of the Municipal Code provides, "A licensee shall be guilty of maintaining a public disorder when the licensee or any of the licensee's employees knowingly permit prostitution *** to be conducted upon the premises *** by any person or persons getting a room or rooms from said licensee." Chicago Municipal Code § 4-208-080 (added Dec. 9, 1992). The pertinent portion of section 11-17 of the Criminal Code provided:

> "(a) Any person who has or exercises control over the use of any place which could offer seclusion or shelter for the practice of prostitution who performs any of the following acts keeps a place of prostitution:
>
> (2) Grants or permits the use of such place under circumstances from which he could reasonably know that the place is used or is to be used for purposes of

prostitution[.]" 720 ILCS 5/11-17 (West 2002).[2]

¶ 18 Camelot argues that Price-Adkins violated neither section because no violation can occur "by merely making an offer to let a room which has not been accepted." According to Camelot, no acceptance occurred because Price-Adkins "required that [Officer Iglesias] pay the required rental fee and follow Camelot's registration procedures—which he never did—before she would allow him to use the premises of the motel." Camelot argues that without an acceptance, Price-Adkins cannot be found to have granted or permitted the use of the motel for the purpose of prostitution.

¶ 19 The City asserts that after Officer Iglesia stated he was with a prostitute, Price-Adkins made him a "rental offer" by agreeing to rent a room for $40 so long as he showed identification, which the officer accepted when he placed the $40 and his identification on the counter. Under the Chicago Municipal Ordinance, the hearing officer was free to infer that the Price-Adkins made her offer to rent the room with knowledge that it would be used for prostitution. Chicago Municipal Code § 4-208-080 (added Dec. 9, 1992). The same conclusion can be drawn regarding the violation of the criminal statute: the offer and acceptance constituted an act of keeping a place of prostitution because the circumstances were such that no other intended use by Officer Igesia could reasonably be understood by Price-Adkins. 720 ILCS 5/11-17 (West 2002). As the City argues, neither the ordinance nor the state statute requires a completed act of prostitution. See People v. Thompson, 85 Ill. App. 3d 964, 967-68 (1980) (claim rejected that

[2] The City points out that effective July 1, 2011, section 11-17 was replaced by section 11-14.3, based on the definition in section 11-0.1, which uses nearly the identical language from section 11-17.

defendant's constitutional rights were violated "by defining an inherently inchoate offense [such as prostitution] as a specific substantive offense"). We also take guidance from our decision in Cha v. City of Chicago, 194 Ill. App. 3d 213, 216 (1990), which rejected the license holder's claim that he did not "knowingly" permit prostitution at his hotel.

¶ 20 In Cha, a motel owner's license was suspended after he was found to have knowingly permitted his motel to be used for purposes of prostitution in violation of section 11-17(a) of the Criminal Code. Id. at 214. A police officer testified that he arrived at the motel with a woman that had earlier offered a sex act for money and had suggested using this particular motel. Upon inquiring about a room, the officer informed the owner that he was "paying a prostitute $35." Id. at 215. The officer also claimed to be carrying around a large amount of money, which prompted him to ask the owner "if this whore was safe to be with." Id. The owner replied that she was. Id. The woman that accompanied the officer also testified and admitted to working as a prostitute. She admitted signing the following stipulation on the motel's registration card: "I HEREBY CERTIFY THAT I HAVE NOT RENTED THIS ROOM FOR ANY ILLEGAL PURPOSE: GAMBLING, PROSTITUTION OR SOLICITATION OF OTHERS." Id. at 216. The motel owner argued that the registration card showed he did not knowingly permit prostitution because the woman pledged her "intent not to use the motel premises for acts of prostitution." Id. at 218. The court rejected the argument: "[The prostitute's] signature was a mere formality to her obtaining the motel room and presumably petitioner's maintenance of proper business records. The [prostitute's] and [the motel owner's] real intent [was] more properly extracted from the testimony given at the hearing." Id. The court affirmed the City's

suspension of the motel's license because the totality of the evidence supported the decision that the owner permitted the motel to be used for purposes of prostitution in violation of section 11-17(a) of the Criminal Code. Id.

¶ 21 Contrary to Camelot's suggestion that more was required to establish that an "offer and acceptance" had been made for the use of the motel room for purposes of prostitution under the state statute, it is the "real intent" behind the use of the room that determines whether a violation has occurred. Id. "Intent is rarely proved by direct evidence because it concerns a state of mind." *People v. Witherspoon*, 379 Ill. App. 3d 298, 307 (2008). In the instant case, the Department found a violation of section 11-17 in resolving the conflict between the testimony of Price-Adkins and Iglesias. "[I]f the issue is merely one of conflicting testimony and credibility of witnesses, the agency's determination should be sustained." Cha, 194 Ill. App. 3d at 217; People v. Testa, 261 Ill. App. 3d 1025, 1031 (1994) ("The nature of defendant's intent was a factual question for the jury to decide."). Thus, under the plain language of the state statute, the circumstances were such that Price-Adkins "could reasonably know that the place *** is to be used for purposes of prostitution." 720 ILCS 5/11-17(a)(2) (West 2002);

¶ 22 The same interaction between Price-Adkins and Iglesias also proved a violation of the Municipal Code. The hearing officer was free to draw the inference that Price-Adkins "knowingly permit[ted] prostitution to be conducted upon the premises" when she agreed to let a room to Iglesias after he announced his intended use of the room. Chicago Municipal Code § 4-208-080 (added Dec. 9, 1992). We note that Price-Adkins confirmed that Iglesias left $40 on the counter before she was ticketed. Testa, 261 Ill. App. 3d. at 1028-29 (sufficient circumstantial

evidence existed from which "an agreement could be inferred").

¶ 23 In similar fashion to its argument that no violation of the Criminal Code was proved, Camelot argues that the plain language of section 4-208-080 of the Municipal Code does not prohibit the mere offering of the use of the premises, which it claims is all Price-Adkins did, in the absence of proof that the offer was accepted. According to this argument, the ordinance does not reach incomplete misconduct that prematurely ends. "If the city council had intended to bring inchoate misconduct within the scope of the Ordinance, it certainly could have done so by use of the word 'offer,' rather than, or in addition to, the term 'permit.' "

¶ 24 Certainly, neither the state statute nor the municipal ordinance requires that prostitution actually occur before a violation can be found. From this, it necessarily follows that no showing is required that a prostitute is actually present. Rather, the violation arises when a licensee "knowingly permit[s] prostitution," in the words of the ordinance, or knowingly "grants or permits the use of such place for the purpose of prostitution," in the words of the state statute, which places the focus of the legislation's prohibition on the licensee and not on the person patronizing the purported prostitute. In the context of this case, Price-Adkins should not have repeated the offer to rent Iglesias a room once he stated he wanted the room to spend time with the paid "whore" to foreclose a finding that she violated the statute and ordinance. There is nothing in either that requires a finding of something more than what occurred here to support the inference drawn by the hearing officer.

¶ 25 Nor do we agree with Camelot's assertion that before Price-Adkins could be found to have "permitted" Iglesias to use the room for his stated purpose, the officer was required to fill

out the registration card, which Price-Adkins testified had to be accompanied by identification. There is no authority for Camelot's contention that a violation turns on satisfactorily completing the registration process the motel claims it follows. Nothing in the statute or ordinance requires that registration steps be followed before a violation can be found. We will not read a requirement into legislation that might well encourage arbitrary and divergent findings based on nothing more than different registration formalities a business might impose on prospective customers. Cha stands as counter authority based on its rejection of the motel owner's contention that the written stipulation with the prostitute insulated him from a violation of the state statute. Cha, 194 Ill. App. 3d at 218.

¶ 26 Likewise, the failure to receive a key does not defeat the claim that an unlawful "letting" of the motel room occurred. Completing the registration card and obtaining the key would have been nothing more than a confirmation that a room had been rented for an unlawful purpose. See id. Such conclusive proof is required by either the state statute or municipal ordinance to demonstrate that the motel "permitted" its premises to be used for purposes of prostitution. When Price-Adkins was informed of Iglesias' stated purpose in renting the room and she repeated to Iglesias the cost of the room, the trier of fact was free to draw the inference that she permitted the couple to unlawfully use the motel for purposes of prostitution. In short, the willingness of Price-Adkins to rent the room, despite knowing the intended purpose, was sufficient to prove a violation of the statute and ordinance, even against the indisputable facts that Iglesias never completed the registration card and no key was tendered by Price-Adkins. See Madonia v. Houston, 125 Ill. App. 3d 713 (1984).

¶ 27 In Madonia, a court addressed a licensee's contention that the evidence did not prove a violation of an anti-prostitution ordinance in the Springfield municipal code. Id. at 715. In that case, a tavern owner challenged the revocation of her liquor license after the liquor control commission found that the manager allowed prostitution to occur on the premises. Id. at 714. Before the commission, a police officer testified that while he was at the tavern, he and a woman had a prostitution-related conversation. According to the officer, the woman "offered, in a loud voice, to perform a sexual act for a price" and the tavern's bartender was within "three to five feet" of the conversation. Id. at 716. The officer testified that after the woman made this offer, the manager nodded at the woman and at him, "smiled and walked away." Id. The court explained the question raised by the testimony: "If the trier of fact believed [the officer's] testimony, it could find that when [the manager] understood that an offer had been made, he gave tacit acquiescence rather than expelling both [the woman and the officer], and thus permitted prostitution to take place in the tavern." Id. at 718. We note that no evidence was introduced that the "sexual act" occurred or that the asking "price" was paid. The court affirmed the revocation of the license based on the ordinance violation. Id.

¶ 28 We find no difference between what the Madonia court characterized as a "tacit acquiescence" and the inference drawn in this case that Price-Adkins permitted prostitution at the motel based on the conversation Iglesias testified he had with her. We agree with Madonia that deference is owed to conclusions reached by the trier of fact. In particular, just as the Madonia court stated that the bartender's failure to expel the female that loudly offered "to perform a sexual act for a price" constituted "permitting" prostitution on the premises (id. at 716), we state

that Price-Adkins' willingness to rent a room to Iglesias after he made known the use he planned for the room, Camelot permitted prostitution on its premises. Following Madonia, it fell to the trier of fact to assess Price-Adkins' conduct in deciding whether an ordinance violation had been proved. As in Madonia, we are presented with no basis to overturn the hearing officer's findings, which establish a violation of the ordinance.

¶ 29 Finally, we are presented with no reason to overturn the sanction imposed, which in any event is entitled to deference. See *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 99 (1992) (reviewing courts defer "to the administrative agency's expertise and experience in determining what sanction is appropriate").

¶ 30 CONCLUSION

¶ 31 The Department was free to draw the inference that the agent of Camelot Motel, Price-Adkins, was willing to rent a room to an undercover officer after he stated his clear intentions to use the room for purposes of engaging in sexual acts with a paid "whore" that accompanied him. Price-Adkins' actions constituted permitting prostitution on the premises, which violated both the criminal statute and the city ordinance. Consequently, the Department's decision was not against the manifest weight of the evidence. Nor did the evidence demonstrate that Price-Adkins engaged in "inchoate" misconduct, not reached by either the criminal statute or city ordinance.

¶ 32 Affirmed.