

2011 IL App (1st) 111046 - U
No. 1-11-1046

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

NORENE BROWN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 10 M1 625619
	)	
CITY OF CHICAGO, and the CITY OF CHICAGO	)	Honorable
DEPARTMENT OF ADMINISTRATIVE	)	William G. Pileggi,
HEARINGS,	)	Judge Presiding.
	)	
Defendant-Appellee.	)	

JUSTICE STERBA delivered the judgment of the court.
Justice Fitzgerald Smith and Justice Pucinski concur in the judgment.

ORDER

¶ 1 *Held:* The administrative agency's finding that a motorist violated the City of Chicago's no turn on red ordinance was not against the manifest weight of the evidence because photographs and a video captured the motorist making a right turn when the traffic signal displayed a red light.

¶ 2 *Pro se* plaintiff Norene Brown appeals the administrative law judge's (ALJ) finding that she violated a City of Chicago (City) ordinance by making a right turn into an intersection when a traffic signal displayed a steady red light. Brown claims that she completed the right turn

1-11-1046

before the traffic signal displayed a red light. Brown also claims that the ALJ erred in imposing a penalty if she did not pay the fine within 21 days from the determination of liability date. For the reasons that follow, we affirm.

¶ 3

Background

¶ 4

The City sent Brown a red light violation notice (notice) dated May 23, 2010 for violating section 9-102-020 of the Chicago Municipal Code (Code). According to the notice, on May 3, 2010 at 12:54 p.m., a vehicle bearing a license plate registered to Brown made a right turn at 400 W. Belmont Avenue, Chicago, Illinois, when the traffic signal displayed a red light. The notice included three photographs, which consisted of one close-up image of license plate number G97 2784, one image of a vehicle with that license plate number approaching the intersection at 400 W. Belmont Avenue and one image of the vehicle completing the right turn at the intersection. The notice indicated that the fine for the violation was \$100 if paid by June 6, 2010. The notice provided Brown with the option of contesting the violation by choosing either a contest by mail or in-person hearing. Brown elected to contest the violation by attending an in-person hearing.

¶ 5

An ALJ conducted Brown's administrative hearing on September 15, 2010. During the hearing, the City offered the following evidence: (1) the violation notice; (2) a technician certificate; (3) three photographs taken at 400 W. Belmont Avenue; and (4) the video taken of the violation in progress. A technician for the City's red light camera enforcement system prepared a sworn certificate stating that she was "trained to inspect images to identify vehicles used in violation" of the Code. From her inspection of the images, the technician concluded that

1-11-1046

"at the time and place shown on the notice of violation, the vehicle was used in violation of Section 9-102-020 in that the vehicle did not stop for steady circular red signal before entering the intersection." During the hearing, the ALJ described in detail the three photographs included in the notice. The ALJ observed that in one of the photographs, the traffic signal had been amber for 3.02 seconds and then red for .19 seconds. The vehicle in that image was in the right turn only lane and was behind both the stop line and crosswalk. The ALJ noted two traffic signals at the intersection. The ALJ could not see clearly the traffic signal suspended over the intersection, but observed that the traffic signal almost in front of the vehicle was illuminated red. The ALJ also observed that a "No turn on red" sign was posted on the pole attached to the traffic signal that was just in front of the vehicle. In the next photograph, the ALJ observed that the time frame was .70 seconds after the time frame in the first photograph, and the traffic signal was red. The images in this photograph appear similar to the images in the other photograph except that the vehicle proceeded past the stop line and was in the process of making a right turn. The third photograph was a close-up image of the vehicle's license plate number.

¶ 6 During the hearing, Brown presented her defense. Brown stated that the traffic signal the ALJ observed as red was the traffic signal for the walkway. The ALJ disagreed with Brown because according to the video of the violation, the signal was not flashing and the ALJ watched the light change from green to yellow to red, which indicated that it was not a signal for the walkway. Brown also stated that the traffic signal was yellow and she completed her turn before the signal turned red. Based on the video, the ALJ again disagreed with Brown's position. The ALJ admitted into evidence the notice, the technician's certificate, the three photographs and the

video. The ALJ also admitted into evidence Brown's defenses, which were that the red traffic signal was the signal for the walkway, and that she completed her turn when the signal was yellow.

¶ 7 The ALJ entered a finding of liability against Brown on September 15, 2010. The ALJ informed Brown that she had the right to appeal the determination within 35 days with the trial court or pay the \$100 fine within 21 days of the determination's date. The ALJ's final determination included a provision that if Brown did not pay the \$100 fine within 21 days, a penalty equal to the fine would be imposed.

¶ 8 On October 13, 2010, Brown filed a complaint for administrative review. The trial court entered an order continuing the matter and also stated that if the ALJ's determination was affirmed, the fine would stand at the doubled amount. The trial court affirmed the ALJ's determination. Brown timely appealed.

¶ 9 *Analysis*

¶ 10 In administrative cases, this court reviews the administrative agency's findings and not the trial court's findings. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2007). An administrative agency's finding regarding a question of law is reviewed adopting a *de novo* standard. *Adams v. Board of Trustees of Teachers' Retirement System of State*, 407 Ill. App. 3d 592, 595 (2011). An administrative agency's finding regarding a question of fact will not be reversed unless the finding is against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 532. A finding is "against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.* at 534. The administrative agency's factual finding should be

1-11-1046

affirmed if the record includes evidence supporting the decision. *Id.* On review, however, "[n]o 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 court." 735 ILCS 5/3-110 (West 2008). Moreover, the administrative agency's findings and conclusions "on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2008).

¶ 11 Section 9-102-020 of the Code states in relevant part:

“(A) The registered owner of record is liable for a violation of this section and the fine set forth in Section 9-100-020 when the vehicle is used in violation of Section 9-8-0202© or Section 9-16-030© and that violation is recorded by a traffic control signal monitoring device as determined by a technician who inspects the recorded image created by the device. *A photographic recording of a violation obtained by a traffic control signal monitoring device and that has been inspected by a technician shall be prima facie evidence of a violation of this chapter.*” (Emphasis added.) Chicago Municipal Code § 9-102-020 (added July 9, 2003).

The ALJ's finding that Brown committed the red light violation was not against the manifest weight of the evidence. The record includes photographs of the violation that were inspected by a technician for the red light camera enforcement system who certified "that at the time and place shown on the notice of violation, the vehicle was used in violation of Section 9-102-020 in that the vehicle did not stop for the steady circular red signal before entering the intersection." According to the Code, these photographs and the technician's certification are *prima facie*

evidence of a red light violation. The ALJ also viewed the video and observed that the traffic signal progressed from green to yellow to red and Brown's vehicle made a right turn into the intersection when the traffic signal displayed a red light. The ALJ rejected Brown's defense that the traffic signal was a walkway signal because the light on the signal, unlike one for a walkway, did not flash.

¶ 12 On appeal, Brown raised additional defenses that the camera malfunctioned, the video shown at the trial court was altered and that the red light camera program has been criticized by the National Motorist Association and politicians. Since Brown did not present these defenses at the administrative hearing, she has forfeited review of the defenses and we may not consider them. 735 ILCS 5/3-110 (West 2008) (stating that “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 court.”) See *Cook County Board of Review v. Property Tax Appeal Board*, 395 Ill. App. 3d 776, 786 (2009) (recognizing that “arguments or objections that are not made during the course of the administrative hearing process but instead are raised for the first time on review are deemed waived”) and *North Ave. Properties, L.L.C. v. Zoning Board of Appeals*, 312 Ill. App. 3d 182, 185 (2000) (stating that “arguments not raised before the administrative agency are waived for purposes of administrative review.”) The evidence in the instant case supports the ALJ's finding that Brown committed a red light violation and an opposite conclusion is not clearly evident.

¶ 13 Brown also appeals the increased fine amount from \$100 to \$200. The “Determination of Liability” section of the “Automated Red Light Camera Program” chapter of the Code provides

1-11-1046

that “[t]he determination of liability for a violation notice issued under this chapter shall be made in accordance with Sections 9-100-050, and 9-100-070 through 9-100-090.” Section 9-100-050(e) of the Code entitled “Determination of Liability” states the following:

"(e) Failure by any respondent to pay the fine for a parking or compliance violation within 21 days of the issuance of the determination of liability will automatically subject the respondent to a penalty for late payment. The penalty for late payment shall be an amount equal to the amount of the fine for the relevant parking or compliance violation." Chicago Municipal Code § 9-100-050(e) (added March 21, 1990).

Since we must interpret the City's ordinance, a question of law is presented and this court is not bound by the administrative agency's interpretation of the ordinance. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 97 (1992); *North Ave. Properties, L.L.C.*, 312 Ill. App. 3d at 190. If the ordinance's language is clear and unambiguous, “the court must interpret the ordinance according to its terms without resorting to aids of construction.” *North Ave. Properties, L.L.C.*, 312 Ill. App. 3d at 190.

¶ 14 The ALJ determined that Brown was liable for committing a red light violation, and that finding was not against the manifest weight of the evidence. The fine for a red light violation is \$100, but the fine is also subject to a late payment penalty if it is not timely paid. Chicago Municipal Code § 9-100-020 (added March 21, 1990). The late payment penalty is double the fine amount, which in the instant case is an additional \$100. Chicago Municipal Code § 9-100-050(e) (added March 21, 1990). The ALJ instructed Brown that if she did not remit payment

1-11-1046

within 21 days from the date of the determination of liability, the fine would increase from \$100 to \$200. Section 9-100-050(e)'s clear and unambiguous language provided the ALJ with the authority to impose a late payment penalty. Chicago Municipal Code § 9-100-050(e) (added March 21, 1990). Moreover, the imposed penalty complied with section 9-100-050(e) of the Code and did not exceed the permissible penalty amount. Thus, the ALJ did not err in imposing the fine amount, and Brown's total penalty for the red light violation is \$200.

¶ 15 Accordingly, the judgment of the administrative agency is affirmed.

¶ 16 Affirmed.