FOURTH DIVISION
SEPTEMBER 27, 2012

No. 1-11-1284

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUDIP RAY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	10 M1 625599
CITY OF CHICAGO,	)	
	)	The Honorable
Defendant-Appellee.	)	Patrick T. Rodgers,
	)	Judge Presiding.

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

ORDER

¶1 HELD: (1) Section 220(b) of the Chicago Municipal Code (Chicago Municipal Code § 9-76-220(b) (added February 7, 1997, amended May 26, 2004)) is a proper exercise of the city's home rule authority. (2) The ordinance is not preempted by the provision of the Illinois Vehicle Code regarding window tints (625 ILCS 5/12-503 (West 2010)). (3) The ordinance is rationally related to the city's legitimate interest in police safety.

¶2 BACKGROUND

¶3 On July 24, 2010, plaintiff was issued a ticket for a violation of section 220(b) of the Chicago Municipal Code (Chicago Municipal Code § 9-76-220(b) (added February 7, 1997, amended May 26, 2004)) for having smoked/tinted windows while his car was parked. On July 25, 2010, plaintiff drafted a letter to contest the citation by mail, arguing that he was in compliance with Illinois state law under 625 ILCS 5/12-503(a-5) (West 2010). Plaintiff included the window tint receipt with his letter, which indicated the window tint was no more than 35%. On September 2, 2010, an administrative law judge determined that the violation occurred and found that, as the registered owner of the vehicle, plaintiff was responsible for the fine of $250.

¶4 On October 1, 2010, plaintiff filed a complaint for administrative review in circuit court. Counsel for plaintiff argued that section 220(b) of the Chicago Municipal Code restricts interstate and intrastate commerce, and that the subject of the ordinance was preempted by state law. Counsel for plaintiff also argued that the basis for the ordinance, police safety, is not supported by the legislative history or the ordinance itself, as it allows for the back windows of vehicles to remain tinted. The city argued that section 76-220(b) is a valid ordinance under home rule authority under the Illinois Constitution, because the Illinois General Assembly did not specifically limit or declare exclusive a concurrent exercise of power on the subject.

¶5 On February 24, 2011, the circuit court denied plaintiff's complaint for administrative review. The court found that Chicago had the authority to enact the ordinance because the Illinois General Assembly did not include express preemption language in section 12-503 of the Illinois Vehicle Code, which also imposes restrictions on tinting (625 ILCS 5/12-503 (West 2010)). Plaintiff filed a motion to reconsider, which was denied on April 12, 2011. Plaintiff

timely appealed.

¶6 ANALYSIS

¶7 Plaintiff argues that the circuit court erred in holding that the city of Chicago did not exceed its home rule authority in enforcing a municipal law in violation of a statutory scheme. Plaintiff maintains that section 220(b) of the Municipal Code of Chicago is an invalid exercise of Chicago's home rule authority because of the extraterritorial effect which negatively impacts intrastate and interstate commerce.

¶8 Under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2010)), the scope of judicial review extends to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110 (West 2010). We are not bound to give the same deference to an agency's conclusions of law as we give to its findings of fact and cannot let stand a decision based upon an erroneous construction of a statute. *Zbiegien v. Department of Labor*, 156 Ill. App. 3d 395, 399 (1987). We exercise independent review of questions of law. *Dow Chemical Company v. Illinois Department of Revenue*, 224 Ill. App. 3d 263, 265 (1991). Further, we consider the constitutionality of an ordinance *de novo*. *Palm v. 2800 Lake Shore Drive Condo. Association*, 401 Ill. App. 3d 868, 873 (2010). All laws are presumed constitutional, and a litigant challenging a law's constitutionality "bears the burden of rebutting this presumption and clearly establishing a constitutional violation." *Segers v. Industrial Commission*, 191 Ill. 2d 421, 432-33 (2000).

¶9 The city of Chicago is a home rule unit. *Palm*, 401 Ill. App. 3d at 873. The Illinois Constitution provides that "[h]ome rule units may exercise and perform concurrently with the

State *any* power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." (Emphasis added.) Ill. Const. 1970, art. VII, § 6(i). This provision "was intended to give home rule units like Chicago the broadest powers possible to regulate matters of local concern." *Palm*, 401 Ill. App. 3d at 873 (citing *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992)). However, home rule ordinances which affect matters outside of the home unit will be held invalid. *Laundry v. Smith*, 66 Ill. App. 3d 616, 620 (1978). "Home rule units' powers are liberally construed." *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1113 (2010) (citing Ill. Const. 1970, art. VII, § 6(m)).

¶10 Courts apply a three-part test to determine whether a municipality's actions are a valid exercise of its home rule authority: (1) "we must decide whether the exercise of power by the municipality is a power ' "pertaining to its government and affairs" ' "; (2) "we must determine whether the legislature has specifically limited the local exercise of the power at issue or whether the legislature has specifically declared the State's exercise to be exclusive, thereby totally preempting a home rule unit's exercise of its constitutional power"; and (3) "if no specific action has been taken, then we must determine the proper relationship between the local ordinance and the state law." *City of Oakbrook Terrace v. Suburban Bank & Trust Co.*, 364 Ill. App. 3d 506, 514 (2006) (quoting *County of Cook v. John Sexton Contractors Co.*, 75 Ill. 2d 494, 508 (1979), quoting Ill. Const. 1970, art. VII, § 6(a)).

¶11 Section 9-76-220(b) of the Municipal Code of Chicago provides:

"It is unlawful to park or stand a vehicle on any portion of the public way if the

vehicle is equipped with nonreflective, smoked or tinted glass or nonreflective film on the front windshield, sidewings or side windows immediately adjacent to either side of the driver's seat." Chicago Municipal Code § 9-76-220(b) (added February 7, 1997, amended May 26, 2004).

¶12 Plaintiff argues that the first part of the test is not satisfied. Specifically, plaintiff argues that the ordinance results in a chilling effect on interstate commerce because, "[d]ue to Chicago's blanket bar on driver adjacent window tint, any Illinois or non-Illinois resident with tinted windows cannot freely visit the city of Chicago without risking a fine or having the window tint removed." However, this is not the case, as plaintiff was found to have violated only section 9-76-220(b), which only prohibits parking or standing a vehicle with tinted windows on a Chicago public way. Moreover, plaintiff's argument about the effect on interstate commerce falls far short of establishing a constitutional violation of the Commerce Clause. Under the Dormant Commerce Clause, a state or local law may not discriminate against or burden interstate commerce. *Alliant Energy Corp. v. Bie*, 330 F.3d 904, 911 (2003).

¶13 Plaintiff also argues that Chicago would lose revenue and economic growth. However, the potential effect on Chicago's revenue from this ordinance is a question firmly within the city's home rule authority. The city's citation to *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984), is on point. As the city argues, the mere fact that some individuals might simply avoid a municipality rather than comply with that municipality's laws is no "reason to hold that [those laws do] not pertain to local government or affairs, any more than the possibility that a village speed regulation might cause people who wish to go faster to route themselves around the village

invalidates local speed laws." *Kalodimos*, 103 Ill. 2d at 504.

¶14 Plaintiff further argues that the first part of the test is not met because the problem addressed by the provision does not pertain to a local government problem or affair. "[T]he extent and history of the State's activity in resolving the problem will determine whether the problem pertains to local government and affairs." *City of Chicago v. Stubhub, Inc*., 2011 IL 111127 at ¶ 19. As the city cogently argues, for over a century the Illinois legislature has delegation to all municipalities the authority to "regulate the use of the streets" (65 ILCS 5/11-80-2 (West 2010)) and to "regulate traffic *** upon the streets" (65 ILCS 5/11-80-20 (West 2010)).

¶15 Plaintiff also argues that the second part of the test for valid exercise of home rule authority is not met. Plaintiff argues that the city's provision is preempted by the provisions of the Illinois Vehicle Code regarding window tints. 625 ILCS 5/12-503 (West 2010). Plaintiff relies on section 11-207 (625 ILCS 5/11-207 (West 2010)) and section 11-208.1 of the Illinois Vehicle Code (625 ILCS 5/11-208.1 (West 2010)). However, as plaintiff concedes, the legislature has not limited the city's exercise of the power regulated here or declared its own exercise to be exclusive.

¶16 Further, an analysis of the provisions relied upon by plaintiff demonstrate that his argument is without merit. Section 11-207 in chapter 11, Rules of the Road, of the Illinois Vehicle Code provides the following:

> "Provisions of this Chapter uniform throughout State. The provisions of *this Chapter* shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any

> ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein. *Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Chapter,* but such regulations shall not be effective until signs giving reasonable notice thereof are posted." (Emphasis added.) 625 ILCS 5/11-207 (West 2010).

Nothing in this provision indicates preemption; rather, it specifically provides that local authorities may adopt their own regulations that are not in conflict with the Rules of the Road. The chapter referenced is chapter 11, Rules of the Road, provisions which are not implicated in this case. The provision of the Illinois Vehicle Code regarding window tints is found in chapter 12. See 625 ILCS 5/12-503 (West 2010).

¶17 Also, section 11-208.1 of the Illinois Vehicle Code provides:

> "Uniformity. The provisions of *this Chapter* of this Act, as amended, and the rules and regulations promulgated thereunder by any State Officer, Office, Agency, Department or Commission, *shall be applicable and uniformly applied and enforced throughout this State, in all other political subdivisions and in all units of local government*." (Emphasis added.) 625 ILCS 5/11-208.1 (West 2010).

Again, the reference to "this Chapter" is to chapter 11, Rules of the Road. Also, this provision merely provides that the rules shall be uniformly applied throughout the State. Nothing in the Vehicle Code indicates preemption.

¶18 Plaintiff also argues the third part of the test, that there is no rational relationship between the local ordinance and a legitimate city interest. Where no fundamental constitutional right is

implicated, courts review the statute under consideration using the rational basis test. *Segers*, 191 Ill. 2d at 433 (citing *Russell v. Department of Natural Resources*, 183 Ill. 2d 434, 446 (1998). "Under this test, the statute must bear a reasonable relationship to the public interest intended to be protected, and the means adopted must be a reasonable method of accomplishing the desired objective." *Segers*, 191 Ill. 2d at 433 (citing *Russell*, 183 Ill. 2d at 447). As the city argues, the ordinance is rationally related to police safety. Plaintiff cites to no authority holding that an ordinance of this type is not rationally related to officer safety. We find no error in the administrative law judge's determination nor in the circuit court's denial of plaintiff's complaint for administrative review.

¶19 CONCLUSION

¶20 We hold that section 220(b) of the Chicago Municipal Code (Chicago Municipal Code § 9-76-220(b) (added February 7, 1997, amended May 26, 2004)) is a proper exercise of the city's home rule authority. Second, the ordinance is not preempted by the provisions of the Illinois Vehicle Code regarding window tints. Third, the ordinance is rationally related to the city's legitimate interest in police safety.

¶21 Affirmed.