2014 IL App (1st) 133742-U

FOURTH DIVISION
November 26, 2014

No. 1-13-3742

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALAN TABOR,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 11285
	)	
CITY OF CHICAGO,	)	The Honorable
	)	Mark J. Ballard,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Taylor concurred in the judgment.

ORDER

HELD: Administrative decision impounding plaintiff's vehicle and assessing fines, fees and costs against him pursuant to city ordinance was proper, and defense provided therein does not necessitate spousal testimonial common law exception.

¶ 1 Plaintiff-Appellant Alan Tabor (plaintiff) sought administrative review of a decision issued by defendant-appellee the City of Chicago's (City) Department of Administrative Hearings

(DOAH) impounding his vehicle and charging him $11,670 in fines and fees. The trial court affirmed the administrative decision. On appeal, plaintiff contends that the defense provided to him via the City's ordinance with respect to impoundment has an unintended consequence which requires an owner to charge his spouse with a crime and, therefore, it is against public policy. Urging that the ordinance "must be interpreted to allow a spousal testimonial common law exception," he asks that we reverse the decision impounding his vehicle and assessing the fines and fees against him. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 According to the record in this cause, plaintiff is the sole owner of a 1998 Oldsmobile 88. In July 2012, plaintiff was out of town and had hidden the keys to his vehicle from his wife by giving them to his son. While he allowed his son to use the car, he did not give permission for his wife to use it; plaintiff's wife's driver's license was suspended at that time and she was not named on his insurance policy on the car. However, plaintiff's wife found the keys and drove the car, whereupon she was pulled over by police. She was eventually arrested for driving on a suspended license and, following a custodial search, for possession of a controlled substance, to wit, heroin.

¶ 4 Pursuant to sections 7-24-225 and 9-80-240 of the Municipal Code of Chicago, the City impounded plaintiff's car and assessed him costs, fines and fees. Section 7-24-225 states, in relevant part:

> "The owner of record of any motor vehicle that contains any controlled substance *** or that is used in the purchase, attempt to purchase, sale or attempt to sell such

> controlled substances *** shall be liable to the city for an administrative penalty *** plus any applicable towing and storage fees ***. Any such vehicle shall be subject to seizure and impoundment pursuant to this section." Chicago Municipal Code, § 7-24-255 (2012).

Likewise, section 9-80-240 states, in relevant part:

> "The owner of record of any motor vehicle that is operated by a person with a suspended or revoked driver's license shall be liable to the city for an administrative penalty *** plus any applicable towing and storage fees. Any such vehicle shall be subject to seizure and impoundment pursuant to this section." Chicago Municipal Code, § 9-80-240 (2012).

Plaintiff challenged the City's impoundment of his car, and the cause proceeded to an administrative hearing before the DOAH. Plaintiff cited section 2-14-132(8) of the ordinance, which provides a defense to both sections 7-24-225 and 9-80-240. See Chicago Municipal Code §§ 7-24-225(c), 9-80-240(c) (2012) (both stating that "[t]he provisions of Section 2-14-132 shall apply whenever a motor vehicle is seized and impounded" pursuant to either of those sections). Section 2-14-132(8) states, in relevant part:

> "For purposes of this section, a vehicle is not considered to have been used in a violation that would render the vehicle eligible for towing if: (1) the vehicle used in the violation was stolen at the time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered ***." Chicago Municipal Code, § 2-14-132(8) (2012).

Plaintiff argued that he could not be liable for the impoundment or fines and fees because he had not given his wife permission to drive his car or transport drugs in it, and that he should not be required to report her for theft to sustain a defense to the impoundment. He admitted at the hearing that he did not report his car stolen at any point; he did not do so because he knew his wife had pending charges against her and he wanted to prevent any marital discord reporting her would cause.

¶ 5 Following the hearing, the DOAH found against plaintiff. Noting that this is a strict liability offense, it held that the City had proven its case. It acknowledged plaintiff's defense, but concluded that there was absolutely no testimony that he availed himself of it, since he never reported the car stolen. Therefore, the DOAH held in favor of the City and assessed plaintiff $11,670 in costs, fines and fees. Plaintiff sought further review in the trial court, which affirmed the DOAH's decision.

¶ 6 ANALYSIS

¶ 7 On appeal, plaintiff renews his argument below, asserting that the ordinance's defense as found in section 2-14-132(8) has an unintended consequence which requires the owner of an impounded vehicle to charge his spouse with a crime. Stating that this essentially compels spouses to testify against each other in contravention of the U.S. Supreme Court's holding in *Trammel v. United States*, 445 U.S. 40 (1980), and relegating the Illinois supreme court's holding of *People v. Palumbo*, 5 Ill. 2d 409 (1955) to "sweeping *dicta*," plaintiff claims that this is against public policy and insists that we carve out a "spousal testimonial common law exception" to the ordinance, lest it remain "clearly erroneous." We wholly disagree.

¶ 8 First, we note briefly that, as the reviewing court in the administrative setting, we review the DOAH's decision, not that of the trial court. See *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 19, citing 735 ILCS 5/3-101 *et seq.* (West 2008) (judicial review of the Chicago Municipal Code is governed by the Administrative Review Law). While our review regarding a question of law is to be *de novo*, the DOAH's decision does merit some deference, namely, on questions of statutory interpretation, since it is this agency that is in charge of administering the provisions of the Act. See *Swoope v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 323 Ill. App. 3d 526, 529 (2001) ("agency is presumed to make informed judgments based on its experience and expertise" in applying act it administers "and, thus, substantial deference is given to its interpretation of a statute"). In this context, just as with the construction of any statute, municipal ordinances are presumed constitutional and the burden is on the challenging party to establish a clear constitutional violation. See *Jackson*, 2012 IL App (1st) 111044, ¶ 20, quoting *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008) (" '[i]n construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes' "). Specifically, we are bound to enforce them as written and may not resort to other tools of statutory construction, including reading into them exceptions, limitations or conditions not expressed by the body who wrote them. See, *e.g.*, *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421-22 (2002); accord *Waste Management of Illinois, Inc. v. Illinois Pollution Control Bd.*, 356 Ill. App. 3d 229, 233 (2005).

¶ 9 The language of the sections at play in this appeal is inherently plain, clear and unambiguous. Pursuant to sections 7-24-225 and 9-80-240, a car that is found to contain a

controlled substance or is found to be driven by someone with a suspended license is subject to impoundment, and its owner is liable to the City for fines, fees and costs associated with such impoundment. Meanwhile, section 2-14-132(8) of the ordinance provides a defense for the owner of a vehicle impounded pursuant to these sections: if he reports to police a theft of the vehicle within 24 hours after it was discovered or reasonably should have been discovered, then the owner will not be liable for the impoundment. See Chicago Municipal Code, § 2-14-132(8) (2012).

¶ 10 Plaintiff here has never disputed that his wife drove his car, that she did so with a suspended license and that she was pulled over and found to have heroin in the car. Moreover, plaintiff never called police at any time to report his car stolen and, thus, never even attempted to avail himself of the defense provided by section 2-14-132(8). Therefore, the impoundment of his car and the fines, fees and costs assessed were in direct accord with the ordinance.

¶ 11 Plaintiff challenges the propriety of section 2-14-132(8)'s defense, asserting that it requires him to be compelled to testify against his wife by charging her with a crime, in direct contradiction to public policy which upholds marriage safeguards and the common law which prohibits forcing spouses to testify against each other. His challenge, however, wholly misses the mark here.

¶ 12 First and foremost, as the City here counters, Illinois does not recognize a spousal testimonial privilege. It is true, as recognized in *Trammel*, that, at common law, spouses could not testify for or against each other. See 445 U.S. at 43-44. However, this rule then "evolved into one of privilege rather than one of absolute disqualification," allowing spouses to testify on

each other's behalf but not requiring them to be compelled to testify against each other. *Trammel*, 445 U.S. at 44. Then, two separate rules of privilege were created: one preventing the compulsion of spousal testimony and the other preventing the disclosure of confidential communications made during the marriage. See *Trammel*, 445 U.S. at 44-45. Yet, with respect to the spousal testimonial privilege, it became highly criticized (see *Trammel*, 445 U.S. at 44-45), and, eventually, our state specifically abolished it in *Palumbo*, leaving only the privilege related to spousal communications. See 5 Ill. 2d at 414. Accordingly, and in direct contradiction to plaintiff's appeal here, Illinois recognizes only the marital communications privilege and not the spousal testimonial privilege. See *Palumbo*, 5 Ill. 2d at 414.

¶ 13 Plaintiff insists that *Palumbo* is only *dicta* and should not be followed, and that an exception should be carved out according to *Trammel's* continued recognition of the federal privilege for adverse spousal testimony. See, *e.g.*, *Trammel*, 445 U.S. at 46, citing *Hawkins v. United States*, 358 U.S. 74, 79 (1958) (the privilege continues in the *federal* arena, but not without the potential for "whatever changes in the rule [that] may eventually be dictated by 'reason and experience' "). However, that would require us to dispel a direct holding issued by our state supreme court. That court in *Palumbo* made clear that the statutory changes made by our legislature to the existing spousal privilege at common law "were intended to eliminate the common-law disqualification of husband and wife, and to leave only the common-law privilege relating to communications between them." *Palumbo*, 5 Ill. 2d at 414. This is, then, contrary to plaintiff's characterization, the law in Illinois–law which we, as an appellate court, are required to follow. In addition, the Court in *Trammel* made clear that the spousal testimonial privilege is a

state law decision, and it even specifically recognized, approvingly so, that Illinois was one of several states that had abolished it. See *Trammel*, 445 U.S. at 48, n.9.

¶ 14 The law in Illinois is clear: there is no spousal testimonial privilege, and one spouse may testify for or against the other. See *Palumbo*, 5 Ill. 2d at 414; accord *People v. Trzeciak*, 2013 IL 114491, ¶ 41. Thus, plaintiff's contention here regarding compulsory spousal testimony plainly fails. However, even if there was such a privilege or even if we were to carve one out as per his claim, we would still find that it would not apply to the defense provided in section 2-14-132(8) of the ordinance. This is because that section simply makes the defense to impoundment available to the owner of a car that is impounded under either section 7-24-225 or section 9-80-240. That is, it was plaintiff's choice to call police and report a theft of his car; the defense does not *compel* him to testify against his wife. Moreover, in accord with Illinois' abolishment of the spousal testimonial privilege, our supreme court has reaffirmed that the "mere description of one spouse of general, noncommunicative conduct is not protected by the marital privilege." *Trzeciak*, 2013 IL 114491, ¶ 43. In the instant cause, a call by plaintiff to police to report his car stolen by his wife, thereby invoking the defense of section 2-14-132(8), would have been a description of her general, noncommunicative conduct of stealing his car and, thus, would not involve the marital privilege at all.

¶ 15 Ultimately, we find that the DOAH's decision here was completely correct. Plaintiff's insistence that we must carve out in the ordinance an exception based on the spousal testimonial privilege is unfounded. Not only is this privilege specifically not recognized under Illinois law, but the statutory language of the sections of the ordinance at issue here are plain and

unambiguous. Plaintiff knew what he had to do to avoid liability for the impoundment of his car; he chose not to exercise the defense available to him. Plaintiff's proposed "exception" would require us to impose a condition on the ordinance to which it does not speak, and would compel us to contravene the laws of our state and the clear holdings of our supreme court. This, we are not willing to do.

¶ 16 CONCLUSION

¶ 17 Accordingly, for all the foregoing reasons, we affirm the decision of the DOAH, as well as that of the trial court, and uphold the order against plaintiff for $11,670 in fines, fees and costs related to the impoundment of his car.

¶ 18 Affirmed.