2016 IL App (1st) 143429-U

SECOND DIVISION
May 24, 2016

No. 1-14-3429



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| HEATHER O'CONNOR, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Cook County |
| | ) | |
| v. | ) | |
| | ) | No. 14 M1 450116 |
| CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS and the CITY OF CHICAGO ANIMAL CARE AND CONTROL COMMISSION, | ) | Honorable |
| | ) | Joseph Sconza |
| Defendants-Appellees. | ) | Judge Presiding. |

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PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

## ORDER

¶ 1 *Held*: There was sufficient evidence to find plaintiff's dog bit a person on public property without provocation. The circuit court properly found plaintiff's new evidence discovered after the administrative hearing did not require rehearing.

¶ 2 Following a hearing, the City of Chicago department of administrative hearings (the Department) found that a dog owned by plaintiff Heather O'Connor was a "dangerous animal" under section 7-12-020 of the Municipal Code of Chicago (the Code) (Chicago Municipal Code

§ 7-12-020 (amended Nov. 19, 2008)) for biting a person without provocation. Plaintiff sought administrative review in the circuit court of Cook County arguing that the Department's decision was against the manifest weight of the evidence. She also argued that newly discovered evidence required vacatur of the Department's decision and rehearing. The circuit court affirmed the Department's judgment and found that the newly discovered evidence did not require vacating that judgment. Plaintiff filed this timely appeal, we affirm.

¶ 3 BACKGROUND

¶ 4 On November 23, 2013, a dog bit Katherine Juras at Bickerdike Square Park in Chicago, Illinois. The incident allegedly occurred when Juras was in close proximity to plaintiff's and witness, Chris Shaver's dogs. Immediately after the incident plaintiff informed a police officer that plaintiff's dog was solely responsible for her injuries.

¶ 5 Following that incident plaintiff received a letter of determination from the City's animal care and control commission (CACC) that her dog was a "dangerous animal" pursuant to 7-12-020 of the Municipal Code (Chicago Municipal Code § 7-12-020 (amended Nov. 19, 2008)) and a citation for not leashing her dog on the date of the incident.

¶ 6 On February 4, 2014, the Department held a hearing regarding that determination before an administrative law judge. The following evidence was presented at that hearing.

¶ 7 Complainant Katherine Juras testified she was walking her dog at Bickerdike Park when her dog yelped loudly. She picked her dog up for about three seconds to check its paws. At this time, two other dogs, belonging to plaintiff and Shaver, ran toward her from across the approximately 100-yard long park. Juras testified that "I was mostly focused on my dog just because he was still screaming at the time when I picked him up, and all of a sudden *** one of

my back calves was bit and I was just shocked." Juras dropped her dog, and then her "next calf was bit by the same dog, and I looked down" and saw plaintiff's dog. Overall, she received multiple bites on her arm, right buttock area, and both calves. Juras received stitches for her wounds and has "hideous scars on the backs of [her] legs."

¶ 8 Juras testified that she screamed towards plaintiff and another dog owner, Chris Shaver, "[h]elp, your dog is biting me, help." After the dog stopped biting her, Juras overheard a nearby witness, Brooke Reavey, telling plaintiff "[y]our dog just attacked the woman. Can you see accountability, does your dog have shots?" Plaintiff told Juras her dog was not responsible and left the scene. Shaver stayed to give Juras his phone number, offering to take responsibility if his dog did anything. Plaintiff did not see Shaver's dog bite her and no one else accused Shaver's dog of having bit Juras. A sworn statement from Reavey confirmed Juras' story of Reavey's involvement.

¶ 9 CACC inspector Jose Del Rio testified, describing the reports he received when investigating the dog bite. He recounted that Shaver claimed he met plaintiff when walking his dog on the day of the incident. While Shaver and plaintiff talked, their dogs ran unleashed in the park. Juras' dog yelped from across the park, and then plaintiff's dog and Shaver's dog ran towards the noise. Plaintiff and Shaver followed their dogs, although plaintiff was 10-20 yards behind Shaver. According to Shaver, a white car blocked his view of the incident and he could not see the dog biting Juras. After Juras was bitten Shaver checked his dog's mouth for blood and signs of trauma, but found none. Shaver's sworn statement confirmed these statements and report. Del Rio testified that Shaver's story was consistent with the other witnesses' stories. Del Rio also stated any inaccurate witness statements could have altered his decision as to whether

plaintiff's dog was a "dangerous animal."

¶ 10 Aliyah Carey, a certified dog trainer and behaviorist, testified on plaintiff's behalf. She stated she ran several tests to determine the behavioral patterns of plaintiff's dog. As a result, she claimed the dog exhibited no aggressive tendencies. Carey concluded plaintiff's dog would not have run across the park to bite Juras and further stated Juras' bite wounds did not match the size of plaintiff's dog.

¶ 11 Plaintiff testified that she heard Juras yelling she was bitten five seconds after hearing the initial yell that caused her dog to run towards Juras. Plaintiff estimated it took her dog 20 seconds to reach Juras from across the park. Thus, her dog could not have been responsible for Juras' injuries. Plaintiff further testified she lost sight of her dog and Shaver's dog for about three or four seconds once they exited the park. According to plaintiff, her dog returned to plaintiff wagging his tail with no blood on him. Juras told plaintiff her dog had bitten her, and plaintiff responded, "I don't see how that is possible. He was 100 yards away when you screamed, 'Somebody help me.' " Plaintiff submitted to the administrative law judge a certificate of achievement from obedience school and letters from friends and neighbors claiming plaintiff's dog had never exhibited aggressive tendencies.

¶ 12 The administrative law judge affirmed CACC's determination that plaintiff's dog was a dangerous animal under the Code. He explained, "[i]t is my finding that the animal that's the subject of this appeal is a dangerous animal as defined in 7-12-020, Subsection 1, in that it is my finding that that animal bit a human being without provocation on public property." The Department ordered plaintiff to comply with the Chicago Municipal Code's requirements for owning a "dangerous animal" and fined plaintiff $1,000 plus $40 in court costs because

plaintiff's leash ordinance violation had resulted in the severe injury to Juras.

¶ 13 On February 15, 2014, approximately two weeks after the Department hearing, plaintiff contacted James Grabowski, who claimed to have witnessed the dog bite. According to Grabowski, he was nearby when the dog bite occurred and saw plaintiff leaving with her own dog as he approached Juras. While at the scene of the incident Grabowski heard a nearby man state, "I think it was my dog that bit." Once the man had given Juras his name and number and left, Grabowski claimed to have heard Juras say, "[i]t couldn't have been his dog; his dog is too cute and he was nice; [plaintiff] was a bitch, so screw her." Plaintiff asserts she did not know about Grabowski during the Department proceeding and therefore, was unable to obtain his testimony then. Subsequently, Grabowski executed a sworn affidavit confirming these events.

¶ 14 On March 6, 2014, plaintiff filed a complaint for administrative review with the circuit court of Cook County. Plaintiff sought reversal of the Department's decision because it relied on insufficient, contradictory evidence and inadmissible hearsay to conclude her dog was a dangerous animal. In the alternative, plaintiff requested a rehearing before the Department in light of the Grabowski affidavit. On November 7, 2014, the circuit court affirmed the Department's administrative decision and found that the new evidence, the Grabowski affidavit, did not warrant rehearing. Plaintiff's timely filed appeal followed.

¶ 15 ANALYSIS

¶ 16 On appeal, plaintiff argues: (1) the record is inadequate because the City failed to identify its counsel for the record during the Department hearing; (2) the evidence was contradictory, insufficient, and contained inadmissible hearsay, therefore, the finding that plaintiff's dog is a dangerous animal must be reversed; and (3) in the alternative, the administrative decision should

be remanded in light of plaintiff's new evidence.

¶ 17 When reviewing the merits of an administrative agency's final decision under the administrative review law, we must review the agency's decision and not the circuit court's determination. *XL Disposal Corp., Inc. v. Zehnder*, 304 Ill. App. 3d 202, 207 (1999). The appropriate standard of review on appeal depends on whether the issue is one of fact, law or a mixed question of law and fact. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007). Questions of law are reviewed *de novo*, an agency's findings of fact are deemed *prima facie* true and correct and will not be overturned unless against the manifest weight of the evidence, and an agency's ruling on a mixed question of law and fact will not be disturbed unless it is clearly erroneous. *Parikh v. Division of Professional Regulation of the Department of Financial & Professional Regulation*, 2014 IL App (1st) 123319, ¶ 19.

¶ 18 Plaintiff first argues that the City attorney failed to identify himself by name at the administrative hearing and therefore, the record is inadequate and necessitates remand. An agency's final decision will be reversed for failure to follow proper procedures only if the failure substantially affected a party's rights. See *MacDonald v. State Board of Education*, 2012 IL App (4th) 110599 at ¶ 12. Here, plaintiff does not explain how the failure to identify the City's counsel substantially affected her rights. Our review of this record reveals no clear reason that the failure of the City's attorney to identify herself for the record warrants a finding that the record is inadequate or warrants remand. Therefore, we find no reason to reverse the Department's decision on procedural grounds.

¶ 19 Next, plaintiff argues that the Department's findings are not supported by the record. Because this challenge involves a finding of fact as to whether plaintiff's dog bit a person

without provocation on public property, we will not overturn the decision unless it is against the manifest weight of the evidence, and the opposite conclusion is clearly evident. *Wortham*, 2015 IL App (1st) 131735 at 13.

¶ 20 The Chicago Municipal Code defines "dangerous animal" as "any animal which bites, inflicts injury on, kills or otherwise attacks a human being or domestic animal without provocation on any public or private property." Chicago Municipal Code § 7-12-020 (amended Nov. 19, 2008). Plaintiff challenges the Department's findings on the basis that the evidence produced at the hearing was insufficient and inconsistent and therefore could not have supported the finding that her dog is a "dangerous animal." Specifically, she contends the evidence failed to establish how Juras' own dog was injured, and whether that injury was connected to Juras' bite, where Reavey was standing, and why Reavey concluded plaintiff's dog was responsible. Plaintiff also challenges the Department's findings because she believes that her dog could not have run 100 yards in three seconds as Juras claimed and it is unreasonable to believe the dog could have bitten Juras for 45 seconds in plain sight, when neither plaintiff nor Shaver saw the plaintiff's dog bite Juras.

¶ 21 We disagree with plaintiff and find that the record supports the Department's findings that plaintiff's dog bit Juras without provocation and is a "dangerous animal." The evidence presented at the hearing was that plaintiff allowed her dog to roam in the park without a leash and her dog ran towards Juras. Juras was bitten repeatedly by a dog and suffered permanent scarring. Juras and Reavey claimed they saw plaintiff’s dog bite Juras. Plaintiff and Shaver, who were standing together when the incident occurred, did not see which dog bit Juras. It is not this court's function to "reweigh the evidence presented to an administrative tribunal, but instead to determine

whether the findings are supported by *some evidence*." (Emphasis added.) *Caliendo v. Martin*, 250 Ill. App. 3d 409, 417 (1993). Simply stated, if the record contains some evidence that supports the determination made by the agency, the appellate court is required to accept that determination and the appellate court is not permitted to enter a different finding.

¶ 22 Plaintiff acknowledges that the Department's findings were based on the credibility of witnesses but argues that the Department failed to articulate which statements were deemed reliable or incredible. On administrative review, we consider an administrative agency's credibility determinations *prima facie* true and correct and if the issues merely involve conflicting testimony or the credibility of witnesses, the agency's determinations should be upheld. *Parikh*, 2014 IL App (1st) 123319, ¶ 28. Here, the agency was presented with conflicting testimony, Juras and Reavey who claimed that plaintiff's dog bit Juras, and plaintiff who claimed that although she did not see the incident, her dog could not have bitten Juras. Because the Department's findings are supported by the record that contains conflicting testimony and evidence, they will not be reversed.

¶ 23 Plaintiff also contends the Department erred in admitting Juras' hospital records, Reavey and Shaver's notarized statements, and information provided to Del Rio during his investigation, as evidence because they constitute inadmissible hearsay.

¶ 24 As acknowledged by both parties, under the Chicago Municipal Code, "[t]he formal and technical rules of evidence shall not apply in the conduct of the hearing. Evidence, including hearsay, may be admitted only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." Chicago Municipal Code § 2-14-076(h) (amended April 29, 1998). If permitted by the procedural rules of the administrative agency, hearsay evidence

may be admitted at administrative hearings when it is "reliable." *Metro Utility v. Illinois Commerce Comm'n*, 193 Ill. App. 3d 178, 185 (1990). In this instance, in administrative hearings before the Department, hearsay evidence may be admitted. Chicago Municipal Code § 2-14-076(h) (amended April 29, 1998). Plaintiff does not challenge the reliability of Juras' hospital records, Reavey and Shaver's sworn statements and Del Rio's investigation information. Instead, she argues: that the statements were made by non-testifying witnesses; it was unreasonable to consider them; and they were improperly relied upon as proof of the underlying facts.

¶ 25 We find that because hearsay evidence may be admitted in proceedings before the Department and plaintiff has failed to challenge the sufficiency of this evidence, the Department's decision was not improperly grounded on hearsay evidence. See *Shapiro v. Regional Board of School Trustees*, 116 Ill. App. 3d 397, 408 (1983) (failure of an administrative agency to follow "technical rules of evidence" is not grounds for reversal of its decision).

¶ 26 Plaintiff also contends the Department failed to provide any specific rationale or findings of fact to justify its decision. She claims this was especially important due to the evidentiary inconsistencies and possible witness biases.

¶ 27 Unless a statute requires specific factual findings, an administrative agency must only provide a record and findings to permit "orderly and efficient judicial review." *Kimball Dawson, Ltd. Liability Co. v. City of Chicago Department of Zoning*, 369 Ill. App. 3d 780, 787 (2006). Here, the Department has no statutory requirement to provide its specific factual findings. The Chicago Municipal Code only requires "a copy of the findings and decision of the administrative law officer," as well as "a final determination of liability or no liability" and any necessary penalties, fines, orders, or costs. Chicago Municipal Code § 2-14-076(k) (amended April 29,

1998); Chicago Municipal Code § 2-14-076(l) (amended April 29, 1998). Because the Code does not require the Department to delineate specific factual findings, the Department is only required to provide a record and sufficient findings to permit judicial review. *Kimball Dawson, Ltd. Liability Co.*, 369 Ill. App. 3d at 787. We find the Department has provided a sufficient record for us to conduct "orderly and efficient judicial review" (*id.*) and therefore will not reverse the Department's decision on this basis.

¶ 28 Lastly, plaintiff contends the circuit court erred in denying her request to remand this matter for reconsideration by the Department in light of her new evidence.

¶ 29 Illinois administrative review law provides that a reviewing court may not remand an administrative decision due to newly discovered evidence unless: (1) the court is satisfied the evidence was in fact discovered subsequent to administrative proceedings' termination; (2) the evidence could not have been obtained during the proceedings; and (3) the evidence is material to the issues and not cumulative. 735 ILCS 5/3-111(a)(7) (eff. Aug. 14, 2008).

¶ 30 Plaintiff argues Grabowski's statements demonstrate Juras' testimony was false and therefore, this new information is material and merits remand. In his affidavit, Grabowski averred he overheard a nearby man stating "I *think* it was my dog that bit [Juras]." (Emphasis added.) He further averred that Juras said the man's dog could not have bitten her because it "is too cute" and "the other lady [O'Connor] was a bitch, so screw her." This statement does not conclusively counter Juras' testimony that plaintiff's dog bit Juras. In addition, Grabowski's testimony could not controvert Juras' identification of plaintiff's dog at the time she was bit because Grabowski only arrived after the incident occurred. Furthermore, Grabowski does not identify the "nearby man" who expressed uncertainty about whether his dog bit Juras. Plaintiff

suggests that the "nearby man" was Shaver, however, according to Juras' testimony and Reavey's affidavit, Shaver offered to take responsibility if his dog had bitten Juras. Plaintiff seeks rehearing to use Grabowski's testimony to impeach Juras. Such impeachment, though, would not overcome the weight of the evidence as discussed above. Therefore, the circuit court properly found that Grabowski's affidavit did not require vacatur of the Department's decision and rehearing.

¶ 31 Ultimately, the Department heard testimony from two witnesses, including the person who was bitten, who stated that they saw plaintiff's dog bite Juras, including Juras. Plaintiff, who did not see the incident, believed her dog could not have bitten Juras because of the timeline of events, her dog's general nature and the absence of blood on or trauma to her dog. On administrative review we do not assess witness credibility, reweigh evidence or substitute our judgment for that of the administrative agency. *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d 780, 786 (2006). Where, as here, the agency was presented with conflicting testimony, the agency's determination is upheld if supported by some evidence. *Parikh*, 2014 IL App (1st) 123319, ¶ 28; *Caliendo*, 250 Ill. App. 3d at 417. Therefore, we affirm the Department's findings that plaintiff's dog bit Juras without provocation and is a "dangerous animal."

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, we affirm the final decision of the City of Chicago department of administrative hearings and the order of the circuit court of Cook County denying plaintiff's request for rehearing based on newly discovered evidence.

¶ 34 Affirmed.