2011 IL App (5th) 100413-U

NO. 5-10-0413

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

KNOOB ENTERPRISES, INC., d/b/a STIX BAR AND BILLIARDS, Plaintiff-Appellant, v. THE ILLINOIS LIQUOR CONTROL COMMISSION, THE CITY OF CARBONDALE, and THE CARBONDALE LOCAL LIQUOR CONTROL COMMISSION, Defendants-Appellees.	)	Appeal from the Circuit Court of Jackson County. No. 09-MR-60 Honorable W. Charles Grace, Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Donovan concurred in the judgment.

O R D E R

¶ 1 *Held*: City attorney could properly bring complaint against liquor license holder for failure to comply with local ordinances; administrative agency did not apply the wrong legal standard; and evidence supported the administrative decision; but fines imposed were excessive under the applicable local ordinance.

¶ 2 The plaintiff, Knoob Enterprises, Inc., operates a bar in Carbondale, Illinois. The Carbondale Local Liquor Control Commission (CLLCC) imposed fines on the plaintiff for allowing one person under the age of 19 to enter its establishment and allowing two people under the age of 21 to remain on the premises possessing alcohol. The plaintiff appeals an order of the circuit court affirming the final administrative decision. It argues that (1) the city attorney lacked the authority to bring the complaint against it, (2) the CLLCC applied the wrong legal standard to the

facts before it, (3) the administrative decision was against the manifest weight of the evidence, and (4) the fines imposed were improper. We affirm in part, reverse in part, and remand with directions.

¶ 3 The plaintiff operates two bars in Carbondale, Illinois, and holds a liquor license for each bar. The City of Carbondale, via assistant city attorney Jamie Snyder, filed a complaint against the plaintiff with the CLLCC. The complaint included one count of allowing a person under the age of 19 to enter a liquor establishment (Carbondale Revised Code (CRC) §2-5-10(A)) and two counts of allowing a person under the age of 21 to remain on the premises while possessing alcohol (CRC §2-5-10(A)(2)). The charges stemmed from an incident in which 19-year-old Elise K. and her 15-year-old sister, Jennifer K., were cited for underage possession of alcohol in Stix Bar and Billiards, one of the two bars owned by the plaintiff.

¶ 4 The testimony at a hearing in the matter showed that Elise and Jennifer went to Stix with Elise's 21-year-old boyfriend, Matt. According to Elise, they had planned to meet up with some of Matt's friends there. First, Matt entered the bar with Jennifer, who used Elise's driver's license to gain admission. He then went outside, leaving Jennifer alone inside, and returned Elise's driver's license to her. Matt and Elise then entered the bar together. Both Elise's and Jennifer's hands were stamped indicating that they were under 21.

¶ 5 Matt bought what Jennifer called a "bucket drink" of cranberry vodka. He returned to where Elise and Jennifer were standing and asked them to hold his drink for him while he went to the restroom. At this point, Investigator Doug Brinkley from the Illinois Secretary of State Police approached the two girls because they looked very young. He also could see that their hands were stamped to indicate that they were under 21 and they were holding what "looked like mixed drinks." According to

Brinkley, one of the girls was holding a pitcher and the other was holding a cup. He did not remember whether they were full, but he did remember that they were not empty. He further testified that they admitted to him that the drink was cranberry vodka. This testimony was in accord with the testimony of the two girls. Jennifer stated that she was holding a cup and Elise was holding a pitcher. Elise testified that there were several cups. She remembered that Matt had filled one cup for himself prior to going to the restroom, but she could not remember whether any of the other cups had been filled.

¶ 6 Investigator Brinkley issued tickets only to the two girls. At the hearing, he explained

that he did not issue a ticket to the bar for serving them liquor because he did not know how the girls obtained the drinks. When he saw them, both already had the drinks in their hands. However, one month later, the city issued the complaint that forms the basis of this appeal. Initially, the plaintiff was charged with two counts of allowing persons under the age of 21 to remain on the premises while consuming alcohol, but the complaint was subsequently amended by interlineation to reflect charges of allowing them to remain on the premises while possessing alcohol.

¶ 7 The CLLCC held a hearing in the matter. Carbondale Mayor Brad Cole acted as hearing officer. Jennifer, Elise, and Investigator Brinkley testified as discussed. In addition, Samuel Mrofcza, the plaintiff's manager, testified that the practice of using the same identification card by more than one person–called "pass-back"–is quite common. He explained that it is difficult to prevent pass-back because it is also common for a doorman to see the same identification card more than once for legitimate reasons. For example, he explained, a patron might leave the bar to smoke a cigarette and then return. Asked how common it was for him to catch underage

patrons with drinks, Mrofcza replied, "It happens every night." He explained that in most instances, this occurs because an older friend buys a drink for their underage friend. He testified that when this happens, he and his staff confiscate the alcohol and require both the underage patron and the friend who purchased the alcohol to leave the bar.

¶ 8 Greg Knoob, president of Knoob Enterprises, Inc., also testified that pass-back is common. He explained that it was hard to prevent the practice due to the difficulty in remembering every identification card presented to a doorman on any given night.

¶ 9 Cole also accepted into evidence several exhibits. In relevant part, he considered copies of earlier proceedings involving the plaintiff's applications to renew each of its liquor licenses. These were relevant to show that the plaintiff had been involved in previous cases involving violations. In addition, he considered color copies of Elise's driver's license and Jennifer's high school identification card. Although the color copies do not appear in the record on appeal, testimony indicated that Elise had blond hair in her driver's license photograph, while Jennifer had dark hair in her school identification picture. She also had braces. We presume that Elise did not have braces, although the record does not state this. Jennifer testified that on the night the events at issue took place, she looked the way she did in the photograph on her identification card. Elise, however, testified that she had subsequently changed her hair color to brown. In addition, she testified that the photograph on her license was taken 11 days after she turned 16. This is relevant because Jennifer turned 16 a few days after the events at issue occurred.

¶ 10 In his findings, Cole emphasized the fact that Jennifer was only 15 years old and that it was unusual for someone that young to be allowed into a bar. He stated, "The fact that a fifteen-year-old girl could so easily enter a seemingly well-staffed bar

***, be in possession of alcohol[,] and not be seen or suspected of being out of place by the bar's security, bartending[,] and/or management staff is more than slightly alarming." Cole also noted that the practice of "pass-back" occurs commonly and is therefore "something that the establishment should be conscious of." Finally, Cole took judicial notice of the two previous CLLCC proceedings involving the plaintiff's license renewal applications. He noted that due to a record of arrests related to underage possession of alcohol on the premises, the establishment was "put on notice" at a hearing on its license renewal application. In conclusion, Cole found the violations to be "especially egregious" in light of all of these factors. Cole recommended a fine of $2,500 for the charge of allowing a person under the age of 19 to enter the bar and fines of $1,000 for each charge of allowing persons under 21 to remain on the premises while possessing alcohol.

¶ 11 The CLLCC adopted Cole's recommendations, and the plaintiff appealed its decision to the Illinois Liquor Control Commission (ILCC). The ILCC affirmed the ruling. The administrative decision stated simply that sufficient evidence existed to support all three charges and that the local commission "proceeded in a manner provided by law" in all other respects. The plaintiff filed a petition for rehearing, which the ILCC denied. The plaintiff then filed a petition for administrative review with the circuit court. The circuit court affirmed the administrative decision. This appeal followed.

¶ 12 Decisions of the ILCC and local liquor control commissions are subject to review under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2008)). *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1078, 938 N.E.2d 1168, 1175 (2010); 235 ILCS 5/7-11 (West 2008). On appeal, we review the administrative agency's decision, not the circuit court's ruling. *Koehler*, 405 Ill. App.

3d at 1078, 938 N.E.2d at 1174. Our review of the agency's factual findings is highly deferential; its findings "are considered *prima facie* true and correct," and we review them only to determine if they are against the manifest weight of the evidence. *Bailey v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 550, 553, 938 N.E.2d 629, 633 (2010). However, we review the agency's conclusions of law *de novo*. *Bailey*, 405 Ill. App. 3d at 553, 938 N.E.2d at 633. We will reverse the agency's determinations as to the legal effects of the facts before it if they are "clearly erroneous." *Bailey*, 405 Ill. App. 3d at 553-54, 938 N.E.2d at 633. This standard is somewhere between *de novo* and manifest-weight-of-the-evidence review. *Koehler*, 405 Ill. App. 3d at 1079, 938 N.E.2d at 1175. Under the clearly erroneous standard, we reverse the administrative agency's decision only if, after considering the entire record, we are "left with the definite and firm conviction that a mistake has been committed." *Bailey*, 405 Ill. App. 3d at 554, 938 N.E.2d at 633.

¶ 13 The plaintiff first argues that the Carbondale city attorney lacked authority to bring the complaint on behalf of the City of Carbondale. In support of this argument, the plaintiff points to two sections of the Carbondale Revised Code. It first points to section 2-3-3(D), which outlines the powers and duties of the Carbondale Liquor Advisory Board. The ordinance provides that the liquor advisory board has the duty to "receive and investigate" citizen complaints about liquor license holders. It further provides that the liquor advisory board is to bring to the attention of the CLLCC those complaints which warrant further attention. CRC §2-3-3(D).

¶ 14 The plaintiff also points to section 2-2-1(C), which provides that the CLLCC is responsible for receiving complaints from citizens about violations of city ordinances related to liquor licenses. This ordinance also provides that the CLLCC is responsible for administration of relevant provisions of the Liquor Control Act of

1934 (Act) (235 ILCS 5/1-1 *et seq.* (West 2010)). CRC §2-2-1(C).

¶ 15 The plaintiff argues that these two ordinances give the CLLCC the duty and authority to receive and investigate complaints about liquor license holders and to enforce local liquor ordinances and the Act. The plaintiff further contends that there is no mechanism for shifting this duty to the city or the city attorney. The plaintiff argues that by bringing the administrative complaint, the city attorney assumed these duties without the authority to do so.

¶ 16 The CLLCC points out that the city has the burden of proving charges to the CLLCC by a preponderance of the evidence. See CRC §2-2-3(D). It argues that if the city lacked the authority to bring charges against license holders, the language in the ordinance giving it this burden of proof would make no sense. The CLLCC also argues that because it acts as the decision maker, it would make little sense for it to be required to initiate and prosecute complaints. Finally, the CLLCC argues that the city attorney's job is to represent the city in matters that involve the city's interests (see CRC §1-11-3) and that enforcement of city liquor ordinances is a city interest.

¶ 17 Interpretation of a local ordinance involves the same principles as statutory construction. *Daniels v. Corrigan*, 382 Ill. App. 3d 66, 72, 886 N.E.2d 1193, 1201 (2008). Our goal is to ascertain the legislative intent of the municipal body that drafted the ordinance. The best indication of this intent is the language of the ordinance itself. *Daniels*, 382 Ill. App. 3d at 72, 886 N.E.2d at 1201-02. If the language of the ordinance is clear and unambiguous, we should enforce it as written without resorting to other tools of statutory construction. *Daniels*, 382 Ill. App. 3d at 72, 886 N.E.2d at 1202. In interpreting an ordinance, we must consider the provision as a whole, reading it in conjunction with every other provision. Further, we must assume the municipal body did not intend an absurd or unjust result.

Daniels, 382 Ill. App. 3d at 72, 886 N.E.2d at 1202.

¶ 18 Applying these principles to the ordinances cited by the parties, we find that the city attorney has the authority to act on behalf of the city in bringing the complaint, and the complaint may be brought in the name of the city. As previously noted, it would make little sense to impose a burden of proof on the city unless it is a proper party. At the hearing before the ILCC, the city addressed this argument by explaining to the commissioners that both the Carbondale Liquor Advisory Board and the CLLCC were part of the city government and that the city attorney represents them because this is more reasonable than having a separate attorney for each agency. Although this is argument, not evidence, it is supported by provisions in the Carbondale Revised Code. See CRC §2-2-1 (providing that "[t]he mayor and the city council shall be the local liquor control commission"); CRC §2-3-3(G) (giving the local liquor advisory board the duty "[t]o perform such other functions and duties as requested by the mayor and city council, from time to time"). We also agree with the city that it would make no sense to require a complaint to be brought in the name of the CLLCC when that commission is responsible for adjudicating the complaints. Moreover, any other interpretation would mean that only a private citizen could file a complaint. This would be an absurd result because it would leave the city with no recourse to address violations unless a private citizen happened to file a complaint.

¶ 19 The plaintiff next argues that the CLLCC applied the wrong legal standard. According to the plaintiff, the administrative agency used a standard of absolute liability–meaning that the liquor license holder is responsible for what occurs on its premises "no matter what." The plaintiff goes on to argue that applying such a standard is not permissible for offenses which carry a fine of more than $500 unless the statute or ordinance expressly states that a standard of absolute liability applies.

See 720 ILCS 5/4-9 (West 2008). The city argues that this provision is not applicable to administrative proceedings involving fines that are civil in nature. We need not resolve these arguments. We find that the record contradicts the plaintiff's claim that the administrative agency held the plaintiff to a standard of absolute liability.

¶ 20 We note that at the CLLCC hearing, the parties did not dispute the standard of accountability to be applied; both used the term "strict liability." Nevertheless, it is clear that the hearing officer did not hold the plaintiff accountable for anything that occurred in its bar regardless of culpability. As previously discussed, his findings explicitly addressed whether the plaintiff's employees should have noticed these young women in the bar holding a pitcher of cranberry vodka. The arguments both parties made to the CLLCC and the ILCC also reflect this. Each party discussed how similar or different the two sisters looked. The city attorney emphasized that Elise used her license to gain admission to Stix less than five minutes after Jennifer had used the same license. He argued that things might be different were this not the case. The hearing officer found that the plaintiff's failure to notice a 15-year-old girl standing in a bar holding a drink amounted to "gross negligence" under the circumstances. This is not absolute liability.

¶ 21 The plaintiff next argues that the CLLCC's findings were against the manifest weight of the evidence. This is so, the plaintiff contends, for two reasons. First, the plaintiff argues that the evidence could only support a finding that it violated the ordinance if a standard of absolute liability applies. Second, Jennifer showed what appeared to be a valid government-issued identification card to gain admission to Stix. Under the Act, reasonably relying on an apparently valid identification card is an affirmative defense to a charge of selling or furnishing liquor to a person under the age of 21. 235 ILCS 5/6-16 (West 2008). The plaintiff contends that this provision

logically applies here as well. We reject both of these contentions.

¶ 22 As previously discussed, the hearing officer expressly found that the plaintiff's employees failed to take adequate steps to ensure compliance with the city's liquor control ordinances. He noted that it was difficult to believe that none of the employees of a well-staffed bar would notice a girl as young as Jennifer standing in a bar holding a drink. The plaintiff has offered no argument in support of its apparent conclusion that these findings were against the manifest weight of the evidence. Moreover, there was evidence to support both charges. Investigator Brinkley testified that he noticed Jennifer and Elise right away due to their youthful appearances. He also saw that they were holding drinks even though the stamps on their hands indicated that they were under 21. This is sufficient to support the charge that the plaintiff allowed the girls to remain on the premises in the possession of alcohol.

¶ 23 There was conflicting evidence as to how reasonable it was for the doorman to allow Jennifer into Stix when she showed him Elise's driver's license. As noted earlier, color copies of identification photographs of both girls were admitted into evidence but do not appear in the record on appeal. In addition, Elise testified that she did not think that allowing Jennifer to use her driver's license would work because she did not believe they looked anything alike. As previously discussed, Jennifer's hair was not the same color as Elise's hair in the driver's license photograph and she had braces at the time. We also note, however, that Elise's hair was not the same color as it was in her own driver's license photograph.

¶ 24 The plaintiff highlighted the fact that Jennifer and Elise were sisters and the fact that the driver's license picture was taken when Elise was a mere two weeks older than Jennifer was when the events at issue took place. Plaintiff's counsel argued that it was thus reasonable for the doorman to allow Jennifer to enter the bar relying on

Elise's license. The city attorney, on the other hand, emphasized the various differences and argued that the two girls do not look very similar. Because the color copies are not included in the record, it is impossible for us to assess whether the plaintiff's doorman's reliance on the driver's license was reasonable. We note however, that it is not our function to reweigh the evidence, and the hearing officer saw the photographs and also saw what Jennifer and Elise looked like when they testified before him in person. As previously noted, the factual findings of an administrative agency are *prima facie* true and correct. In addition, we must resolve any doubts left by an incomplete record in favor of the appellee. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984). We thus find that the evidence was adequate to support a finding that the plaintiff allowed Jennifer to enter the bar without using a standard of absolute liability.

¶ 25 We also do not accept the plaintiff's contention that Jennifer's use of her sister's driver's license to enter the bar relieves it of its liability under the Carbondale ordinance. The plaintiff argues without citing authority that this statutory affirmative defense should apply with equal force to Jennifer's use of the identification card to gain entry to Stix. However, by its express terms, this affirmative defense applies only to violations of the statute itself. 235 ILCS 5/6-16 (West 2008) (providing that "[p]roof that the defendant-licensee, or his employee or agent, *** demanded, was shown[,] and reasonably relied upon [an identification] in any transaction, forbidden by this Section is an affirmative defense in any criminal prosecution therefor"). As the CLLCC correctly notes, earlier versions of the statute did not contain this express language making reasonable reliance on a false identification card an affirmative defense, and the courts of this State did not read such a defense into the statute. See *B&W Liquors, Inc. v. Illinois Liquor Control Comm'n*, 96 Ill. App. 3d 413, 415, 421

N.E.2d 396, 397 (1981).

¶ 26 The Carbondale ordinance at issue contains no language expressly making reasonable reliance on a false identification an affirmative defense. Rather, the ordinance provides that evidence that the license holder or its employee demanded and was shown proper identification "will be considered in mitigation." CRC §2-5-10(A)(3). Thus, we cannot find the administrative agency's findings to be against the manifest weight of the evidence based on the plaintiff's doorman's reliance on Elise's driver's license in allowing Jennifer into the bar. We therefore reject the plaintiff's contentions that the agency's findings were against the manifest weight of the evidence.

¶ 27 Finally, the plaintiff argues that the CLLCC imposed fines that exceeded the amount authorized under the relevant ordinances. We agree.

¶ 28 Section 2-5-10(C) of the Carbondale Revised Code provides applicable fines for violations of section 2-5-10(A) and (B). Here, all three charges were for violations of section 2-5-10(A). The ordinance provides that the fine applicable to each violation of subsection (A) is a minimum of $500 to a maximum of $750. CRC §2-5-10(C)(1). The ordinance contains no language indicating that a different provision of the code may apply in certain circumstances.

¶ 29 CLLCC relies on section 2-5-2, which is a "catchall" penalty provision. That section provides that any licensee who violates any relevant local liquor control ordinance or state statute is subject to the penalties provided in the ordinance "unless otherwise provided pursuant to the provisions of this title." CRC §2-5-2(A). That section provides for fines of up to $2,500 for a third violation by a licensee within a 12-month period. CRC §2-5-2(A)(4). Reading these two provisions together and giving them their plain and ordinary meaning, we find that section 2-5-10(C)(1)

applies.

¶ 30 The CLLCC, however, contends that section 2-5-2 applies because it is the only penalty provision that "applies to a licensee directly." We disagree. Section 2-5-10(A) is entitled "Licensee, Agent, Representative, Employee Liability" and outlines violations that can be committed by license holders and their agents or employees. CRC §2-5-10(A). Subsection (B) is entitled "Patron Liability" and outlines violations applicable to patrons. CRC §2-5-10(B). Section 2-5-10(C)(1) provides penalties for violations of subsection (A)–which, as noted, applies only to licensees–while section 2-5-10(C)(2) provides penalties for violations of subsection (B) by patrons. CRC §2-5-10(C). It is thus clear that this provision does apply directly and specifically to a license holder such as the plaintiff. Because the fines imposed exceed the fines permitted under the express terms of the relevant ordinances, we remand that portion of the judgment affirming the administrative decision with directions to remand the cause to the administrative agency so that it may determine an appropriate fine within the range prescribed in the ordinance.

¶ 31 For the foregoing reasons, we reverse the circuit court's ruling and the administrative decision as to the fines imposed and remand for further proceedings as discussed. We affirm the ruling of the circuit court and the administrative decision in all other respects.

¶ 32 Affirmed in part and reversed in part; cause remanded with directions.