APPEAL CASE NO: 5-18-0453

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

CASE# 2018OV400153

CITY OF MADISON

Plaintiff-Appellee

v.

KEVIN LINK

Defendant-Appellant

ON APPEAL FROM THE
CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT OF MADISON COUNTY, ILLINOIS

HONORABLE JUDGE SLEMER

APPELLANT'S REPLY BRIEF

Kevin Link
Self-Represented

35 Dublin Drive
Granite City, IL

POINTS AND AUTHORITIES

STATUTES CITED: City of Madison, Illinois ordinance §90.02 and §90.05; 625 ILCS 5/4-203

AUTHORITIES CITED: Brecick v. Spencer, 188 Ill.App.3d 217 (5th Dist. 1989).

TABLE OF CONTENTS

Argument

It is curious that Appellee expends so much effort seeking to undermine the Appellant's character, while presenting little argument as to the central issues detailed in the Appellant's brief. And Again, Appellee, after expending a significant time detailing the alleged character issues of the Appellant's, itself engages in speculation and assertions of facts which are not set forth in the record.

As an example, Appellee notes the defects of the vehicles, allegedly the source of the ordinance violations, as "deflated tires." (*Appellee's Brief* **pg. 2)** While this fact is not strongly supported by the record, this admission is telling for several reasons. First, a motor vehicle with a deflated tire would hardly seem to qualify as "Abandoned, discarded, inoperable, or wrecked" as described by Madison city ordinance **§90.02 (E. at 3).** And **s**econd, in the event the city (Appellee) truly sought to remove nuisances from areas within city limits, that the city would unreasonably pursue a landlord for allowing a car with "deflated tires" to be adjacent to his property, and not the owner/operator of the "defective" motor vehicle(s) defies logic and common sense. As well, Appellee further asserts the vehicles were "without valid registration," another "fact" that has no basis in the record, nor was it presented in the proceedings of the lower court.

In the Appellee's only attempt to address the Appellant's argument *directly* (*Appellee's Brief* **pg. 6**), Appellee asserts there were, or could have been, any number of reasons for the dismissal of the owner/operators case. If the record had been supplemented with that case, it would clearly show the matter was dismissed *without* trial. That act prompted the filing of the Appellant's "*Response to Motion to Deny...*" (**C. at 21-22)**, whereby the record does show that the Appellant brought this matter before the lower court in his motion, furthermore the record is devoid of any denial of that fact by the Appellee.

Regardless, it should be obvious that a landlord, that is, one who by commonly understood rules does not have occupancy or direct control over his tenant's property, is not the one who should be required to literally police his tenant's vehicles to ensure that their tires are properly inflated and their registration is up to date; that indeed the actual owner/operator of the vehicles would be the reasonable focus of municipal efforts to reduce the number of nuisances within city limits. And again, simple logic dictates that where one in control of property allows that property to become a nuisance, in this case by having deflated tires, yet the property owner is dismissed of all charges and found not liable; the indirect owner, this landlord, is not the proper target and focus of litigation.

In the absence of any logical argument or explanation as to why this Appellant, who lacks any necessary control over the allegedly violating vehicles, should be the *sole* focus of the Appellee's prosecution, this suggests the city (Appellee) has other, ulterior motives in it's pursuit of this Appellant.

Without engaging in further speculation, let us examine which facts are supported by the record, but just as important, which facts are *not* supported by the record:

The municipal ticket seeks to hold the Defendant/Appellant liable for *knowingly allowing* the parking of disabled, inoperable, or abandoned vehicles (Madison city ordinance **§90.02, (E. at 3).** The Appellant presented the following fact to the trial court: that he did not own, authorize, or operate the offending vehicles; that presentation is supported by the record throughout **(E. at 5, et al.)**, yet the record is devoid of any denial of that fact by the Appellee.

Madison city ordinance **§90.05** mandates that "no person in charge or control of any property within city limits...shall **allow** any abandoned, discarded, inoperable, wrecked, partially dismantled or junked motor vehicle to remain on the property longer than seven days following the issuance of a municipal notice to remove the same." First, the "fact" that this landlord *allowed,* the plain meaning being that he both knew of *and* authorized the placement of the allegedly disabled vehicle(s), is not supported in the record whatsoever; the Appellant denied that claim in the trial court **(E. at 5),** and furthermore the Appellee has expended no effort in proving or arguing this claim, despite it being argued against in the Appellant's opening brief (*Appellant's Opening Brief* ***pg. 9)***.

Second, even in the event that this Appellant did *allow* this occurrence, which he denies, Madison city ordinance **§90.05 (E. at 3)** plainly states that the "issuance of a municipal notice" seven days prior is a threshold requirement for the finding of a violation. Here again, the record is entirely devoid of any evidence of such a written municipal notice ever being issued, and again the Appellee's brief expends no effort in proving or arguing this *critical* element of the alleged violation, despite this argument being clearly presented in the Appellant's opening brief (*Appellant's Opening Brief* ***pg. 8).***

As stated in the Appellee's brief (*Appellee's Brief* **pg. 4)**:

> "A judgment may be found to be against the manifest weight of the evidence only where...the findings appear to be unreasonable, arbitrary, or not based on the evidence" **(**Brecick v. Spencer, 188 Ill.App.3d 217**)**.

Considering that the record is devoid of evidence proving two essential elements of the alleged violation: First, that this Appellant *knowingly allowed* the vehicles to violate the ordinance, and second that the issue was made known to this Appellant seven days prior through the issuance of the required municipal notice (*Madison city ordinance* **§90.05, E. at 3)**; and further considering that the Appellee expended no effort in proving either claim, this Appellant would argue that the "findings appear to be not based on the evidence", as well as unreasonable and arbitrary as it was admitted by the Appellee that the "defect" was merely "deflated tires."

On that same point, the Appellant would further argue that the findings are both "unreasonable and arbitrary". As argued previously in this brief, unreasonable in the sense that the landlord, who it is commonly understood does not have occupancy or direct control over his tenant's property, is not the one who should be required to literally police his tenant's vehicles to ensure they are in proper condition; indeed the "reasonable" focus of efforts to reduce municipal nuisances would be the owner and operator of those vehicles.

Finally, the findings of the trial court are arbitrary in the sense that without reason or logic they have placed the sole liability on the indirect owner, this landlord, whose *only* connection to the violating vehicles is ownership of the property they were parked adjacent to; when the trial court has decided (without so much as a trial) that the owner of the vehicles, presumably the one who violated the ordinance by parking them on location and allowing them to become "inoperable", is not held accountable for the violation. Again, while the details of the operator's case are not included in the record, the record clearly does show that these facts were presented to the trial court (**C. at 21)**, and furthermore that the Appellee has made no denial of these facts, despite their inclusion in the Appellant's opening brief (*Appellant's Opening Brief* **pg. 10)**.

It should be clear that the findings of the trial court are "unreasonable, arbitrary, or not based on the evidence" and the trial court's judgment therefore should be considered to be against the manifest weight of evidence. [Brencick v. Spencer, 188 Ill.App.3d 217]

The Appellee in their brief also challenged the Appellant's argument against the sufficiency of evidence by stating: (*Appellee's Brief* **pg. 6)**

> **"**Given the lack of a Report of Proceedings at trial, and the trial Court's formal Order containing findings of fact and conclusion of law, these contentions must fail"

The Appellant would like to guide the court to the following document(s): while not specifically labeled a "Bystanders Report", the "*Demand for Dismissal*" **(E. at 5)** is a written statement that was given to the Plaintiff/Appellee and submitted to the judge at trial, and it contains a complete, written summary of the verbal arguments and testimony made by the Appellant at trial. And again, the "*Attached Statement*" (**C. at 13),** while not specifically labeled as a "Bystander's Report of *all* court proceedings", that is what it contains; a written summary of all court proceedings before and including the trial as witnessed by this Appellant, and in fact the final two paragraphs of said statement specifically outline the events of the trial.

The Appellant challenged the sufficiency of evidence brought against him in his opening brief (*Appellant's Opening Brief*, **pg. 9**), but now that it has been called into question, it is necessary to expand upon that argument. The original photographs, dated **3/19/2018 (E. at 6-8)** submitted by the Plaintiff/Appellee as evidence are telling for several reasons:

First, they show no less than seven (7) separate vehicles, however, the Appellant was only ticketed for four; absent of any other identifiers in the record (e.g make or model), how could it be determined *which* 4 vehicles were in question? Secondly, all vehicles shown by those photographs are outside the Appellant/Defendant's property, the boundaries of which are denoted by the wooden fence visible in the photographs **(E. at 8, et al.)**.

It would be unreasonable, and indeed infeasible to expect this Appellant to not only police what is on his property, but also any vehicles parked adjacent to his property on the public parking area alongside the street. Furthermore, the photographs **(E. at 8)** show two separate vehicles, both of which licensed and registered, albeit to two *different* owners. The city (Appellee) was presumably aware of this, and the titles of the photographs do allude to that fact [*Cameron Sheraden Sullivan II.JPG*; *Corey Jackson II Decatur II.JPG;* **E. at 8].** Does the Appellee also intend to hold this Appellant liable for not only policing the actions of his tenants, but also *any* individual who parks their vehicle in the public parking area adjacent to the Appellant's property? The Appellee was clearly aware of the actual owners of the vehicles, and public records reveal they ticketed at least one of the individuals; this Appellant sought to submit evidence of such into the record **(C. at 34 & 39)**, however, the Appellee objected to it's entry**.**

It defies logic and all notions of legal equity to pursue the Appellant, a landlord, due to alleged parking violations adjacent to but outside his property, when the nature of public street-side parking makes it impossible for one in his position to effect any necessary change, for he has little legal authority outside the bounds of his property; indeed the only entity that could be reasonably expected to enforce public street-side parking ordinances is the municipal police themselves. Why then was this Appellant ticketed and fined, when it would have been far more logical and appropriate to tow the vehicles for being in violation, or ticket the actual owner/operators? If the Appellee truly sought to remove municipal nuisances, their actions defy common sense. What was this Appellant expected to do, have the vehicle(s) towed? That itself would be illegal, as towing a vehicle from public property must be ordered by a law enforcement agency with jurisdiction:

(625 ILCS 5/4-203, Ch.95 ½, par. 4-203)

(b) When a vehicle is abandoned on a highway in an urban district 10 hours or more, its removal by a towing service may be authorized by a law enforcement agency having jurisdiction.

(c) When a vehicle is abandoned or left unattended on a highway other than a toll highway, interstate highway, or expressway, outside of an urban district for 24 hours or more, its removal by a towing service may be authorized by a law enforcement agency having jurisdiction.

The Appellee also contends that the Appellant had submitted false pleadings in his post trial motion; the Appellee states: (*Appellee's Brief* **pg. 5)**:

> "the trial Court further found Defendant had falsely claimed to have requested a jury trial even though no jury demand was filed, nor a jury fee tendered, and that the Defendant-Appellant had submitted false pleadings in his Post Trial Motion."

As the Appellant did not make any argument as to if he did or did not request a jury trial in his opening brief, the inclusion of this suggests that the Appellee is seeking to undermine the Appellant's credibility. It is unknown to this Appellant why court records do not reflect his verbal "Motion for Trial by Jury & Waiver of Court fees", however, there could be any number of reasons: Did the trial Judge not understand the Appellant's verbal motion? Perhaps the motion was not filed in accordance with the trial court's rules? Neither of those reasons would constitute "false pleadings", yet we simply do not know why the record does not reflect the Appellant's verbal motion. Regardless, lack of jury trial has not been part of this Appellant's defense during appeal, and this "fact" is irrelevant to the current proceedings.

Conclusion

The Appellee expends the majority of their brief attempting to undermine the Appellant's character and highlighting the technical flaws of the Appellant's brief, however, expends little to no effort in directly addressing the well grounded arguments of the Appellant's brief. This suggests that the Appellee lacks a reasonable evidentiary basis to uphold the legitimacy of the trial court's judgment, and instead seeks to undermine the Appellant's presentation of facts through technicality rather than reasonable, just, and sound argument. It would be a travesty of justice to uphold the trial court's verdict, when the Appellee has failed to present evidence or argument directly addressing the key issues presented to this court by the Appellant, and furthermore it strikes this Appellant as inappropriate and unscrupulous to attempt to circumvent the key legal issues of the case by focusing on the Appellant's lack of legal training and expertise as a route to a favorable outcome for the Appellee. The Appellant/Defendant respectfully requests that this court reverse the trial court's decision.

Respectfully Submitted,

Kevin Link, Appellant

Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is **10** pages.

Kevin Link, Appellant