Illinois Official Reports

Appellate Court

City of Aurora v. Greenwood, 2022 IL App (2d) 210341

Appellate Court Caption	THE CITY OF AURORA, Plaintiff-Appellant, v. TAIWAN J. GREENWOOD, Defendant-Appellee.
District & No.	Second District No. 2-21-0341
Filed	August 8, 2022
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 19-DT-881; the Hon. Rene Cruz, Judge, presiding.
Judgment	Appeal dismissed.
Counsel on Appeal	Richard J. Veenstra, of City of Aurora, of Aurora, Kimberly M. DiGiovanni, of Wheaton, and Everette M. Hill Jr., Jason A. Guisinger, and George A. Wagner, of Klein, Thorpe & Jenkins, Ltd., of Chicago, for appellant. James E. Chadd, Thomas A. Lilien, and Drew A. Wallenstein, of State Appellate Defender's Office, of Elgin, for appellee.

Panel JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.
Presiding Justice Bridges and Justice Hudson concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, the City of Aurora (City), appeals the trial court's order dismissing, for improper venue, the City's complaint against defendant, Taiwan J. Greenwood. We dismiss the City's appeal for lack of jurisdiction.

¶ 2 I. BACKGROUND

¶ 3 In July 2019, the City filed in the circuit court of Kane County a complaint alleging that defendant committed the offense of driving under the influence of alcohol (DUI). Defendant allegedly committed the offense within a portion of the City inside the boundaries of Du Page County. A section of the complaint titled "Violation" had check boxes for various provisions of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 2018)) and a check box for "Local Ordinance." The box for section 11-501(a)(5) of the Vehicle Code (*id.* § 11-501(a)(5)) was checked. The "Local Ordinance" box was also checked, but there was nothing in the spaces designated for a citation of the ordinance allegedly violated.

¶ 4 The City is a home rule municipality. The city clerk's office is in Kane County, but the City also encompasses territory in Du Page, Will, and Kendall Counties. Section 27-3(a) of the City's code of ordinances states: "[The Vehicle Code] as now or hereafter amended [citation] is adopted by reference as if set forth at length in this chapter." Aurora Code of Ordinances § 27-3(a) (amended Feb. 12, 2013). Section 20-204 of the Vehicle Code authorizes this adoption and states: "[T]he corporate authorities of a municipality may adopt all or any portion of [the Vehicle Code] by reference." 625 ILCS 5/20-204 (West 2018).

¶ 5 Defendant moved to dismiss the complaint pursuant to section 114-1(a)(7) of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/114-1(a)(7) (West 2018)). He argued that the complaint initiated a criminal prosecution and, as such, the City should have filed the complaint in Du Page County, where he is alleged to have committed the offense. The City responded that the civil venue provisions applied. Those provisions mandate that a municipality's action for a "violation of any ordinance of that municipality" be filed in "the county wherein the office of the clerk of the municipality is located." 735 ILCS 5/2-101 (West 2018). The trial court agreed with defendant and dismissed the complaint. The City filed a notice of appeal.

¶ 6 II. ANALYSIS

¶ 7 Anticipating defendant's objection, the City first argues that we have jurisdiction to hear this appeal under either (1) Illinois Supreme Court Rule 604(a)(1) (eff. July 1, 2017), as the dismissal of a criminal charge, or (2) Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), as the final judgment in a civil action.

¶ 8 Section 1-2-1.1 of the Illinois Municipal Code provides:

> "The corporate authorities of each municipality may pass ordinances, not inconsistent with the criminal laws of this State, to regulate any matter expressly within the authorized powers of the municipality, or incidental thereto, making violation thereof a misdemeanor punishable by incarceration in a penal institution other than the penitentiary not to exceed 6 months. The municipality is authorized to prosecute violations of penal ordinances enacted under this Section as criminal offenses by its corporate attorney in the circuit court by an information, or complaint sworn to, charging such offense. The prosecution shall be under and conform to the rules of criminal procedure. Conviction shall require the municipality to establish the guilt of the defendant beyond reasonable doubt." 65 ILCS 5/1-2-1.1 (West 2018).

Section 114-1(a)(7) of the Code of Criminal Procedure permits the dismissal of a criminal charge where "[t]he county is an improper place of trial." 725 ILCS 5/114-1(a)(7) (West 2018).

¶ 9 Apart from these statutes, our appellate jurisdiction turns on litigants' compliance with the rules of the Illinois Supreme Court. *People v. Lyles*, 217 Ill. 2d 210, 217 (2005). Relevant here, Rule 604(a)(1) provides:

> "In criminal cases *the State* may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence." (Emphasis added.) Ill. S. Ct. R. 604(a)(1) (eff. July 1, 2017).

¶ 10 The City acknowledges our prior holdings that "the State" in Rule 604(a) does not include a municipality prosecuting a criminal violation under section 1-2-1.1. See *Village of Mundelein v. Minx*, 352 Ill. App. 3d 216 (2004); *Village of Cary v. Pavis*, 171 Ill. App. 3d 1072 (1988) (citing *Village of Park Forest v. Bragg*, 38 Ill. 2d 225 (1967)). A brief survey of these cases illustrates the point.

¶ 11 In *Bragg*, a magistrate found the defendant guilty of an ordinance violation and assessed fines. The magistrate suspended the fines, and the village appealed. The appellate court upheld the suspension. *Bragg*, 38 Ill. 2d at 227. The supreme court made two related holdings: (1) Rule 604 did not govern the village's appeal from the suspension of the fines, and (2) the appeal did not violate the defendant's double-jeopardy rights. The basis for both holdings was that the ordinance prosecution was "quasi-criminal in character, but civil in form." *Id.* The court determined that a "criminal case" per Rule 604 meant prosecution for violating a "general criminal law[ ]." *Id.* at 229. The court further noted that, even if the prosecution were a "criminal case," Rule 604 would not allow the appeal, because the village was not "the State." *Id.*

¶ 12 In *Pavis*, we held that the village could not appeal an interlocutory suppression ruling in a DUI prosecution under a village ordinance that allowed for a jail term of up to one year. We noted that the authorization of a jail term set the ordinance apart from the ordinance in *Bragg* and made section 1-2-1.1 applicable; thus, the prosecution had to " 'be under and conform to the rules of criminal procedure.' " *Pavis*, 171 Ill. App. 3d at 1075 (quoting Ill. Rev. Stat. 1987, ch. 24, ¶ 1-2-1.1). However, we commented: "While this statute clearly regulates the rules of trial procedure where the ordinance provides for a possible jail sentence upon conviction and mandates conformity to the rules of criminal procedure, only the supreme court can make rules governing interlocutory appeals, subject only to double jeopardy clauses." *Id.* (citing *People v.*

Young, 82 Ill. 2d 234, 239 (1980)). We then determined that the only possible basis for an interlocutory appeal was Rule 604(a). Yet we noted that its plain language, permitting certain interlocutory appeals by "the State," excluded municipal entities such as the village. *Id.* We noted that the subject matter of municipal prosecutions is generally less serious than that of State criminal prosecutions. Consequently, there is less need to permit an interlocutory appeal from the suppression of evidence. *Id.*

¶ 13 And, in *Minx*, we rejected the village's request that we overrule *Pavis*, noting again that "[o]nly the supreme court can make rules governing interlocutory appeals, and we are constrained to follow these rules and the long string of cases interpreting Rule 604(a) as applying only to State and not municipal appeals." *Minx*, 352 Ill. App. 3d at 218.

¶ 14 The City argues that "this line of cases must be re-examined in light of the City of Aurora's home rule powers." The City relies on article VII, section 6(i), of the Illinois Constitution, which states:

> "Home 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." Ill. Const. 1970, art. VII, § 6(i).

¶ 15 Article VII, section 6(m), of the Illinois Constitution declares that the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const. 1970, art. VII, § 6(m). Thus, home-rule units have "the broadest powers possible to regulate matters of local concern." *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 873 (2010), *aff'd*, 2013 IL 110505. The City further cites section 7 of the Statute on Statutes, which provides, "No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit *** unless there is specific language limiting or denying the power or function ***." 5 ILCS 70/7 (West 2018). From these provisions, the City concludes that "the Supreme Court's Rule 604 cannot be interpreted to restrict home rule municipalities from appealing in the same manner as the State. Pursuant to section 1-2-1.1, the [c]harge must be prosecuted as a criminal offense, subject to the rules of criminal procedure and proof of guilt beyond a reasonable doubt."

¶ 16 The City essentially argues that its home rule powers allow it to create an avenue of appeal for itself. However, allowing appeals to the appellate court is not merely a "matter of local concern." Forcing the appellate court to accept a completely new set of appeals not previously permitted potentially affects all Illinois citizens and is at most only incidentally related to the City's interest in prosecuting crimes occurring within the city limits. See *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 542 (1975) (the Illinois Constitution does not contemplate or authorize any control over, or permit the imposition of a burden on, the judicial system by any local entity).

¶ 17 Moreover, the Illinois Constitution specifically limits the power of home rule units to impose punishments. "A home rule unit shall have only the power that the General Assembly may provide by law *** to punish by imprisonment for more than six months ***." Ill. Const. 1970, art. VII, § 6(e). To that end, the legislature has enacted section 1-2-1.1, which permits a municipality to "pass ordinances *** making violation thereof a misdemeanor punishable by incarceration in a penal institution other than the penitentiary not to exceed 6 months." 65 ILCS 5/1-2-1.1 (West 2018). A municipality is further permitted "to prosecute violations of penal ordinances enacted under [section 1-2-1.1] as criminal offenses by its corporate attorney," and

"[t]he prosecution shall be under and conform to the rules of criminal procedure." *Id.* The requirements of section 1-2-1.1 as to rules of procedure and burden of proof apply equally where, as here, the municipality adopts a statute that authorizes incarceration for its violation. Since this *is* a criminal case, Rule 301 and Rule 303 are inapplicable, and the restrictions on appeals by the prosecution apply. The prosecution generally may not appeal final judgments in criminal cases, and only the supreme court can provide for interlocutory appeals in such cases. Ill. Const. 1970, art. VI, § 6; *People v. Holmes*, 235 Ill. 2d 59, 66 (2009) (The supreme court has "exclusive and final authority to prescribe the scope of interlocutory appeals from any order or ruling that is not a final judgment. [Citation.] Thus, whether a particular order may be appealed [in an interlocutory appeal] depends solely upon our construction of our Rule 604(a)(1)." (Internal quotation marks omitted.)). The supreme court has interpreted Rule 604(a) as not encompassing appeals by municipalities. *Bragg*, 38 Ill. 2d at 227; *Pavis*, 171 Ill. App. 3d at 1075.

¶ 18 The City alternatively contends that, if the dismissal for improper venue is not appealable under Rule 604(a), it must be appealable under Rules 301 and 303 as a final judgment in a civil case. Defendant disputes the characterization of the order as final, noting that the trial court was willing to transfer the case to Du Page County but the City refused. Defendant further notes that the City or the State could revive the case simply by filing a complaint in Du Page County. See *Palm*, 2013 IL 110505, ¶ 21 (an order dismissing a complaint with leave to refile is not a final judgment); 725 ILCS 5/114-1(e) (West 2018) ("Dismissal of the charge upon the grounds set forth in subsections (a)(4) through (a)(11) of this Section shall not prevent the return of a new indictment or the filing of a new charge ***.").

¶ 19 Regardless of whether the trial court's order was final, this case is criminal, not civil. See 65 ILCS 5/1-2-1.1 (West 2018); *Pavis*, 171 Ill. App. 3d at 1075. Therefore, it is axiomatic that Rules 301 and 303 do not apply. The City cites *Bragg* for the proposition that "adverse trial court rulings in ordinance cases may be brought by a municipality as civil appeals." In permitting the village's appeal, the court in *Bragg* expressly noted that the prosecution was for an ordinance violation and was not a criminal proceeding. The court further noted that, if the proceeding were criminal, Rule 604(a) would not allow the appeal, because the rule does not apply to municipalities. *Bragg*, 38 Ill. 2d at 227.

¶ 20 In *Pavis*, on the other hand, the prosecution was brought under a DUI ordinance prescribing a maximum penalty of up to a year in jail. We held that, under section 1-2-1.1, the proceeding was a criminal prosecution and, thus, Rule 604(a) applied. *Pavis*, 171 Ill. App. 3d at 1075. Like *Pavis*, the prosecution here is for DUI, with a maximum penalty of up to a year in jail. Thus, it is a criminal prosecution, and Rule 604(a) governs rather than the civil appeals rules.

¶ 21 In its brief, the City argued that the trial court's judgment was immediately appealable because it was void. At oral argument, the City withdrew that argument. Thus, we do not consider it.

¶ 22 In its reply brief, the City insists that it is not asking us to overturn the *Pavis* line of cases. Rather, it "is asking this Court to recognize that in none of those cases was the Court asked to address a municipality's home rule status." The City thus apparently wants us to rewrite Rule 604(a) to provide that "[i]n criminal cases the State *or a home rule municipality* may appeal." We cannot rewrite our supreme court's rules.

¶ 23 We interpret supreme court rules the same way we interpret statutes. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 12. We ascertain and give effect to the drafter's intent by

giving the language its plain and ordinary meaning. *Id.* In doing so, we "may not inject provisions that are not found in a statute." *People v. Roberts*, 214 Ill. 2d 106, 116 (2005).

¶ 24 Rule 604(a)'s plain language provides that only "the State" may appeal certain types of orders. The supreme court itself said, albeit in *dicta*, that a municipality may not appeal in cases to which Rule 604(a) applies (*Bragg*, 38 Ill. 2d at 227), and that *dicta* is clearly binding on this court. See *Woodstock Hunt Club v. Hindi*, 305 Ill. App. 3d 1074, 1076 (1999). Our conclusion in *Pavis* was consistent with the supreme court's interpretation of its own rule in *Bragg*. Moreover, in the more than 30 years since we decided *Pavis*, the supreme court has neither overruled it nor amended Rule 604(a). Thus, the City has failed to establish that the supreme court intended to provide municipal prosecutors with the power to initiate interlocutory appeals.

¶ 25 III. CONCLUSION

¶ 26 We continue to follow *Pavis*, *Bragg*, and *Minx*, as well as the plain and unchanged language of Rule 604(a). We determine that we lack jurisdiction over this appeal and are obliged to dismiss it. See *Ex Parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868) (without jurisdiction, "the only function remaining to the court is that of announcing the fact and dismissing the cause").

¶ 27 Appeal dismissed.