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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

KINDE SETEGNE,

Plaintiff and Appellant,

v.

CITY OF SAN JOSE,

Defendant and Respondent.

H037388

(Santa Clara County

Super. Ct. No. CV188487)

Appellant Kinde Setegne is a taxicab driver, who had a permit to pick up passengers at the Norman Y. Mineta San Jose International Airport (Airport). After respondent City of San Jose (City) revoked his permit, Setegne filed a petition for writ of administrative mandamus directing the City to set aside its decision and grant his request for an administrative hearing. The trial court denied the petition and entered judgment in favor of the City. We conclude that the City failed to show that Setegne was properly served with the notice of the appeal hearing and reverse the judgment.

I. Factual and Procedural Background

On February 9, 2010, Setegne and another driver were involved in a fistfight at the Airport. During the investigation of the incident, the police determined that Setegne was driving with a suspended license. Three days later, the Airport suspended Setegne's airport access permit.

On July 28, 2010, Setegne was served with a notice of decision to revoke his airport access permit. He was also notified that this decision would become final unless the Airport received a written request for a hearing before the Director of Aviation within 14 days after the notice was mailed.

On August 12, 2010, Setegne submitted a written appeal. He stated that he had never received the July 28, 2010 notice. He also provided two new addresses for correspondence.

On August 16, 2010, the Airport purported to serve Setegne with a notification of the appeal hearing before the Director of Aviation. This notice was sent to the two addresses that Setegne had provided and set the hearing for August 27, 2010. Setegne failed to appear at the hearing.

On September 7, 2010, the Airport served Setegne with a notification of decision, which stated that the decision to revoke his airport access permit had become final because he failed to pursue his right to appeal. A week later, Setegne sent a letter to the Airport commission in which he stated that he had never received notice of the August hearing. He also requested that a hearing be scheduled with the Airport commission. Two days later, the city attorney sent Setegne a letter informing him that the administrative decision was final and that his only recourse was judicial review.

On November 29, 2010, Setegne filed a petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5. Following a hearing, the trial court denied the petition and entered judgment in favor of the City. Setegne filed a timely appeal.

II. Discussion

Notice of a decision to revoke a permit becomes final if the holder of the permit does not request a hearing before the Director of Aviation within 14 days. (San Jose Municipal Code, §§ 25.10.300, subds. (D), (E), 25.10.310, subd. (A).)¹ Here, Setegne timely applied for a hearing, but he failed to appear at the set time and date.

Setegne contends that he never received notice of the hearing set for August 27, 2010, and the City's proof of service of the notice is invalid. Thus, he asserts that he did not waive his right to hearing. We agree.

“Due process principles require reasonable notice and an opportunity to be heard before governmental deprivation of a significant property interest.” (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.)

“Interpretation of statutes, including local ordinances and municipal codes, is subject to de novo review. [Citation.]” (*City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69, 78.)

Section 1.04.140 sets forth the requirements for proof of service by mail “[w]henver a notice is required to be given under this code.” Section 1.04.140 provides in relevant part: “[S]uch notice may be given . . . by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.”²

¹ All further code references are to the San Jose Municipal Code.

² Section 1.04.150 specifies how the proof of notice may be made. It provides: “Proof of giving any notice may be made by the certificate of any officer or employee of the city, or by affidavit of any person over the age of eighteen years, which shows service in conformity with this code or other provisions of law applicable to the subject matter concerned.”

Here, the proof of service states: “On August 16, 2010, I caused to be served the within: [¶] Notification of Appeal Hearing before the Director Aviation: Revocation of Airport Access Permit [¶] by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, in the ordinary course of business; and there in United States mail at the place so addressed below.”

Though the declarant states that she placed stamped and addressed envelopes containing the hearing notice for collection and mailing “at [her] place of business following ordinary business practices,” she fails to indicate whether the notices would be collected and mailed on August 16, 2010, or on some other date. She also fails to state what the “ordinary business practices” are. Since the declaration does not state whether mail is collected and mailed daily, weekly, or on another schedule, the proof of service does not establish when service by mail might “be deemed to have been completed” (§ 1.04.140.) Under these circumstances, the City failed to establish that Setegne was served with the hearing notice at least seven days in advance of the hearing date. (§ 25.10.310, subd. (C).) Accordingly, his failure to appear at the hearing did not constitute a waiver of his right to a hearing.

III. Disposition

The judgment is reversed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Márquez, J.