

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 110429-U

Filed 11/23/11

NO. 4-11-0429

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE CITY OF DECATUR, ILLINOIS, a	)	Appeal from
Municipal Corporation,	)	Circuit Court of
Plaintiff-Appellee,	)	Macon County
v.	)	No. 11OV94
JOHN R. BIELENBERG and DIXIE L. BIELENBERG,	)	
Defendants-Appellants.	)	Honorable
	)	Albert G. Webber,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Justices Steigmann and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendants failed to appear, the trial court did not err in issuing a judgment of default.

¶ 2 In February 2010, plaintiff, the City of Decatur, filed a complaint against defendants, John R. Bielenberg and Dixie L. Bielenberg, for alleged housing code violations. In April 2011, the trial court found defendants in default, assessed costs, and ordered them to correct the violations within 120 days.

¶ 3 On appeal, defendants argue their rights have been violated by the City and they now seek relief from alleged housing code violations. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2010, the City filed a complaint against defendants, alleging they were owners of the premises located at 165 North Park Place in Decatur. The complaint alleged

the property was in violation of the housing code for a period between March 25, 2009, and February 23, 2011. The City asked that defendants correct or remove the violations, be prevented from occupying or using the structure or equipment not in compliance with the housing code, and be fined an amount not to exceed \$2,000 for each offense and each day on which a violation occurs or continues.

¶ 6 Summons was served personally on John Bielenberg on March 1, 2011, and alternatively on Dixie Bielenberg through her husband on the same date. The summons indicated a court hearing would take place on March 23, 2011.

¶ 7 On March 10, 2011, defendants, *pro se*, filed an answer. Defendants argued the problems in their home did not amount to serious code violations. Although they had projects underway, defendants stated they "need[ed] to be allowed the time, space, freedom, and peace to get these things done without constant aggression by harassing, uncivil officials." Defendants claimed they had been treated "very badly" by City officials.

¶ 8 The docket entry for March 23, 2011, indicates a defendant personally appeared but does not state which one. By agreement, the cause was continued for status on April 27, 2011. At that status hearing, defendants did not appear. The trial court found defendants in default, assessed costs, and ordered defendants to correct the violations within 120 days.

¶ 9 On April 28, 2011, defendants filed a statement to and requests of the trial court. On May 6, 2011, defendants filed an update of progress and requests to the court. Defendants stated John intended to come to the status hearing on April 27, 2011, but he was unable to breathe due to emphysema. Defendants claimed they called the circuit clerk and the trial court to let them know. On May 9, 2011, the trial court entered its written order. This appeal followed.

¶ 10

## II. ANALYSIS

¶ 11 Defendants have appealed *pro se* and want their case to be heard. Their brief sets forth multiple grievances against the City for its actions taken in connection with alleged housing code violations. Defendants argue the City had violated their rights under the first, fourth, fifth, eighth, and fourteenth amendments to the United States Constitution and their right to life, liberty, and the pursuit of happiness articulated in the Declaration of Independence. Further, defendants claim the City's actions have not been legal since the Magna Carta in 1215. The City argues the trial court properly entered a default judgment.

¶ 12 According to section 2-1301(d) of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1301(d) (West 2010)), a "[j]udgment by default may be entered for want of an appearance."

"Although judgment of default generally may be entered for want of an appearance, a default judgment is a drastic measure, not to be encouraged and to be employed with great caution, only as a last resort. [Citation.] Once a default judgment has been entered, the court, on motion made within 30 days, may exercise its discretion to set aside the order of default 'upon any terms and conditions that shall be reasonable.' [Citation.]" *Biscan v. Melrose Park Board of Fire and Police Commissioners*, 277 Ill. App. 3d 844, 848, 661 N.E.2d 424, 428 (1996).

¶ 13 In the case *sub judice*, defendants did not appear at the April 27, 2011, hearing. By failing to appear, the trial court could properly enter a judgment by default. Defendants did

not file a motion to vacate the default judgment. Although defendants claimed they called the circuit clerk and the court to note John would be unable to attend due to health reasons, no written motion to continue was presented. Under section 2-1007 of the Procedure Code (735 ILCS 5/2-1007 (West 2010)), a court can grant a continuance in an action involving building code violations only upon written motion. "Thus, without a written motion, the trial court could not have abused its discretion in denying a continuance because it is not within the trial court's discretion to grant a continuance without a written motion." *Village of Maywood v. Barrett*, 211 Ill. App. 3d 775, 782, 570 N.E.2d 645, 650 (1991). As defendants failed to appear at the hearing and no written motion to continue was filed, the court did not err in entering a default judgment.

¶ 14

### III. CONCLUSION

¶ 15

For the reasons stated, we affirm the trial court's judgment.

¶ 16

Affirmed.