NOTICE Decision filed 05/17/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.	NO. 5-09-0376 IN THE APPELLATE COURT OF ILLINOIS FIFTH DISTRICT	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).

ANGELIA KILLION, as the Special Representative of the Estates of Maurice Killion, Sr., and Nina Killion, Plaintiffs-Appellants, v. ROSCOE MEEKS, CRAIG MEEKS, ERWIN MEEKS, LINDA MEEKS, and GREGORY BEE, d/b/a Meeks Trash Disposal, Centralia Paper Stock Company, and Meeks Backhoe, Defendants-Appellees.	)	Appeal from the Circuit Court of Marion County. No. 94-MR-13 Honorable Patrick J. Hitpas, Judge, presiding.

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

RULE 23 ORDER

Held: The trial court abused its discretion in failing to award attorney fees to plaintiffs who were represented by their son, where the relevant statute mandates the award (65 ILCS 5/11-13-15 (West 2008)). The court also abused its discretion in ordering the defendants to pay only $750 as a fine for contempt.

The plaintiffs filed this action seeking to compel compliance with a zoning ordinance. Among other requests for relief, they requested attorney fees pursuant to statute. The circuit court denied their request for attorney fees, finding that because their son was acting as their attorney, they had not incurred fees. The defendants continued to disregard both the ordinance and an injunction against them. The circuit court initially found that their refusal to comply was not willful or contemptuous; however, this court reversed that finding. On remand, the court ordered the defendants to pay a fine of $750 as a contempt sanction. The

plaintiffs appeal, arguing that the court abused its discretion in (1) refusing to award attorney fees and (2) imposing a fine that was insufficient to serve as a sanction for contempt. We reverse.

This case derives from a long-standing and contentious legal dispute between neighbors, the Meeks and the Killions. It also marks the parties' third time before our court. In 2002, the plaintiffs, Maurice and Nina Killion, filed a complaint against the City of Centralia (the City) and various members of the Meeks family (the Meeks defendants or the defendants) seeking to enforce a zoning ordinance against Meeks Trash Disposal, Centralia Paper Stock Company, and Meeks Backhoe and to prohibit them from operating in an area of the City zoned residential and agricultural. Count I sought a writ of mandamus directing the City to enforce its zoning ordinance. Count II was brought pursuant to section 11-13-15 of the Illinois Municipal Code (65 ILCS 5/11-13-15 (West 2004)) and sought to enjoin the Meeks defendants from operating a business on their property in violation of the zoning ordinance. The statutory provision, which concerns proceedings to prevent a violation, allows an action by land owners or tenants to enforce a zoning ordinance when the municipality has not. 65 ILCS 5/11-13-15 (West 2004).

Following a trial, the circuit court entered a judgment for the defendants on the grounds that the plaintiffs' cause of action was barred by laches. On appeal to this court, we reversed the circuit court and remanded for further proceedings on the merits against the City of Centralia, Roscoe Meeks, and others. Killion v. City of Centralia, No. 5-04-0722 (2005) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). In August 2006, the circuit court dismissed the suit against the City of Centralia and issued a permanent injunction against the Meeks, defendants, prohibiting them from "operating a trash disposal business or any business or storing trucks or other equipment or supplies for any business" at their property adjacent to the plaintiffs' residence. In addition, the court denied the

plaintiffs' request for an award of attorney fees, stating that the plaintiffs had cited no authority and had not presented any proof entitling them to fees.

The injunction became effective 60 days from the date of its entry to allow for the removal of business-related items from the property. Subsequently, the court allowed the defendants a 30-day extension. Following the extension deadline, the plaintiffs filed a petition for a rule to show cause why the defendants should not be held in contempt of court for their failure to comply with the court's order. After a hearing, the court found violations of the permanent injunction; however, the court found that those violations were not willful and contumacious. The court further found that the defendants had made reasonable efforts to vacate the property and were not in contempt. The court declined to award attorney fees, costs, or fines or order an inspection of the property, all prayed for by the plaintiffs.

The plaintiffs took another appeal. On April 3, 2008, our court found that the circuit court abused its discretion in not finding the defendants' behavior willful and contumacious and in contempt of the court's order. Killion v. City of Centralia, 381 Ill. App. 3d 711, 715, 885 N.E.2d 1199, 1203 (2008). We reversed the court's order and remanded for a reconsideration of the relief requested by the plaintiffs. *Killion*, 381 Ill. App. 3d at 716, 885 N.E.2d at 1204.

On remand, the circuit court filed an order titled "Memorandum of Decision" on June 30, 2009. In relevant part, the court found as follows:

> "5. The Meeks defendants did fail to fully comply with this Court's order by the date set by the Court.
>
> 6. The Appellate Court has found this failure to be wilful and contumacious and the Meeks defendants are in contempt of this court.
>
> 7. There is no evidence that Maurice Killion or any of the plaintiffs incurred any attorneys fees because Maurice Killion, Jr. was serving as counsel without

charging attorneys fees. To award attorneys fees when none were incurred would be a winfall [*sic*] to the plaintiffs."

The court then ordered as follows:

"A. The Meeks defendants shall by August 7, 2009, pay the Clerk of the Court a fine for violation of the order in the amount $750.00.

B. The Meeks defendants shall pay Plaintiffs' taxable costs.

C. Plaintiffs are granted leave to inspect the property in question to ensure compliance with this Court's orders. This should be accomplished with the assistance of the Centralia Police Department. This inspection shall take place at a mutually agreed time not later than July 31, 2009."

It is from the denial of attorney fees and the amount of the fine that the plaintiffs now appeal.

Maurice Killion, Sr., died while this appeal was pending, and Nina Killion died earlier in the course of this litigation. We therefore allowed their daughter, Angelia Killion, to be appointed as a special representative for purposes of this litigation and substituted as the plaintiff.

Attorney Fees

We review a court's decision on whether to award attorney fees for an abuse of discretion (*Sandholm v. Kuecker*, 405 Ill. App. 3d 835, 942 N.E.2d 544, 571 (2010), *appeal allowed*, 239 Ill. 2d 589, 943 N.E. 2d 1109 (2011)), but we review *de novo* the court's application of the legal principles underlying that decision (*Bank One, Milwaukee, N.A. v. Loeber Motors, Inc.*, 293 Ill. App. 3d 14, 20-21, 687 N.E.2d 1111, 1115-16 (1997)).

Here, we are asked to decide the very narrow issue of whether the plaintiffs incurred any attorney fees entitling them to an award. We are not asked to decide whether an award of attorney fees in and of itself is appropriate, because clearly it would be appropriate both as a sanction for contempt and in furtherance of the enforcement of the statute sued under

(65 ILCS 5/11-13-15 (West 2008)). Our task is not so much one of statutory construction, because the language of the provision is clear; it is more a question of semantics and the interpretation of attorney Killion's testimony regarding attorney fees.

We believe that the court's statement that attorney fees were not incurred is a strained interpretation of the interchange between attorney Killion and the court. The court stated the following in its June 30, 2009, order: "There is no evidence that Maurice Killion or any of the plaintiffs incurred any attorneys fees because Maurice Killion, Jr. was serving as counsel without charging attorneys fees. To award attorneys fees when none were incurred would be a winfall [*sic*] to the plaintiffs." We disagree with the court's reasoning. We believe that attorney Killion intended to be compensated for his services, which is why he filed an affidavit setting forth his itemized fees for his professional services. He stated as much to the court. The court inquired of him, "Do you have an agreement with your father?" Attorney Killion responded, "Yes, your honor." When asked what the agreement was, he responded: "I told him I am going to pursue reasonable attorney's fees because I can do that pursuant to the petition in the rule to show cause. Reasonable attorney fees is a recoverable item for a rule to show cause." Under further questioning by the court, attorney Killion stated that in the event the court did not award attorney fees, he would not "go after his father."

The fact that attorney Killion apparently intended to forgive his father the legal fees in the event they were not awarded does not negate the fact that his representation provided valuable legal services to his parents in furtherance of the enforcement of the zoning ordinance. Nor does it negate the fact that sanctions are mandatory under the relevant statute.

The statute in question authorizing attorney fees is found in the Illinois Municipal Code and states in relevant part as follows:

> "If an owner or tenant files suit hereunder and the court finds that the defendant has engaged in any of the foregoing prohibited activities, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney. This allowance shall be a part of the costs of the litigation assessed against the defendant, and may be recovered as such." 65 ILCS 5/11-13-15 (West 2008).

The award of attorney fees under 11-13-15 is mandatory and not discretionary upon a finding that defendants have engaged in the prohibited activity. *Palella v. Leyden Family Service & Mental Health Center*, 79 Ill. 2d 493, 502, 404 N.E.2d 228, 233 (1980). This court found that the defendants continued to engage in the prohibited activity. *Killion*, 381 Ill. App. 3d at 715-16, 885 N.E.2d at 1203-04. We further found the defendants' behavior willful and contumacious, in contempt of the permanent injunction. *Killion*, 381 Ill. App. 3d at 716, 885 N.E.2d at 1204. It is axiomatic that an appropriate remedy in cases of contempt is to require the contumacious party to bear the reasonable costs, as well as attorney fees, for the contempt proceeding. *Village of Lakemoor v. First Bank of Oak Park*, 136 Ill. App. 3d 35, 44, 482 N.E.2d 1014, 1021 (1985).

The crux of the defendants' argument is that attorney Killion's legal representation is not compensable because it is akin to *pro se* representation. The defendants cite to *Hamer v. Lentz*, 132 Ill. 2d 49, 547 N.E.2d 191 (1989), a case where the court held that a *pro se* attorney was not entitled to attorney fees under the Illinois Freedom of Information Act. *Hamer*, 132 Ill. 2d at 63, 547 N.E.2d at 198. While the defendants concede that attorney Killion is not technically *pro se*, they argue that because Killion represents "his family's interests," his position is analogous to that of an attorney *pro se* litigant. This is a distinction with a difference, and we find the defendants' argument to be without any legal support. There has been no showing that attorney Killion is a party in interest. While he may be

emotionally involved in what has now become a decades-long legal battle, this involvement does not and cannot translate into a legal interest without more.

We also find the defendants' citation to the American rule inapposite. Under this rule, each party is required to bear the ordinary burdens and expenses of litigation, including attorney fees, in the absence of a statute or agreement authorizing otherwise. *Ritter v. Ritter*, 381 Ill. 549, 553, 46 N.E.2d 41, 43 (1943). Here, the statute on its face authorizes an award of attorney fees. 65 ILCS 5/11-13-15 (West 2008).

"The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent." *Burger v. Lutheran General Hospital*, 198 Ill. 2d 21, 40, 759 N.E.2d 533, 545 (2001). The very purpose of the award of attorney fees under this statutory provision is in furtherance of compliance with zoning ordinances. A denial of attorney fees thwarts this purpose. We hold that the trial court abused its discretion in not awarding mandatory attorney fees under the statute.

We now turn to the amount of the award. The record contains the plaintiffs' exhibit "Itemization of Legal Fees," admitted into evidence. Therein, attorney Killion details 13.85 hours of related legal activity billable at the rate of $150 per hour, for a total amount of $2,077.50. The plaintiffs' detailed time record was sufficient proof of the reasonableness of the requested fees. See *Fiorito v. Jones*, 72 Ill. 2d 73, 94, 377 N.E.2d 1019, 1028 (1978), *abrogated on other grounds by Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 659 N.E.2d 909 (1995); *Village of Lakemoor*, 136 Ill. App. 3d at 44, 482 N.E.2d at 1021. Thus, we find that the $2,077.50 requested by the plaintiffs as attorney fees is a reasonable and appropriate amount to award.

Contempt Fine

We next determine the reasonableness of the $750 fine the defendants were ordered to pay the clerk of the court for the violation of the court's order. The standard of review is

abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87, 469 N.E.2d 167, 176 (1984). In our opinion of April 3, 2008, this court found that the trial court had abused its discretion in not finding the defendants in contempt of the August 31, 2006, permanent injunction. We reversed and remanded for a reconsideration of plaintiffs' requested relief, in light of the defendants' willful and contumacious disregard of the permanent injunction. One part of the relief prayed for by the plaintiffs was a fine to coerce compliance with the permanent injunction.

The $750 fine ordered by the trial court amounted to $10 a day divided among five defendants for the 75 days in issue. A fine must bear some reasonable relationship to the contemptuous behavior if it is to coerce change. See *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43, 558 N.E.2d 404, 415 (1990) (explaining that coercing compliance is the purpose of civil contempt sanctions). We fail to understand how this paltry amount could reasonably be expected to compel the contemnors to conform their behavior after literally years of refusal. This court stated the following in its harshly worded opinion: "The defendants offered no evidence of any valid excuse for failing to *fully* comply with the court's order. *** The Meeks defendants' failure to fully comply with the permanent injunction after all these years of litigation can be viewed as nothing but willful and contumacious." (Emphasis in original.) *Killion*, 381 Ill. App. 3d at 715-16, 885 N.E.2d at 1203-04.

We believe that the record amply supports an amount greater than that imposed by the trial court. Our 2008 opinion is replete with examples of the defendants' flagrant disregard for the permanent injunction. After citing to numerous examples, we stated, "There is no question that the Meeks defendants are in the wrong, and they understand this." *Killion*, 381 Ill. App. 3d at 715-16, 885 N.E.2d at 1203-04. In the face of this record, we believe that a fine amounting to a mere $10 per day is unreasonably low and constitutes an abuse of the circuit court's discretion.

We also believe, however, that the $75,000 fine requested by the plaintiffs–which amounts to $1,000 a day for the 75 days in issue–is excessive. We believe that a fine of $7,500, which amounts to $100 a day, is substantive enough to achieve a coercive purpose without being overly onerous to the defendants.

For the foregoing reasons, we reverse the circuit court's denial of attorney fees and order the defendants to pay attorney fees to the plaintiffs in the amount of $2,077.50. We also amend the court's order to increase the fine the court ordered the defendants to pay the clerk of the circuit court from $750 to $7,500.

Reversed; order amended.