

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Chapman and Justice Stewart concurred in the judgment.

R U L E 2 3 O R D E R

Held: The awards of attorney fees and costs to the plaintiff were proper under section 11-31-1(a) of the Illinois Municipal Code (65 ILCS 5/11-31-1(a) (West 2006)).

The defendants, C and S, Ltd., Phil Sheets, and Sheets Enterprises, Ltd., appeal the July 13, 2010, orders of the circuit court of St. Clair County that, *inter alia*, awarded the plaintiff, the Village of Freeburg (the Village), attorney fees and costs totaling \$6,221.45 and \$12,163.15, which the Village incurred in litigation involving properties located at 409 West Washington Street, Freeburg, and 2 South Monroe, Freeburg, respectively. The defendants contend that these awards were in error because the Village's petitions to demolish were dismissed and the Village did not incur any costs for demolition, repair, enclosure, or removal, pursuant to the language of section 11-31-1(a) of the Illinois Municipal Code (the Code) (65 ILCS 5/11-31-1(a) (West 2006)). Moreover, the defendants contend that the circuit court erred by retaining jurisdiction to foreclose the Village's costs lien, which the defendants argue should be stricken because the Village was not entitled to recover its attorney fees and costs. For the following reasons, we affirm.

FACTS

The facts relative to this appeal are undisputed. On April 26, 2007, and May 30, 2007, the Village filed amended petitions, pursuant to section 11-31-1(a) of the Code (65 ILCS 5/11-31-1(a) (West 2006)), for the demolition of two structures belonging to the defendants, which were located at two separate addresses, namely, 2 South Monroe in Freeburg (the Monroe property) and 409 West Washington Street in Freeburg (the Washington property). On February 25, 2008, the Village filed motions for attorney fees and costs with regard to both properties, which the Village claimed were recoverable as the expenses it incurred in its efforts to enforce the Code, pursuant to the language of section 11-31-1(a) (65 ILCS 5/11-

31-1(a) (West 2006)).

According to the Village's motion with regard to the Washington property, on October 10, 2007, the defendants provided the Village with a closing statement, indicating that the subject property had been sold by the defendants. The motion stated that the subsequent purchaser had submitted a redevelopment plan, which was approved by the Village. Arguing that its attorney fees and costs for litigating the petition amounted to costs for enforcing the Code, the Village requested \$3,011.34, plus any additional attorney fees and costs incurred by the Village in connection with the case between January 31, 2008, and the entry of an order by the circuit court.

According to the Village's motion with regard to the Monroe property, in December 2007, the defendants voluntarily demolished the building at issue, rather than proceeding to a trial. The Village requested \$4,505.38, plus any additional attorney fees and costs incurred by the Village in connection with the case between January 31, 2008, and the entry of an order by the circuit court. On April 3, 2008, the Village filed a separate petition for the court to retain jurisdiction for foreclosure proceedings and a notice of lien reiterating the requests previously stated in the motion for attorney fees and costs.

On April 8, 2008, the circuit court entered orders that, *inter alia*, granted the Village \$3,011.34 for attorney fees and costs associated with the Washington property and \$4,505.38 for attorney fees and costs associated with the Monroe property. In addition, the circuit court granted the Village's petition to retain jurisdiction with regard to the Monroe property. On April 28, 2008, the defendants filed motions to reconsider, vacate, and set aside, which were denied by the circuit court in orders dated August 11, 2008. In the same orders, the circuit court acknowledged that the Washington property had been sold and a rehabilitation plan submitted and that the Monroe property had been voluntarily demolished. The circuit court noted that these remedial actions were due in whole or in part to the efforts of the Village to

enforce the provisions of section 11-31-1(a). Due to attorney fees and costs incurred by the Village in briefing and arguing the motions to reconsider, vacate, and set aside, the circuit court modified its April 8, 2008, judgment and ordered the defendants to pay the Village's attorney fees and costs totaling \$3,685.95 with respect to the Washington property and totaling \$8,047.15 with respect to the Monroe property. The defendants appealed (the first appeals), and this court entered summary orders on August 24, 2009, dismissing the first appeals for a lack of appellate jurisdiction, pursuant to Supreme Court Rule 23(c)(1) (eff. May 30, 2008), because the underlying petitions for demolition remained pending and yielded a potential for further fees and costs to be assessed. *Village of Freeburg v. C&S, Ltd.*, Nos. 5-08-0467 & 5-08-0468 (2009) (unpublished orders under Rule 23(c)(1)).

On June 3, 2010, the Village filed motions to voluntarily dismiss with prejudice the petitions for demolition and for additional attorney fees and costs it incurred in filing those motions and in defending the first appeals. On July 13, 2010, the circuit court entered orders dismissing the petitions for demolition with prejudice with regard to both properties, granting the Village additional attorney fees and costs in the amount \$2,535.50, for a total of \$6,221.45, with respect to the Washington property, and granting the Village additional attorney fees and costs in the amount of \$4,116.00, for a total of \$12,163.15, with respect to the Monroe property. The defendants filed timely notices of appeal, which we consolidated for purposes of oral argument and disposition by an order filed January 27, 2011.

ANALYSIS

The defendants' sole issue on appeal is whether the circuit court erred by awarding the Village its attorney fees and costs under section 11-31-1(a) of the Code (65 ILCS 5/11-31-1(a) (West 2006)), given that the Village's petitions to demolish were dismissed and the Village did not incur any costs for demolition, repair, enclosure, or removal. The issue in this case is a matter of statutory construction. " 'Construction of a statute is a purely legal

question, appropriately subject to *de novo* review.' " *Melton v. Frigidaire*, 346 Ill. App. 3d 331, 335 (2004) (quoting *In re Marriage of Murphy*, 203 Ill. 2d 212, 219 (2003)).

"[T]he fundamental rule of statutory construction is to ascertain and give effect to the true intent and meaning of the legislature." *In re Application of the County Treasurer for Judgment & Order of Sale Against Lands Returned Delinquent for Nonpayment of General Taxes for the Year 1992 & Prior Years*, 308 Ill. App. 3d 897, 899 (1999). "Courts should look first to the statutory language itself, as the language of the statute is the best indication of the legislature's intent." *Id.* "Where the meaning of a statute is clearly expressed in the language of the statute, a court cannot imply any other meaning." *Id.*

Section 11-31-1(a) of the Code provides, *inter alia*, the following:

"The corporate authorities of each municipality may demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings within the territory of the municipality ***.

* * *

The cost of the demolition, repair, enclosure, or removal incurred by the municipality, by an intervenor, or by a lien holder of record, including court costs, attorney's fees, and other costs related to the enforcement of this Section, is recoverable from the owner or owners of the real estate *** and is a lien on the real estate ***." 65 ILCS 5/11-31-1(a) (West 2006).

The defendants contend that the Code requires a municipality to obtain a court order authorizing a demolition and to incur the costs of a demolition before an award of attorney fees and court costs may be granted under section 11-31-1(a). The defendants cite the following additional language from section 11-31-1(a):

"The corporate authorities shall apply to the circuit court of the county in

which the building is located (i) for an order authorizing action to be taken with respect to a building if the owner or owners of the building, including the lien holders of record, after at least 15 days' written notice by mail so to do, have failed to put the building in a safe condition or to demolish it or (ii) for an order requiring the owner or owners of record to demolish, repair, or enclose the building or to remove garbage, debris, and other hazardous, noxious, or unhealthy substances or materials from the building." 65 ILCS 5/11-31-1(a) (West 2006).

As the defendant aptly notes, a court order is necessary before a municipality may facilitate an involuntary demolition, as demonstrated by the provision that "[t]he corporate authorities *shall* apply to the circuit court." (Emphasis added.) 65 ILCS 5/11-31-1(a) (West 2006). However, we find these provisions to be procedural instructions for a municipality to use when selecting a remedy under this section. Nothing in the cited provisions indicates that a municipality must obtain a demolition order before it may recover court costs, attorney fees, and other costs related to the enforcement of section 11-31-1(a).

According to the provisions cited by the defendants, a demolition is not a requirement but merely one possible avenue of remedy that a municipality may pursue. A municipality must request either an order authorizing the municipality itself to take action or an order requiring the owners to take action, with the demolition of the building being merely one of many available options. See 65 ILCS 5/11-31-1(a)(ii) (West 2006). Also noteworthy is the first sentence of paragraph (a), which provides, "The corporate authorities of each municipality *may* demolish *** dangerous and unsafe buildings ***." (Emphasis added.) 65 ILCS 5/11-31-1(a) (West 2006). Each of these provisions indicates that demolition is an option rather than a requirement which must be met prior to an award of attorney fees and costs, as suggested by the defendants.

The portion of section 11-31-1(a) allowing for attorney fees and costs provides, "The

cost of the demolition, repair, enclosure, or removal incurred by the municipality, *** including court costs, attorney's fees, and other costs *related to the enforcement of this Section*, is recoverable from the owner ***." (Emphasis added.) 65 ILCS 5/11-31-1(a) (West 2006). This neither specifies nor even implies that a demolition is necessary before attorney fees and costs may be recovered. The legislature could have specified that attorney fees and costs related only to the demolition, repair, enclosure, or removal are recoverable, yet it chose not to do so. Rather, the allowance for attorney fees and costs explicitly states that the recovery is "*related to the enforcement of*" section 11-31-1(a) (emphasis added) (65 ILCS 5/11-31-1(a) (West 2006)), which, as already established, includes options other than demolition.

Notably, the appellate court has already deemed appropriate the award of attorney fees and costs under section 11-31-1(a), where no demolition order was sought or obtained. In *City of McHenry v. Suvada*, 396 Ill. App. 3d 971, 974-75 (2009), after providing the requisite notice to the defendant, the plaintiff, rather than seeking a demolition order from the trial court, obtained a preliminary injunction preventing the occupancy of the subject premises until repairs were made to bring the premises into compliance with the plaintiff's codes and ordinances. The case proceeded to a bench trial, at which the plaintiff requested, *inter alia*, attorney fees and costs associated with prosecuting its verified complaint, pursuant to section 11-31-1 of the Code. *Id.* at 977. The trial court denied attorney fees and costs, holding that section 11-31-1 did not apply at any point in the proceedings, which the appellate court found to be erroneous. *Id.* at 988. The appellate court observed that although "[t]he purpose of section 11-31-1 is to give the City a quick and effective means of removing *** dilapidated structures that present danger," "the 'implication of [section 11-31-1] is that if the property at issue can be *repaired* ***[,] the city ought to adopt this course rather than complete demolition.'" (Emphasis in original.) *Id.* at 986-87 (quoting *City of Aurora v. Meyer*, 38 Ill.

2d 131, 137 (1967)). The appellate court added that the "admonishment that cities should seek repairs *** before they seek demolition is an acknowledgment that section 11-31-1 is an appropriate vehicle by which to compel repair." *Id.* at 987. The appellate court held that attorney fees and costs deemed by the trial court as reasonable or related to the suit are recoverable under section 11-31-1. *Id.* at 985. Accordingly, the court reversed and remanded for a determination of attorney fees and costs. *Id.* at 988.

The defendants emphasized at oral argument that in this case there were no injunctions, no orders of demolition, no findings that the buildings were unsafe, nor any hearings to determine those matters. The defendants also contended at oral argument that the appellate court's decision under *City of McHenry* requires there to first be a finding by the trial court that a building is unsafe before attorney fees may be awarded under section 11-31-1. We disagree. The appellate court holding in *City of McHenry* was that attorney fees and costs are recoverable under section 11-31-1 if they are found by the trial court to be reasonable or related to the lawsuit. 396 Ill. App. 3d at 985. This holding was in no way contingent upon any additional order or finding by the trial court. *Id.*

The language of section 11-31-1(a) and the appellate court's holding in *City of McHenry* refute the defendants' contentions in the instant appeal. Accordingly, the circuit court's award of attorney fees and costs to the Village under this section was proper, and we need not address the defendants' remaining argument that the circuit court erred by retaining jurisdiction to foreclose the Village's cost lien, which the defendants argue should be stricken because the Village was not entitled to recover its attorney fees and costs.

CONCLUSION

For the foregoing reasons, we affirm the July 13, 2010, orders of the circuit court of St. Clair County that awarded the Village attorney fees and costs totaling \$6,221.45 and \$12,163.15.

Affirmed.