

FOURTH DIVISION
JUNE 28, 2012

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).

No. 1-10-3170

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VILLAGE OF BARRINGTON HILLS,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	Nos. 09MC33003791,
)	10MC3351, 10MC3352,
)	10MC3353
PHILIP MAKSYMONKO,)	The Honorable
)	Alfred L. Levinson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

ORDER

HELD: Judgment of the circuit court finding that defendant homeowner violated multiple provisions of the Village of Barrington Hills' Village Code upheld where the court heard testimony from defendant's neighbors regarding the activities occurring on his property and made factual findings that were not against the manifest weight of the evidence.

¶1 Defendant, Philip Maksymonko, appeals an order of the circuit court finding him in

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violation of four Village Code provisions promulgated by plaintiff, the Village of Barrington Hills (the Village). He argues that the circuit court's findings were not supported by the evidence. For the reasons detailed herein, we affirm the judgment of the circuit court.

¶2 I. BACKGROUND

¶3 The Village is a home rule municipality and municipal corporation with its principal place of business in Cook County, Illinois. Maksymonko is a resident of Barrington Hills and an owner of three parcels of land within the Village. He resides at 3117 Spring Creek Road in a single-family home located on a 6.17 acre parcel. Maksymonko also owns another 6.17 acre parcel that is contiguous to his home. This parcel is vacant and contains no structures. In addition to these sizeable pieces of property, Maksymonko also owns a small 0.12 acre parcel, which serves to provide ingress and egress to the other larger parcels of land. All three parcels are located in an R-1 residential district zoned by the Village.

¶4 The Complaints

¶5 Beginning on June 22, 2009, the Village filed a series of complaints against Maksymonko based upon his purported violations of multiple provisions of the Village's Code. Specifically, the Village alleged that Maksymonko violated its Code provisions by: (1) storing trees and logs on his property, thereby creating a public nuisance; (2) operating a business of selling, breeding and raising dogs on his property; (3) maintaining a compost pile that emitted a putrid odor; and (4) allowing the commercial storage of logs on his property. The complaints were subsequently consolidated and a bench trial ensued.

¶6 Trial

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¶7 At trial, Maksymonko confirmed that he owned three parcels of property located on Spring Creek Road in Barrington Hills and testified that he has resided there since May 1959. He further confirmed that each of his parcels are zoned R-1 residential. Although he initially lived on the land with his parents, Maksymonko testified that his girlfriend, Michelle Randall, has lived with him for the past seven years. As a hobby, Randall began breeding and selling dogs on his property, namely Labrador Retrievers and Shelties. The dogs were kept in a barn located on the same parcel of land on which his residence was located. Maksymonko acknowledged that Randall advertised her hobby, "Randall Ridge Labs and Shelties" on the internet. Maksymonko also admitted that he and Randall used signs to advertise the sale of dogs. Randall had a sign with contact information about her hobby on her vehicle and he put a sign advertising the sale of dogs in front of his law office.¹ His law office and Randall Ridge Labs and Shelties shared the same phone number. Maksymonko indicated that "[m]any other dog owners" advertise in a similar manner and testified that Randall did not just sell dogs, but she participated in dog shows as well. Although he did not know the exact number of dogs that were present on his property over the years, Maksymonko estimated there were probably 30 to 50 dogs on his property at any given time. Most of the dogs belonged to his girlfriend, but he owned a few himself. Randall sold dogs that were not suitable for showing and the price varied depending on the breed and pedigree of the particular dog.

¶8 Maksymonko estimated that each dog on his property generated about 1/2 to 3/4 of a

¹ Maksymonko is a licensed attorney. He represented himself during the circuit court proceedings and on appeal.

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pound of waste each day, and testified that he disposed of the dog waste in a compost pile. He explained that after the dog excrement was collected, it was mixed with a chemical solution and allowed to ferment. The fermented dog waste was then taken to a nearby compost pile located on his property. Maksymonko indicated that he has been composting dog waste on his property in the same manner for years.

¶9 Maksymonko confirmed that the large parcel located adjacent to his house is vacant and contains no structures. Beginning sometime in June 2006, however, Maksymonko acknowledged that he entered into an agreement with Scott Burkemper, the owner of a local landscaping company, and gave Burkemper access to his vacant parcel. Pursuant to their agreement, Maksymonko allowed Burkemper to deposit and store logs on the property and park his landscaping truck there as well. In exchange for providing Burkemper with access to his property, Maksymonko testified that he was able to use the logs that were brought onto his vacant lot to heat his house. Maksymonko acknowledged that there may have been other people who deposited logs onto his property, but indicated that he was not "really sure" who else disposed of wood on his land. Following his agreement with Burkemper, trucks would arrive on his property to unload logs throughout the day and chainsaws and other equipment were then used to cut the wood into smaller pieces and arrange the logs into piles. Maksymonko indicated that he made his best efforts to "keep people out of there that [he] did not invite" but admitted that his efforts "didn't work out real well." As a result, the number of logs stored on his property increased over the years, and he estimated that the log pile reached a height of approximately 12 feet. Maksymonko did not know whether the logs were ever inspected to determine whether they

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contained gypsy moths prior to being deposited on his property.

¶10 Don Schuman, the Code Enforcement Officer for the Village, discussed the zoning of property contained within the Village's boundaries. Schuman indicated that the majority of the parcels of land contained within the Village were zoned R-1 residential and confirmed that each of the parcels owned by Maksymonko were R-1 zoned property.

¶11 Doctor Maciej Malinski, Maksymonko's neighbor, testified that he resided in a house located at 3205 Spring Creek Road and that Maksymonko's vacant parcel was located just south of his property line. Doctor Malinski testified that he purchased his property in August 2005. At that time, there was no log pile located on Maksymonko's lot; however, later that summer, Doctor Malinski began to see and hear trucks arrive and unload logs onto his neighbor's land. The unloading process took place on both weekdays and weekends and caused "lots of noise." In addition to the truck sounds, Doctor Malinski also heard the buzz of chainsaws being used on his neighbor's property.

¶12 Maksymonko's log pile increased in size fairly quickly. Doctor Malinski testified that by 2006, the pile "grew to enormous size that actually exceeded the size of [his] house." He estimated that the pile was at least 20 feet long and "around 20 feet or higher" and was clearly visible from his house. At that point, Doctor Malinski began to get concerned and contacted the Village. He noted that the pile attracted kids from the area and that he was concerned for their safety. He also believed that the gypsy moth infestation that the Village experienced was attributable to Maksymonko's log pile. Doctor Malinski informed the court that the log pile "significantly" affected the use of his own property. "Not only [was the log pile] a visual

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annoyance but [it was also a] safety annoyance, [and a] noise annoyance when certain activity was going on."

¶13 In addition to the wood pile, Doctor Malinski also took issue with the number of dogs that were kept on Maksymonko's property. Doctor Malinski acknowledged that he had seen dogs on Maksymonko's property prior to purchasing his land, but he indicated that the number of dogs that were boarded there seemed to increase over the years. Although Doctor Malinski did not know the total number of dogs contained on his neighbor's property, he believed that there were probably more dogs present than he could actually see given the noises that he overheard. Doctor Malinski indicated that the noise was "constant" and that the dogs could be heard "pretty much every day if [he was] outside." Although Doctor Malinski was a dog owner himself, he explained the sound of the dogs barking on Maksymonko's property was an annoyance to him because "the barking from one to five [dogs] is different from 30, 40, 50, whatever amount of dogs" that were boarded next door. Doctor Malinski believed that the dogs were kept on Maksymonko's property as part of a dog-breeding business. Doctor Malinski explained that Maksymonko's girlfriend advertised the sale of dogs on her vehicle and that Maksymonko had a sign advertising the sale of dogs located outside of his law office. Moreover, Doctor Malinski would often observe people coming onto his neighbor's property to look at the dogs for sale.

¶14 Although Doctor Malinski was annoyed by the noises that the dogs made, he testified that the smell that began to emanate from Maksymonko's property was even more "horrific." He described the smell as the "typical smell for the accumulation of dog feces that any person would recognize whoever entered a zoo." Doctor Malinski indicated that it was a "very gagging odor,"

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the severity of which would depend on the direction of the wind and the level of humidity. As a result of the smell, Doctor Malinski has been unable to leave the windows open in his house and has been unable to entertain in his backyard. He recalled two specific instances where the odor interfered with social gatherings and forced him to escort his guests inside his home to get away from the overpowering smell.

¶15 On cross-examination, Doctor Malinski was asked about other possible sources of the objectionable smell. He acknowledged that there is a farm located just north of his property where cows graze in the field. He further acknowledged that there was a marsh with stagnant water located on his own property; however, Doctor Malinski insisted that he was "pretty sure" that the overwhelming smell that "significantly" affected his ability to enjoy his land was emanating from Maksymonko's property. In addition, despite his objection to Maksymonko's log pile, Doctor Makinski admitted on cross-examination that he, too, kept a pile of wood on his property. However, he explained that his log pile, unlike Maksymonko's, was merely a "small gathering of wood." Doctor Malinski indicated that "[e]verybody in Barrington Hills has wood behind their house because everybody has a fireplace or makes a bonfire. That's common."

¶16 Ann Malinski confirmed her husband's account of the logging activity that occurred on Maksymonko's property. She testified that she was home "quite a bit" and was able to witness a lot of the activity that took place there. Ann saw trucks from multiple companies, including Burkemper Tree Service, Trees R Us, and KB Landscaping, traverse onto Maksymonko's property and dump logs. She also confirmed that the log pile was clearly visible from her house. Initially, in 2005, the log pile was relatively small, but it only increased in size. At one point in

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2009 or 2010, Ann used a landscaper tape measure to measure the size of the log pile. The pile measured 320 feet wide and reached a maximum height of 25 feet. Ann indicated that a portion of the log pile extended onto her property and that the pile was an "extreme annoyance" to her. Ann testified that she has had to chase kids off the property and away from the log pile on a number of occasions. In addition to the safety concerns posed by the log pile itself, Ann was also concerned about the number of random people that trekked on and off of Maksymonko's property to dispose of wood.

¶17 Although she was bothered by the wood pile, Ann testified that the "biggest nuisance" was the smell that resulted from the dogs that were boarded on Maksymonko's property. Ann reported that the odor was "extremely strong" and made her gag. Ann explained that she knew that dog feces were the cause of the offensive odor because she worked for a veterinary clinic for over 9 years and was familiar with that smell. Ann testified that the smell "comes and goes" and has affected her ability to fully enjoy her own property and entertain in her backyard.

¶18 James Naumann, another one of Maksymonko's neighbors, testified that he resided next door at 11241 Haegers Bend in Barrington Hills. Naumann moved into his residence in 2000, and as the years progressed, he became concerned about the growing pile of logs on Maksymonko's property. Before he was able to see the log pile, Naumann reported that he initially began to hear sounds of logging equipment and chainsaws being used on Maksymonko's vacant parcel. Specifically, from 2006 to 2009, Naumann would frequently hear the sounds of trucks, chainsaws, and workmen shouting. They were not sounds that he expected to hear on a routine basis in a residential neighborhood. Although he suspected some kind of logging

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operation was taking place on Maksymonko's vacant lot, Naumann indicated that he was "very surprised" when first observed the log pile. Naumann testified that the log pile was "gigantic." At its biggest, the pile resembled "a two-story apartment building." After seeing Maksymonko's wood pile, Naumann became concerned that neighborhood kids would attempt to climb the pile and he voiced his concerns to his wife. Naumann acknowledged that most of the logs have disappeared within the past month leading up to the trial. Naumann reported that there are now "giant piles" of wood chips on Maksymonko's land rather than giant piles of logs.

¶19 Naumann acknowledged that he also had a pile of logs located behind his house and testified that "[e]verybody in Barrington Hills has piles of wood" stored on their land. Many of his neighbors use wood as kindling in their wood-burning fireplaces. Naumann estimated that his wood pile was "probably three feet by eight feet by ten feet." Maksymonko's wood pile, however, greatly exceeded the size of other Barrington Hills residents' wood piles. Although Maksymonko stated that the logs that were stored on his land were for his own personal use, Naumann opined that his neighbor "might be able to use some of it, but [indicated that Maksymonko would] never be able to use that much wood for hundreds of years." In addition to objecting to the sheer size of Maksymonko's log pile and the safety risks that it posed, Naumann reported that he experienced troubles with gypsy moths in 2005 and 2006. He believed the infestation was attributable to Maksymonko's wood pile explaining: "You know, its our feeling that the gypsy moths came from the wood pile. They weren't there until the wood pile was there. I don't know. That's sort of deductive reasoning." Naumann testified that he was forced to spend thousands of dollars to treat the infestation.

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¶20 With respect to the dogs boarded on Maksymonko's land, Naumann indicated that he was not aware of the dogs when he first moved into the area in 2000. Sometime in 2003, however, when Michelle Randall moved in with Maksymonko, Naumann observed for the first time, "30 or more dogs running around the property." He also had seen Randall driving a white van with signs advertising the sale of dogs located "all over it." On one occasion, Naumann and his wife walked over to Maksymonko's house and voiced their complaints about the number of dogs that were being kept on the property and the noise that the dogs created. In response to their complaints, Maksymonko indicated that it was his plan to "get down to 16" dogs and told Naumann to "buzz off." Naumann did not make another attempt to talk to Maksymonko about the dogs after that conversation and he continued to hear dogs barking and continued to smell dog feces coming from Maksymonko's residence. Naumann described the odor as "pretty putrid" and "rancid" and indicated that he has been unable to leave the windows open in his house or sit outside in his backyard. In his opinion, the dogs have "take[n] a lot of fun out of living in a beautiful area." Although Naumann was aware that there was a farm that contained cows located nearby, he knew that the odor he was smelling was coming from the dogs on Maksymonko's property, not the cows. He explained that he grew up on a farm and knew the difference between the odor of dog feces and the odor that is caused by grazing cattle. Although he was primarily bothered by the odor caused by the dogs, Naumann also indicated that the large number of dogs located on his neighbor's property posed safety concerns. Once, when his three grandchildren were visiting, Naumann recalled that 10 to 12 "big Labs" had approached the fence that separated his property from Maksymonko's land, and began barking and lunging at the kids, attempting to

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engage them in play. Naumann clarified that he did not think that the dogs were violent animals, but indicated that the situation "sort of scared [him]" due to the sheer number of dogs running around his neighbor's property.

¶21 On cross-examination, Naumann acknowledged that in the summer time, due to the number of trees separating their property, he could not see the log pile on Maksymonko's vacant lot. Naumann also acknowledged that he had a pond filled with stagnant water on his property and that a horse farm was located just east of his residence. He also indicated he was aware that there were a number of other dog owners who resided in the neighborhood. Naumann, however, clarified that none of the other neighbors housed 30 or 40 dogs and denied that any of the other dogs in the neighborhood disturbed him.

¶22 Mary Naumann corroborated her husband's testimony regarding the logging and dog breeding activities that took place on Maksymonko's property.

¶23 Mick Johnson testified that he owned a residence located at 601 Hackberry in Algonquin and that his property is adjacent to the Malinski's property and north of Maksymonko's land. Over the past few years, Johnson observed "huge, huge logging trucks with great big tree trunks on them" drive onto Maksymonko's property. In the spring and summer months of 2006 and 2007, Johnson estimated that the trucks made four to six trips a day to his neighbor's residence. From his house, Johnson could hear the sounds of logs being unloaded and being sawed into pieces. It was not until 2006, however, that Johnson first began to notice a growing pile of logs accumulating on Maksymonko's property. He estimated that the pile grew to over 20 feet tall. Johnson confirmed that the log pile began to interfere with his enjoyment of his own property.

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He explained that when he bought his home six years ago, he "didn't expect to experience a logging operation going down a road with huge trucks depositing logs and basically dumping." Johnson described the activity occurring on Maksymonko's property as a "logging operation" "because of the stature of it. The size of the trucks and the size of the tree trunks." Johnson had not expected to see that type of activity occur in a residential area.

¶24 In addition to Maksymonko's logging operation, Johnson also expressed his annoyance about the number of dogs located on his neighbor's property. He indicated that he called the police on several occasions due to the "consistent annoying yapping of dogs." Johnson knew that Maksymonko's dogs were the source of the noise disturbance because the Malinski's had told him that Maksymonko was raising dogs on his property. Johnson, however, acknowledged that he was "lucky" enough not to smell the odors coming from Maksymonko's property because the wind directed the smells away from his house.

¶25 On cross-examination, Johnson acknowledged that he could not see the dogs that were housed on Maksymonko's property from his residence, but testified that he did see the dogs when he was running around the neighborhood and that he had complained to Maksymonko's girlfriend about the noise they made.

¶26 Christie Hecke, a solid waste manager with the McHenry County Department of Health, testified that she had conducted an onsite inspection of Maksymonko's property in April 2008 to investigate the alleged nuisance conditions that were said to be occurring there. Hecke and her co-worker, Kelly Case, met with Michelle Randall who showed them around the property. Hecke observed that there were two dog kennel facilities located on the property as well as a

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stockpile of dog manure with some wood shavings in it. Hecke did not conduct a physical count of the dogs, but Randall informed her that the kennels contained about 70 dogs. Hecke indicated that she did not smell an odor emanating from the pile of feces itself, but stated that the dog kennels had an odor to them. At the time of the inspection, the property did not contain a strong odor of dog feces. Hecke reported that she also conducted an inspection of Maksymonko's other parcel of land that contained the log pile. She did not actually measure the height and width of the log pile, but estimated that it reached 15 to 20 feet in height at certain spots.

¶27 Scott Burkemper testified that he owned a landscape company in 2005 and 2006 called Burkemper Services Incorporated. During that time, Burkemper made an arrangement with Maksymonko, whereby he was allowed to dispose of the trees he cut down at other locations on Maksymonko's property in Barrington Hills. Burkemper was aware that another company, Trees R Us, also disposed of logs on Maksymonko's property. On June 6, 2006, Burkemper was interviewed by a local police officer, Officer Caputo, after complaints had been made about Burkemper illegally dumping logs in the area. During this conversation, Burkemper told the officer that he was leasing the area on Maksymonko's property where he was dumping the logs. Pursuant to their agreement, Burkemper did not pay Maksymonko for the use of his property, but was permitted to deposit logs and store his truck on the premises in exchange for providing Maksymonko with wood to use as kindling in his home. Burkemper reported that he never sold any of the wood that he brought on Maksymonko's property to a third party. Moreover, based on his knowledge, Maksymonko never sold any of the wood that Burkemper deposited on his land to any other person.

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¶28 Officer Dominick Caputo, a patrolman employed by the Village, testified that on June 6, 2006, he responded to a call placed by Ann Malinski, Maksymonko's neighbor, about a large log pile that was encroaching onto her property. As part of his investigation, he conversed with Scott Burkemper at the scene. Burkemper informed Officer Caputo that he had been leasing property from Maksymonko for the past two years. Burkemper stated that he was using Maksymonko's property as a "staging area for logs" which he would then transport to another location. The log pile that Officer Caputo observed was "extremely large" and he estimated that it was 20 to 30 feet high.

¶29 Officer Sabas Parada, another police officer employed by the Village, testified that on May 17, 2007, at approximately 3 p.m., she responded to a phone call placed by Mr. Malinski, in which he complained about the log pile on Maksymonko's property. When she met with Mr. Malinski, he handed her a DVD that he had recorded, which contained images of vehicles dumping logs on the property as well as pictures of the wood pile and debris located there. Officer Parada then accompanied Mr. Malinski to the wood pile, which was "immense." After she took the complaint, Officer Parada subsequently spoke to Maksymonko, who informed her that he had made an arrangement with Scott Burkemper to allow Burkemper to utilize his property as a storage area for logs. Maksymonko indicated that the logs were allowed to dry out on his land and reported that they were then turned into wood chips and removed from the premises. Following their conversation, Officer Parada issued Maksymoko a citation for unlawful disposal of logs.

¶30 After the Village rested its case, Maksymonko called Joel Ashermann as his first witness.

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Ashermann, an employee with the Illinois Department of Agriculture, testified that he performed an inspection of the kennel facilities located on Maksymonko's property on October 6, 2009.

Ashermann explained that Michelle Randall had applied for a kennel license and that he went to the property to see if the facilities met department standards. Ashermann spent approximately one hour on the premises and reported that he did not encounter any putrid smells on the property. He never encountered a compost pile while he was there either.

¶31 On cross-examination, Ashermann indicated that he had arranged the inspection with Randall prior to arriving at the kennel facilities and that the weather was chilly and rainy on the date of his inspection. Although he did not encounter any overwhelming smell, Ashermann acknowledged that he "smelled an odor consistent with 75 dogs on the property." The smell was only apparent close to the kennel facilities, however.

¶32 Skylar Wilson, an Officer with McHenry County Animal Control, testified that she made trips to the kennels located on Maksymonko's property on three occasions. Each of the visits lasted less than a half an hour. Wilson denied experiencing any unusual smells on any of her visits to the premises. On her third trip to the kennels, Officer Wilson did observe a compost pile, but reported that the pile did not emit a disgusting or offensive smell.

¶33 Christopher Baim, another employee with McHenry County Animal Control, testified that he also made three trips to Maksymonko's property. On each of those occasions, Baim had the opportunity to walk freely around the premises. On his first visit, Baim counted 77 dogs and indicated that he did not encounter any odor on the property except for in the immediate area where the Shelties were boarded. There was no other smell on the property. Baim did not

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encounter any foul smell on his two subsequent visits to the property.

¶34 Kelly Case, an inspector with the McHenry Department of Health, testified that she conducted an inspection of Maksymonko's property in April 2009. It was raining that day, and she encountered a "wet dog kind of smell." Case did not smell dog feces in the kennels or at the compost pile.

¶35 Maksymonko recalled Don Schuman, a Code Enforcement Officer for the Village, who reported that he visited Maksymonko's property the previous week to ascertain the status of the premises prior to the trial. On his visit, Schuman testified that he encountered an odor when he walked near the compost pile, but acknowledged that the odor was "not overly offensive." Schuman also took photographs of the log pile and informed the court that the majority of the logs have been removed from the premises. Only a few smaller log piles remain on the perimeter of Maksymonko's property. The dogs have also been removed from the premises.

¶36 Michelle Randall confirmed that she resides with Maksymonko. During the seven years that she has lived with Maksymonko, Randall has not encountered any putrid odors; rather, she reported that there are several marshes and cattle farms located in area and the smells she has encountered were common ones that were "part of nature." Randall acknowledged that she applied for a kennel license with the State of Illinois. While she has been raising dogs for over a decade, Randall denied that she operated a dog-breeding business; rather, it merely a hobby. She has never made a profit on her hobby.

¶37 Randall named her kennel Randall Ridge Labs and Shelties, but has never filed business incorporation papers. She acknowledged, however, that she put signs on her van to advertise the

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sale of dogs and created a website to promote her hobby. On her website, Randall indicates that she accepts Visa or Mastercard as payment for the dogs and that she ships dogs to other locales. Although she admitted to selling dogs, Randall specified that none of the dogs that she sold were ever sold from their property; rather all sales took place at Maksymonko's law office. The phone number that she used to advertise Randall Ridge Labs and Shelties was the same phone number that Maksymonko used for his law business. Randall confirmed that she recently had the dogs removed from Maksymonko's property and transported to Wisconsin. She is now "partially" the owner of those dogs. When asked about the log pile, Randall indicated that she and Maksymonko would heat their residence by burning wood that was stored on the premises.

¶38 In his sworn statement before the court, Maksymonko testified that he has lived on the property since 1959. His parents built a kennel on the premises many years ago and there were always at least 15 animals housed on the property. He acknowledged that the number of animals contained on the property did increase when Randall engaged in her hobby of raising dogs. Although some of the dogs that were raised on his property were sold at some point, Maksymonko reported that Randall's hobby has never made a profit and has never been treated as a business. Despite the number of dogs that were boarded on his property, Maksymonko has never been bothered by any smells. He has followed the rules of composting set out by the USDA and insisted that his compost pile "doesn't smell."

¶39 Maksymonko acknowledged that he agreed to let Scott Burkemper park his truck on the premises in exchange for access to the logs that Burkemper cut down in the course of his landscaping business. Because his home was build in the 1960's and "is heated with firewood,"

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Maksymonko used the logs that were contained on the premises to heat his home. Although he acknowledged that his log pile was "[s]omewhat larger than other people's," he explained that it was necessary because he requires "truck loads of wood in the course of a year to heat [his] house." Maksymonko concluded his defense by denying that any of the wood stored on his property had ever been sold to anybody else.

¶40 Ann Malinski was called as a rebuttal witness by the Village. She indicated that she had a clear view of Maksymonko's chimney from her house. Ann only saw smoke coming from his chimney on a few occasions over the past few years.

¶41 Circuit Court Judgment

¶42 After hearing the aforementioned testimony and the arguments of the parties, the circuit court issued a detailed written order, in which it found in favor of the Village on each of the four complaints. With respect to complaint 09 MC3 003791, regarding Maksymonko's dumping and storage of trees and logs, the court found that the log pile contained on Maksymonko's vacant parcel constituted a public nuisance, explaining: "the Court finds that the presence of the two-story high log pile interferes with the neighbors' use and enjoyment of their properties and therefore, is an annoyance and discomfort to the public." The court thus ordered Maksymonko to permanently remove all logs on his property "except for a reasonable amount of firewood for personal use with which to heat his residence."

¶43 Addressing complaint 10 MC3 00351, Randall's dog-breeding operation, the court found that Maksymonko violated the Village's prohibition against residents conducting businesses from their homes that created public nuisances. The court deemed Randall Ridge Labs and Shelties a

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business "notwithstanding Maksymonko's attempt to characterize [it] as a mere 'hobby.'" In making this determination, the court found that the sheer number of dogs contained on the property as well as the advertising efforts undertaken by Randall and Maksymonko suggested that the "breeding operation on the subject property could not have been sporadic or intermittent." The court further found that this business constituted a nuisance, explaining: "Randall Ridge interfered with the peace, quiet and domestic tranquility of the residential neighborhood. It substantially bothered residents of the surrounding area. The commercial operation was an annoyance and thus, it created a nuisance. The constant barking and other sounds from seventy (70) dogs on the subject property at all hours of the day and night substantially increased the level of noise in the neighborhood. The strong, offensive odors emanating from the dog feces of seventy (70) dogs on the subject property permeated the neighborhood and offended community residents." Accordingly, the court entered a permanent injunction prohibiting Maksymonko from ever using his property "for any business or commercial enterprise involving dog breeding, dog raising, dog boarding, dog housing, dog training and/or dog selling."

¶44 Turning to complaint 10 M3 00352, Maksymonko's maintenance of a compost pile that emitted a "putrid or rancid odor," in contravention of the Village Code, the court found that "[t]he testimony and evidence establishes that a putrid and rancid odor emanates from the compost pile. One of the McHenry County health inspectors testified that flies are attracted to compost piles." Accordingly, the court ordered Maksymonko to remove the compost pile and composting byproducts from his property and permanently enjoined Maksymonko "from placing

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and/or dumping any and all canine feces, organic waste material, humus, and any and all components of composting on the ground, in trenches or in the soil, compost bins, compost containers or compost receptacles on the subject property."

¶45 Addressing, the Village's final complaint, 10 M3 00353, Maksymonko's operation of an unauthorized commercial logging operation from his home, the court found that the evidence did not support Maksymonko's contention that the logs that were stored on his property were for his own personal use and not part a commercial endeavor. Specifically, the court stated: "Based on the testimony and all the photographs entered into evidence, this Court finds that Maksymonko is engaging in the commercial storage of logs on his property in an R-1 zoned residential district in violation of the Village Code. *** Maksymonko has received logs on his vacant parcel transported from remove[d] locations by tree service trucks and other commercial vehicles. The logs are being cut and chipped on the subject property and then transported to other locations." The court further found that "Maksymonko's commercial 'logging' activities on the subject property are an annoyance which increases the levels of noise in this R-1 residential district. The nature of the noise associated with the 'logging' operation substantially and unreasonably interferes with the neighbors' use and enjoyment of their properties. Noise generated from chain saws and commercial truck traffic as part of the business operation is not in character with the surrounding residential community. The neighborhood appearance is negatively impacted by a two-story high log pile. It attracts neighborhood children who play on the log pile and therefore presents a safety issue." Accordingly, the court permanently enjoined Maksymonko from accepting log deliveries and from leasing his property for use in commercial logging activities.

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¶46 As a result of Maksymonko's Village Code violations, the court also assessed a total of \$37,880 in fines against him.

¶47 Maksymonko subsequently filed a motion to reconsider, which the circuit court denied. This appeal followed.

¶48 II. ANALYSIS

¶49 On appeal, Maksymonko argues that the circuit court's findings that he violated provisions of the Village's Code were against the manifest weight of the evidence. He first disputes the court's finding that log pile on his land constituted an impermissible public nuisance under section 7-1-1(A) of the Village Code. He argues that the Village has no ordinance specifically forbidding residents from storing wood on their private property and there was no evidence that his wood pile caused annoyance or discomfort to the public. Rather, the wood pile was a "non[-] invasive issue" that impacted at most, his immediate neighbors.

¶50 The Village, in turn, responds that the court did not err in finding that the logs on Maksymonko's property constituted a public nuisance. The Village observes that the court heard a multitude of evidence about "the dumping and storage of an enormous quantity of logs in a residential area and the activity surrounding the dumping, sawing and chipping of these logs in a residential area," and argues that this evidence supports the trial court's finding that Maksymonko's log pile was an annoyance to the public.

¶51 In a bench trial, the circuit court is the trier of fact and is in the best position to evaluate the evidence, judge the credibility of the witnesses and determine the weight to afford to their testimony. *People ex rel. Illinois Department of Labor v. 2000 West Madison Liquor Corp.*, 394

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Ill. App. 3d 813, 818 (2009). Accordingly, even where the evidence could support conflicting conclusions, a circuit court's findings and judgment will not be disturbed on review unless they are against the manifest weight of the evidence. *Id.* A judgment is against the manifest weight of the evidence " 'only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence.' " *Id.* at 817-18, quoting *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001).

¶52 Pursuant to section 11-60-2 of the Illinois Municipal Code, each municipality has the power to "define, prevent, and abate nuisances." 65 ILCS 5/11-60-2 (West 2008). Under this broad grant of legislative authority, a municipality is entitled to identify what constitutes a nuisance and pass local ordinances to prevent and abate identifiable nuisances. *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 696 (2004). "Historically, nuisance ordinances have been held to be invalid only when the municipality's determination of what constitutes a nuisance is clearly erroneous." *Id.*; see also *Village of Goodfield v. Jamison*, 188 Ill. App. 3d 851, 857 (1989) (recognizing that pursuant to section 11-60-2 of the Municipal Code, "a municipality has authority to regulate, as a nuisance, anything in which there could be an honest difference of opinion and, in questionable cases, the municipality's decision will be conclusive unless its judgment and use of discretion is clearly erroneous"). Our supreme court has observed that the " 'concept of common law public nuisance *** elude[s] precise definition,' and that the existence of a public nuisance is dependant upon the particular facts and circumstances of each case." *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004), quoting *City of Chicago v. Festival Theatre Corp.*, 91 Ill. 2d 295, 306 (1982). Despite the difficulty in defining the term,

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"[i]t is well settled, however, that public nuisance encompasses: 'that class of wrongs that arise from the unreasonable, unwarrantable or unlawful use by a person of his own property, real or personal, or from his own improper, indecent or unlawful personal conduct, working an obstruction of, or injury to, a right of another or of the public. *** It is part of the great social compact to which every person is a party, a fundamental and essential principle in every civilized community, that every person yields a portion of his *** right of absolute dominion.' " *Id.*, quoting H. Wood, *A Practical Treatise on the Law of Nuisances* § 1, at 1-3 (3d ed. 1893).

¶53 Here, pursuant to its broad grant of authority, the Village identified and defined activities that constitute nuisances in Chapter 1 of its Code. Included in the Village's definition of nuisance is "any act which endangers the public health or results in annoyance or discomfort to the public." Village of Barrington Hills Village Code § 7-1-1(A). Although Maksymonko correctly observes that the Village does not specifically forbid residents from storing wood on their properties, the Village argued, and the trial court found, that his storage of large quantities of logs on his property annoyed the public and constituted a public nuisance. We are unable to conclude that the trial court's finding is against the manifest weight of the evidence.

¶54 Maksymonko's immediate neighbors, including Maceij and Ann Malinski, James and Mary Naumann, and Mick Johnson each provided detailed testimony about the annoyance and discomfort that they experienced as a result of Maksymonko's log pile. In addition to the sheer size of the unsightly wood pile itself, which at one point, actually encroached onto the Malinski's property and spanned 20 to 30 feet in height, the neighbors also vocalized their annoyance with the number of trucks using local roadways to bring logs onto the land as well as the frequent

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sounds of chainsaws and other equipment that were used to cut and size the wood. Although Maksymonko argues that his neighbors' testimony merely demonstrated the existence of a private nuisance, with no larger impact on the general public, we observe that in addition to discussing their own personal objections to the wood pile, the Malinski's and Naumann's also discussed the broader implications of Maksymonko's log pile. They both reported that the logs posed a safety concern because children and teenagers were drawn to the wood pile. Moreover, both sets of neighbors believed that the source of local gypsy moth infestation could be attributed to the vast number of logs that were brought onto the property. Based on this testimony, we are unable to conclude that the trial court's finding that log pile on Maksymonko's land constituted a public nuisance was against the manifest weight of the evidence.

¶55 Maksymonko next disputes the trial court's finding that he violated the Village's ordinance by operating a dog breeding business on his R-1 zoned property. He observes that the Village has no ordinance limiting the number of dogs allowed on private property and argues that Randall Ridge Labs and Shelties was not a business that generated substantial income; rather, it was merely a hobby and a "home occupation" that did not violate Village's limitations on R-1 zoned property.

¶56 The Village responds that the trial court heard evidence that an extensive dog breeding business was being operated on Maksymonko's property. The Village observes that "Code Section 5-5-2 establishes certain permitted uses on R-1 property. One of the permitted uses on R-1 property is not the operation of a business of breeding, raising and selling 50-75 dogs." While the Village acknowledges that it permits residents to operate small businesses or "home

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occupations" from their residences, the Village argues that the trial court correctly found that the nature and scope of the dog-breeding business that was conducted on Maksymonko's property was a nuisance and not a permissible home occupation.

¶57 Section 5-5-2(A) of the Village Code sets forth "permitted uses" in residential R1-zoned districts. Village of Barrington Hills Village Code § 5-5-2(A). Among the permitted uses identified in that section are "home occupations." The Village Code defines permissible home occupations as follows:

"(D) Home Occupation: The intent of this subsection is to provide peace, quiet and domestic tranquility within all residential neighborhoods within the village and in order to guarantee to all residents freedom from nuisances, fire hazards, excessive noise, light and traffic, and other possible effects of business or commercial uses being conducted in residential districts. *It is further the intent of this subsection to regulate the operation of a home occupation so that the general public will be unaware of its existence. A home occupation shall be conducted in a manner which does not give an outward appearance nor manifest characteristics of a business which would infringe upon the neighboring residents to enjoy the peaceful occupancy of their dwelling units or infringe upon or change the intent or character of the residential district.*

1. Authorization: Subject to the limitations of this subsection, any home occupation that is customarily incidental to the principal use of a building as a dwelling shall be permitted in any residential zoning district.
2. Definition: A 'home occupation' is any lawful business, profession, occupation

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or trade conducted from a principal building or an accessory building in a residential district that:

- a. Is conducted for gain or support by a full time occupant of a dwelling unit; and
- b. *Is incidental and secondary to the principal use of such a dwelling unit for residential occupancy purposes; and*
- c. Does not change the essential residential character of such dwelling unit or the surrounding neighborhood.

3. Use Limitations:

* * *

f. Nuisance Causing Activities: * * * *[N]o home occupation shall cause or create any act, which endangers public health or results in annoyance or discomfort to the public, said act being defined as a nuisance under *** this code.*" (Emphasis added.) Village of Barrington Hills Village Code § 5-3-4(D).

¶58 The undisputed evidence at trial revealed that there were two kennels facilities located on Maksymonko's property that were used to house approximately 70 dogs at any given time and that prospective dog buyers came onto the property to view the dogs that were for sale. Maksymonko's neighbors testified in detail about the noises and smells that were generated by the dogs. Specifically, Doctor Malinski described the noise as "constant" and Mick Johnson admitted that he called the police on a number of occasions to report the "consistent yapping of

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dogs." In addition, the Malinski's and Naumann's all testified that the smell of dog feces on Maksymonko's property was overwhelming and interfered with their use and enjoyment of their land.

¶59 Although Maksymonko and Randall characterized Randall Ridge Labs and Shelties as a mere hobby, and not a true business or source of significant revenue, the court found that it had "serious difficulties with Maksymonko's testimony on this issue." Indeed, the court remarked that it found Maksymonko's account of the dog breeding operation to be lacking in credibility given the evidence presented about the expansive nature of Randall Ridge Labs and Shelties, including the number of dogs contained on the property, the scope of the kennel facilities used to board the animals, and the advertising efforts undertaken by Maksymonko and Randall to promote the sale of dogs. Indeed, the court specifically concluded that Randall Ridge Labs and Shelties constituted more than an incidental and ancillary use of Maksymonko's R-1 zoned residential property and that the noises and smells generated by the 70 or more dogs on the property constituted a nuisance and not a permissible home occupation. We do not find that the court's conclusion was against the manifest weight of the evidence. See, e.g., *LeCompte v. Zoning Board of Appeals for the Village of Barrington Hills*, 2011 IL App (1st) 100423, ¶ 39 (concluding that the operation of a commercial horse stable in a R-1 zoned district was not a permissible "home occupation" where the stables "caused a significant increase in the traffic and noise in the neighborhood and resulted in complaints by the surrounding property owners"); see also *Dobbs v. Wiggins*, 401 Ill. App. 3d 367 (2010) (recognizing that the sounds of barking dogs boarded in a neighborhood kennel can constitute a nuisance to local residents).

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¶60 Maksymonko next argues that the trial court erred in finding that the compost pile he maintained on his property violated the Village's Code. He observes that the Code specifically permits residents to maintain compost piles. Although his neighbors testified that the compost pile on his property emitted a putrid odor that interfered with their enjoyment of their property, Maksymonko argues that "every single inspector from the State of Illinois, County of McHenry and Village of Barrington Hills testified that they stood feet away from the compost pile and smelled no putrid or offensive odor." Because the court heard evidence that the compost pile did not emit a noxious odor, its conclusion to the contrary was against the manifest weight of the evidence.

¶61 The Village responds that the trial court's finding that Maksymonko's compost pile violated provisions of its Code was based upon overwhelming evidence, namely the testimony of his neighbors about the "gagging" odor coming from his property. The Village acknowledges that Maksymonko's witnesses testified that they encountered no offensive smells when they conducted their inspections of his property, but argues that their testimony should not be given much weight given that they were only on the premises for a short time and that their inspections were pre-arranged.

¶62 Section 7-2-6 of the Village Code permits residents of Barrington Hills to maintain compost piles so long as the piles do not emit a particularly strong and noxious odor. Specifically, the provision, in pertinent part, provides: "It shall be unlawful to maintain a compost pile which: (1) Emits a putrid or rancid odor and attracts or harbors flies, rats or vectors." Village of Barrington Hills Village Code § 7-2-6(B)(1).

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¶63 Here, the court heard conflicting testimony about the state of the compost pile that was maintained on Maksymonko's property. Maksymonko testified that he had been composting dog feces on his vacant parcel for years and explained that he collected the feces and mixed the excrement with leaves and chemicals in accordance with the guidelines set forth by the United States Department of Agriculture. Both Maksymonko and Randall testified that the compost pile did not smell. Several state employees from the Illinois Department of Agriculture, McHenry County Animal Control, and the McHenry Department of Health testified that they conducted inspections of Maksymonko's property and reported that they did not encounter an overwhelming smell generated by his compost pile. In contrast, the Malinski's and the Naumann's, Maksymonko's immediate neighbors, described the odor emitted from the composted pile of dog feces as "putrid," "rancid" and "gagging." They did acknowledge, however, that the intensity of the smell would vary depending on the direction of the wind and the humidity levels. We reiterate that the circuit court is in the best position to evaluate conflicting evidence, ascertain the credibility of the witnesses, and to determine the weight to afford their testimony. *2000 West Madison Liquor Corp.*, 394 Ill. App. 3d at 818. Here, the trial court reviewed the different accounts provided by the witnesses about the nature of the compost pile maintained on Maksymonko's property and concluded that "[t]he testimony and evidence establishes that a putrid and rancid odor emanates from the compost pile." Although there was some testimony to the contrary, we are unable to conclude that the trial court's finding was against the manifest weight of the evidence.

¶64 Finally, Maksymonko disputes the circuit court's finding that he violated the Village's

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Code by permitting the commercial storage of logs on his property. He argues that the uncontradicted evidence established that no wood that was stored on his property was ever sold to a third party, and thus his arrangement with Scott Burkemper did not constitute an impermissible commercial endeavor in contravention of the Village's Code.

¶65 The Village reiterates that section 5-5-2 of its Code specifically limits permissible uses of R-1 zoned property and argues that "[t]he leasing of R-1 residential property for the storage of logs or the storage of commercial vehicle[s] [are] not permitted uses of the property." Although Maksymonko testified at trial that the wood brought onto his property was for his own personal use, the Village contends that the scope of the logging activity occurring on his property belied his assertion that the wood was all for his personal use.

¶66 As set forth above, aside from "home occupations," the Village does not permit owners of R-1 zoned property from engaging in commercial endeavors. Village of Barrington Hills Village Code § 5-5-2(A). To constitute a home occupation, a commercial endeavor undertaken on R-1 zoned property must be incidental to residential use and must not constitute an annoyance to other residents. Village of Barrington Hills Village Code § 5-3-4(D).

¶67 Maksymonko maintained throughout the trial that the logs stored on his land were used by him to heat his house; however, the court heard evidence which led it to conclude that the activity occurring on Maksymonko's land was consistent with a commercial endeavor, not personal use. Although Maksymonko acknowledged that he had made an agreement with Scott Burkemper and permitted Burkemper access to his land, Ann Malinski testified that trucks from several other landscaping companies were also permitted ingress and egress to Maksymonko's

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vacant lot to deposit wood. Specifically, she recalled seeing trucks from Trees R Us and KB landscaping as well as from Burkemper Tree Service traverse onto Maksymonko's property and dump logs. Moreover, despite Maksymonko's claim that he required truckloads of wood to heat his home, Ann reported seeing Maksymonko use his fireplace and chimney only a few times over the past several years.

¶68 In addition to seeing a steady stream of landscaping trucks drive on and off of Maksymonko's property, the Malinksi's, Naumann's, and Mick Johnson all reported hearing the sounds of workmen, chain saws and other equipment being used on the premises. These sounds were not intermittent; rather, they occurred all throughout the day during the Spring and Summer months. Although there was no evidence that Maksymonko personally ever sold the logs that were brought onto his land to third parties, Officer Dominick Caputo testified that during his investigation of the logging operation, Scott Burkemper informed him of the lease agreement and explained that Maksymonko's property was used as a "staging area for logs," which were subsequently transported to other locations. Based on the size of the wood pile and the evidence of the logging activity that occurred on Maksymonko's land, we do not find that the circuit court's conclusion that Maksymonko violated the Village's Code by engaging in the unlawful commercial storage of logs on his property was against the manifest weight of the evidence. The court's additional finding that Maksymonko's commercial endeavor constituted an annoyance and nuisance to the public is similarly not against the manifest weight of the evidence.

¶69 As a final matter, Maksymonko disputes the fines imposed by the trial court, alleging that the fines assessed against him were improper because he was not provided with adequate notice

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of his violations. Aside from failing to adequately raise this issue in the trial court or provide adequate legal support for this argument on appeal (Ill. S. Ct. R. 341(h)(7)), we observe that the Village's Code provides for the mandatory imposition of a fine of up to \$750 dollars for "each day" that a resident violates a provision in the Code. Village of Barrington Hills Village Code §§ 1-4-1, 1-4-3. Where a local ordinance provides for the mandatory imposition of fines when a resident commits a violation, there is no requirement that the resident be afforded notice and an opportunity to cure the violation before being assessed fines. See, *e.g.*, *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806 (2006). Accordingly, we uphold the fines assessed against Maksymonko.

¶70 CONCLUSION

¶71 Upon review, we conclude that the circuit court's findings that defendant violated provisions of the Village's Code were supported by the evidence. Accordingly, the judgment of circuit court is affirmed.

¶73 Affirmed.