2012 IL App (1st) 111349-U

FIFTH DIVISION
September 28, 2012

No. 1-11-1349

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE VILLAGE OF ELMWOOD PARK, an Illinois municipal corporation, Plaintiff-Appellee, v. BERNARD RADOMSKI, TESSIE RADOMSKI, VALERIE RADOMSKI, AWARD LUMBER & CONSTRUCTION, INC., a dissolved corporation, and UNKNOWN OWNERS OF RECORD, individually and jointly, Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County, 10 M4 1119 Honorable Cheryl O. Ingram, Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment.

O R D E R

¶ 1 HELD: Where the plain language of section 11-31-1 of the Illinois Municipal Code allows a municipality to collect reasonable attorney fees incurred in relation to enforcement of the section, the trial court's award of attorney fees to the plaintiff was not in error.

¶ 2 Defendants appeal from an order of the trial court granting the Village of Elmwood Park (Village) attorney fees and costs in the amount of $7004.74, pursuant to section 11-31-1 of the

Illinois Municipal Code (Code) (65 ILCS 5/11-31-1 (West 2010)), which the Village had incurred in litigation involving the property at 1613 North 76th Avenue (Property). On appeal, defendants contend that the trial court erred in awarding attorney fees to the Village because the Village did not incur costs directly from demolishing, repairing, or removing debris from the Property. We affirm.

¶ 3 On July 16, 2010, the Village filed a Complaint and Affidavit for Administrative Search Warrant of the Property. In support, Janet Slusarz, a public health officer and registered nurse for the Village, averred she had reasonable grounds to believe that the premises on the Property, including a single-family home and unattached garage, was in "such a filthy and unihabitable condition *** so as to constitute a health and safety hazard to the residents and surrounding community." On June 30, 2010, Slusarz and members of the Village fire, police, property maintenance, and health departments responded to a complaint of a possible natural gas leak on the Property. At the Property, the Village employees met Valerie Radomski who claimed that her brother, Tom Radomski, was the owner of the Property. Valerie was questioned about the whereabouts of her father, Bernard Radomski, but she stated she did not know where her father was. Bernard was listed as the Property owner in Village records. Slusarz had been unable to locate Tom or Bernard at the time the complaint was filed.

¶ 4 Slusarz could smell "foul and noxious odors effusing from the house and garage" on the Property, which she identified as mold, mildew, and rotting or decaying food. She saw rat feces and rodent nests in the house and garage, indicating a rodent infestation, and observed that the actual structures had been poorly maintained. Slusarz also saw evidence that Valerie had been

living in the back yard of the premises and using a garden hose hooked up to a utility sink for sanitation. Further, Slusarz spoke to several neighbors who had complained about the emanating odors and presence of rats on the Property. Slusarz concluded with a request to inspect the property for faulty plumbing and electrical connections and potential rodent infestations, due to the "possible hazards to the healthy, safety, and welfare of the community."

¶ 5 The trial court denied the motion for administrative search warrant and directed the Village to refile and bring a complaint for violations after giving notice to defendants. The record shows that on July 30, 2010, the Village sent notice to Bernard Radomski, Tessie Radomski, the president of Award Lumber & Construction, Inc., a company with a Certificate of Levy against the Property, and the Registered Agent of Award Lumber, informing them of its intention to file suit due to the dangerous and unsafe premises on the Property. On August 17, 2010, the Village sent notice to Valerie Radomski, observing that records showed her parents, Bernard and Tessie Radomski, were deceased and that she was the surviving legal heir.

¶ 6 On September 1, 2010, the Village filed an Amended Complaint for Demolition and/or Repair of an Unsafe Structure pursuant to section 11-31-1(a) of the Code. The Village detailed Slusarz's observations from her visit to the property on June 30, 2010, and alleged that the Village had provided notice to defendants, but defendants had failed to cure the hazards on the Property. Therefore, the Village sought injunctive relief, fines, or remedies against defendants for maintaining the Property in an unsafe and dangerous condition.

¶ 7 On October 12, 2010, the trial court ordered Valerie to allow Village employees from the building code and public health departments to inspect the premises on the Property. The judge

also participated in the inspection.

¶ 8 Following the inspection, on October 15, 2010, the trial court ordered Valerie to correct various violations found on the Property by exterminating the Property for vermin and rodents, repairing the back porch at her own expense, paying for all necessary dumpsters for removal of debris, and repairing all holes which allowed entry into the garage and house. The order also stated that "the Village shall supply municipal employees to remove the [debris] at no cost."

¶ 9 On December 14, 2010, the parties appeared before the trial court for a status update on the state of the repairs. In a written order, the court set another status date for January 4, 2010, before which the Village was to inspect the property for compliance with the October 15 order. The Memorandum of Orders shows that on the January 4 date, the trial court found the inspection to be satisfactory and that no further inspections were necessary.

¶ 10 On January 6, 2011, the Village filed a motion for attorney fees, costs, and other expenses totaling $10,308.43. On March 30, 2011, the trial court entered a written order granting the Village $6075 in attorney fees and $929.74 in costs, for a total of $7004.74. In addition, the court permitted the entry of a lien against the Property in the amount of $7004.74.

¶ 11 Defendants' sole contention on appeal is that the trial court erred in awarding attorney fees to the Village. Specifically, defendants claim the court did not have authority to award attorney fees under section 11-31-1, because the Village did not demolish the subject Property and did not incur any actual costs from removal of debris or building repair. This issue is one of statutory interpretation, which we review *de novo*. *Ponto v. Levan*, 2012 IL App (2d) 110355, ¶ 25 (citing *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 35) (2009)).

¶ 12 When construing the meaning of a statute, a court's "primary objective is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 95 (quoting *People v. Perry*, 224 Ill. 2d 312, 323 (2007)). To determine the statute's plain meaning, a reviewing court must read all the provisions together and consider the legislature's purpose in enacting the statute. *Perry*, 224 Ill. 2d at 323. If the statute's language is clear and unambiguous, courts must apply the language without using other aids of statutory construction. *Choice v. YMCA of McHenry County*, 2012 IL App (1st) 102877, ¶ 27.

¶ 13 Section 11-31-1(a) of the Illinois Municipal Code provides, in pertinent part:

> "The corporate authorities of each municipality may demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings *** and may remove or *cause* the removal of garbage, debris, and other hazardous, noxious, or unhealthy substances or materials from those buildings.
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> ***
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> 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 or owners of the real estate ***." (Emphasis added.) 65 ILCS 11-31-1(a) (West 2010).

¶ 14 The statute allows a municipality to repair or remove debris from an unsafe and dangerous building. It further allows the municipality to *cause* to be repaired or *cause* the removal of debris from that same building. In order for the municipality to take action or cause action to be taken pursuant to the section, it must apply to the trial court for either an order authorizing that such action be taken or an order requiring the owner of the building to complete the repair and removal of debris. 65 ILCS 11-31-1(a) (West 2010). Read together with the cost provision, the plain language of the statute expressly states that the municipality may recover the costs it incurred in repair or debris removal, or in causing the repair or debris removal, and specifically includes attorney fees related to the enforcement of the section as a recoverable cost.

¶ 15 Defendants argue that section 11-31-1(a) only authorizes the recovery of attorney fees if the municipality incurred some cost directly from the actual repair or removal process. Here, although the Village paid no direct costs to repair the Property, in order to enforce the statute and cause defendants to repair and remove debris from the Property, the Village had to spend multiple hours in and out of court. Even before filing suit, the Village filed a complaint for a search warrant to inspect the Property and expended resources to locate the owners of the Property in order to provide notice of its intention to file suit. Once suit was filed, the Village was required to make multiple appearances before the court before defendants were ordered to make repairs on the Property. Thus, the Village incurred the attorney fees as a result of the enforcement action. The language of the statute contains no limitations to a municipality's recovery of reasonable attorney fees beyond the fees being related to enforcement and, in drafting section 11-31-1(a), the legislature clearly intended that a municipality could recover reasonable

attorney fees if they were related to enforcement of the section. Under these circumstances, we find the Village was entitled to recover the fees.

¶ 16 Our reading of the section is also supported by the Second District's holding in *City of McHenry v. Suvada*, 396 Ill. App. 3d 971 (2009). There, the city filed a suit against the defendant for failing to keep the premises on her property in a safe and habitable condition, and asked the trial court to issue a preliminary injunction to prevent occupancy of the premises until the premises was in compliance with the city code. *Suvada*, 396 Ill. App. 3d at 972, 974-75.. The court granted the injunction and the defendant began to repair the premises. Suvada, Ill. App. 3d at 975-76. Approximately one year later, the case proceeded to a bench trial. *Suvada*, 396 Ill. App. 3d at 977. Although both parties acknowledged the property was in compliance at that time, the city requested an award of attorney fees and costs pursuant to section 11-31-1 of the Code. *Id*. Ultimately, the trial court declined to award the city any attorney fees, finding that section 11-31-1 did not apply to the proceedings. *Suvada*, 396 Ill. App. 3d at 978. On appeal, the city argued it was entitled to $10,458.50 in attorney fees and costs pursuant to the statute. *Suvada*, 396 Ill. App. 3d at 984-85. The appellate court found that section 11-31-1 was applicable to the case and remanded the cause to the trial court to determine which of the requested costs and fees were reasonable and related to the litigation. *Suvada*, 396 Ill. App. 3d at 987-88. The court held, "section 11-31-1 *** entitled the City to recover only those attorney fees and costs that the trial court deems reasonable or 'related to' the suit." *Suvada*, 396 Ill. App. 3d at 985. Here, the Village requested $10,308.43 in attorney fees, costs, and expenses, but was only awarded $7,004.74. From this, we may infer that the trial court considered the different costs and

fees requested and only awarded those it determined were reasonable. As the requested attorney fees were also related to the Village's enforcement of the statute, we find the trial court acted properly in awarding attorney fees to the Village. See also *Village of Franklin Park v. Aragon Management, Inc.*, 298 Ill. App. 3d 774, 777-78 (1998) (the trial court has the discretion to determine whether costs were related to the enforcement of the section, and may award only those costs that were so related and reasonably necessary).

¶ 17 We acknowledge that, in their reply brief, defendants briefly suggest that the award of attorney fees to the Village was unreasonable. However, the record does not contain any evidence that defendants contested the amount of fees based on the reasonableness of the fees before the trial court, and therefore have forfeited review of the issue on appeal. See *LaSalle Bank, N.A. v. C/HCA Development Corporation*, 384 Ill. App. 3d 806, 826 (2008) (citing *People v. Woods*, 214 Ill. 2d 455 (2005)) (if a party fails to either object to an alleged error at trial or include it in a written posttrial motion, that issue is waived on appeal). Furthermore, defendants fail to cite to any authority or portions of the record to support their argument and did not address the issue in their initial appellate brief. As such, the issue of reasonableness has been waived. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the argument section of an appellant's brief "shall contain the contentions of the appellant *** with citation of the authorities and pages of the record relied on. *** Points not argued are waived and shall not be raised in the reply brief ***").

¶ 18 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 19 Affirmed.