

2013 IL App (2d) 130201-U  
No. 2-13-0201  
Order filed August 28, 2013

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE VILLAGE OF MONTGOMERY,	)	Appeal from the Circuit Court of
	)	Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-OV-3085
	)	
JERRY HERBORD,	)	Honorable
	)	William Parkhurst,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Presiding Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Plaintiff's noise-control ordinance was not unconstitutional under the first amendment, as it was a content-neutral regulation of the time, manner, and place of amplified speech, it was narrowly tailored to serve the significant governmental interest in preserving reasonable peace, and it left open ample alternative channels for communication (at a lower volume).
- ¶ 2 After a bench trial, *pro se* defendant, Jerry Herbord, was found to have violated a noise-control ordinance enacted by plaintiff, the Village of Montgomery, and was fined \$350. He appeals, arguing that the judgment is erroneous and that the ordinance is unconstitutional. We affirm.

¶ 3 The record in this case consists of a complaint charging defendant with the violation; a trial court order recording that, on January 24, 2013, after a bench trial, defendant was found guilty and fined \$350; and defendant's timely notice of appeal. There is no verbatim transcript of the trial, certified bystander's report, or agreed statement of facts. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). The appendix to defendant's brief includes an uncertified "Bystanders['] Report" and various other documents that are not in the record on appeal. We may not consider documents that are outside the record. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14 (2009). Insofar as defendant's argument relies on these documents, we disregard it.

¶ 4 Defendant argues first that the judgment is erroneous. Defendant states that he is appealing from a grant of summary judgment (735 ILCS 5/2-1005(c) (West 2010)), but the judgment was actually entered after a bench trial. Thus, we may reverse the judgment only if it is against the manifest weight of the evidence. See *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277 (2009). However, with no record of the trial, we cannot determine whether the evidence supported the judgment. Defendant as appellant must provide a sufficiently complete record to support his claim of error, and any doubts arising from the incompleteness of the record must be resolved in favor of the judgment. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *Han v. Holloway*, 408 Ill. App. 3d 387, 390 (2011). Therefore, we reject defendant's first claim of error.

¶ 5 Defendant's second contention is that the noise-control ordinance is unconstitutional. Plaintiff contends that defendant has forfeited this argument by failing to raise it at trial. Because the forfeiture rule is not a limitation on our jurisdiction (*Jackson v. Board of Election Commissioners of Chicago*, 2012 IL 111928, ¶ 33), we choose to address defendant's argument.<sup>1</sup>

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<sup>1</sup>In a criminal case, a party may challenge the constitutionality of a statute or an ordinance

¶ 6 We take judicial notice of the ordinance (see 735 ILCS 5/8-1002 (West 2012); *Pace v. Regional Transportation Authority*, 346 Ill. App. 3d 125, 132 (2003)). As pertinent here, it reads, “No person shall cause or allow the emission of sound during daytime hours (7 a.m. to 10:00 p.m.) from any noise source to any receiving residential land which exceeds 60 dBA when measured at any point within such receiving residential land \*\*\*.” Montgomery Municipal Code, §12-39(b) (adopted May 11, 2001). There are several exemptions, including the one for “community events,” defined as “such things as parades, festivals, drum corps shows, sports events, Fourth of July celebrations, sanctioned or sponsored in whole or in part by local governments, schools or charitable or service organizations.” Montgomery Municipal Code, §12-39(e)(4) (adopted May 11, 2001).

¶ 7 Defendant’s constitutional argument consists of one paragraph in which he cites *People v. Jones*, 299 Ill. App. 3d 739 (1998), *aff’d*, 188 Ill. 2d 352 (1999), and contends that the ordinance

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for the first time on appeal. *People v. Christy*, 139 Ill. 2d 172, 176 (1990). In a civil case, however, the forfeiture rule applies. *Forest Preserve District of Du Page County v. First National Bank of Franklin Park*, 2011 IL 110759, ¶ 27. Prosecutions for ordinance violations have variously been described as “quasi-criminal” (*Johnston v. City of Bloomington*, 77 Ill. 2d 108, 111-12 (1979)); “civil in nature and \*\*\* tried and reviewed as civil proceedings” (*City of Chicago v. Pudlo*, 271 Ill. App. 3d 107, 109-10 (1995)); and “quasi-criminal in nature” but “civil in form and \*\*\* tried and reviewed as [civil proceedings]” (*City of Elgin v. Hawthorne*, 204 Ill. App. 3d 807, 811 (1990)). We find it simpler to reject defendant’s claim on the merits than to decide whether forfeiture applies. Also, while we cannot say from the scant record whether defendant actually did raise his constitutional argument at the trial level, we resolve the ambiguity against him and assume that he did not. See *Foutch*, 99 Ill. 2d at 391-92.

violates the first amendment “by regulating speech on the basis of content without [a] compelling state interest.” We disagree.

¶ 8 The sound-amplification statute in *Jones* was invalidated because it favored advertising over all other broadcasting by exempting only the former, without the compelling state interest needed to support the content-based distinction. *Jones*, 188 Ill. 2d at 361-63. By contrast, a content-neutral regulation of the time, manner, and place of amplified speech will be upheld as long as it is narrowly tailored to serve a significant governmental interest and leaves open ample alternative channels for communicating the information. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Jones*, 188 Ill. 2d at 357.

¶ 9 We agree with plaintiff that the ordinance is akin to the one upheld in *People v. Arguello*, 327 Ill. App. 3d 984 (2002). That law imposed volume restrictions on the sound systems of motor vehicles being driven on public ways but exempted anyone participating in a parade or public assembly for which a valid permit had been obtained (*id.* at 987). The appellate court explained that preserving quiet is a significant governmental interest (*id.* at 988); the ordinance allowed people to “express themselves with music at any time below a certain volume” (*id.* at 989); and the ordinance did not restrict protected expression more than needed to achieve its purpose (*id.*). Also, the exemption for parades and public assemblies was content-neutral and applied to everyone. *Id.*

¶ 10 Here, the ordinance is also a valid time, manner, and place regulation. It is content-neutral. Content-neutral regulations “confer benefits or imposes burdens without reference to the ideas or views expressed.” *Id.* at 987-88; see *Turner Broadcasting System, Inc. v. Federal Communications Comm’n*, 512 U.S. 622, 643 (1994). The ordinance meets this test: it “restricts excess sound levels regardless of the content, whether it be restful or raucous, religious or rebellious, politically correct

or offensive.” *State v. Medel*, 80 P.3d 1099, 1102 (Idaho App. 2003). It is narrowly tailored to serve the recognized governmental interest in preserving reasonable peace and tranquility for the public (see *Arguello*, 327 Ill. App. 3d at 988; *Medel*, 80 P.3d at 1102); and it leaves people with ample alternative channels of expression: playing the same sound at a lower volume (see *Costello v. City of Burlington*, 632 F.3d 41, 46-47 (2d Cir. 2011)). And, like the exemption in *Arguello*, the exemption for public events is content-neutral. The ordinance does not violate defendant’s first amendment rights.

¶ 11 Defendant appears to contend that the exemption of “community events,” such as public festivals, from the ordinance denies him equal protection. Defendant does not cite any pertinent authority for this assertion (*Jones* addresses content-neutrality, not equal protection). Because defendant’s apparent argument is neither cogently developed nor supported by pertinent authority, we deem it forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991).

¶ 12 Defendant’s brief’s “Points and Authorities” section lists as one issue “Whether the \$350.00 fine \*\*\* was excessive and unjust.” The “Argument” section of the brief does not actually raise, much less support, this claim. Thus, the claim is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Holmstrom*, 221 Ill. App. 3d at 325.

¶ 13 The judgment of the circuit court of Kane County is affirmed.

¶ 14 Affirmed.