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2013 IL App (4th) 120811-U  
 NOS. 4-12-0811, 4-12-0826 cons.

**FILED**  
 July 15, 2013  
 Carla Bender  
 4<sup>th</sup> District Appellate  
 Court, IL

IN THE APPELLATE COURT  
 OF ILLINOIS  
 FOURTH DISTRICT

RICHARD B. ROBRock II,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v. (No. 4-12-0811)	)	Piatt County
THE COUNTY OF PIATT, ILLINOIS,	)	No. 09MR9
Defendant-Appellant,	)	
and	)	
SCOTT T. GAITROS and BRENDA J. GAITROS,	)	
Defendants.	)	
<hr style="border: none; border-top: 1px solid black; margin: 5px 0;"/>		
RICHARD B. ROBRock II,	)	
Plaintiff-Appellee,	)	
v. (No. 4-12-0826)	)	
SCOTT T. GAITROS and BRENDA J. GAITROS,	)	
Defendants-Appellants,	)	
and	)	Honorable
THE COUNTY OF PIATT,	)	Chris E. Freese,
Defendant.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
 Presiding Justice Steigmann and Justice Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court's entry of a declaratory judgment and a permanent injunction were not void for lack of subject-matter jurisdiction; and (2) the court correctly complied with this court's mandate on remand.

¶ 2 In March 2009, defendants Scott T. Gaitros and Brenda J. Gaitros submitted a special-use permit application to defendant County of Piatt (County) for a restricted landing area (RLA) on their property. In May 2009, the Piatt County board passed an ordinance granting the special-use permit. In July 2009, plaintiff, Richard B. Robrock II, filed a complaint for *de novo*

review and for declaratory and injunctive relief. In May 2011, the trial court found in favor of plaintiff, found the ordinance unconstitutional, and entered a permanent injunction against defendants. This court affirmed in part, reversed in part, and remanded with directions. *Robrock v. County of Piatt*, 2012 IL App (4th) 110590, ¶ 2, 967 N.E.2d 822. On remand, the trial court entered a modified judgment order.

¶ 3 On appeal, defendants argue (1) the trial court's order granting declaratory and injunctive relief was void because the court lacked subject-matter jurisdiction and (2) the court improperly applied the mandate of this court. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On April 7, 2008, the Gaitroses submitted an application to the County for a special-use permit for a restricted limited-access grass airstrip, measuring 100 feet wide and 2,400 feet long, on their property zoned as agriculture. The affected property amounted to 5.5 acres out of a 79.5-acre tract. The airstrip would allow takeoffs and landings of the Gaitroses' personal gyrocopter.

¶ 6 A gyrocopter, or gyroplane, is classified as an experimental aircraft that is sold as a kit. Once built, it must receive a certificate of air worthiness from the Federal Aviation Administration. A gyroplane has one or two seats, an open cockpit, and an uncovered gasoline aircraft engine with a muffler. It has a rotor on top similar to a helicopter and a propeller behind the pilot. Except on takeoff, the rotor is not powered by the engine and it helps keep the gyroplane elevated. Gyroplanes cannot hover like a helicopter. The propeller is powered during normal flight. A gyroplane typically flies at an altitude of 600 to 1,000 feet, although it might fly higher on long-distance trips.

¶ 7 An RLA is a private-use restricted facility. It is for the private use of one person having no more than six aircraft. No commercial operations are allowed. There are approximately 480 RLAs in Illinois, with seven located in Piatt County.

¶ 8 On May 13, 2008, the Piatt County Zoning Board of Appeals passed an ordinance granting the Gaitroses' application for a special-use permit. On May 16, 2008, the Gaitroses filed a second application for a special-use permit for a restricted limited-access grass airstrip on the 79.5-acre tract. The second application was not limited to "personal gyrocopter use."

¶ 9 On September 25, 2008, the Piatt County Zoning Board of Appeals, over plaintiff's objection, voted 4 to 1 to recommend approval of the Gaitroses' special-use permit application but failed to achieve the five votes necessary for approval. On October 14, 2008, the Piatt County State's Attorney opined that no special-use permit was required for an RLA. Based on that opinion, the Gaitroses withdrew their second application.

¶ 10 In November 2008, plaintiff filed a complaint for *mandamus* against the County, seeking to compel the County to enforce its zoning ordinance and to require the Gaitroses to obtain a special-use permit for the RLA. On March 16, 2009, the trial court directed the County to enforce its zoning ordinance and to require the Gaitroses to apply for a special-use permit.

¶ 11 On March 23, 2009, the Gaitroses filed an application for their third special-use permit for an RLA on their property. On May 12, 2009, the county board approved the special-use permit allowing the RLA on the Gaitroses' property.

¶ 12 In July 2009, plaintiff filed a complaint for *de novo* judicial review pursuant to section 5-12012.1 of the Counties Code (55 ILCS 5/5-12012.1 (West 2008)) and for declaratory and injunctive relief. Plaintiff contended the presence of the RLA had caused a reduction in the

fair market value of his property, the noise impacts plaintiff's wildlife preserve, and he and his wife both have hearing conditions that require them to avoid loud noise. Plaintiff argued the special-use permit granted to the Gaitroses is arbitrary and bears no real and substantial relation to the public health, safety, morals, comfort, and general welfare, and, therefore, is unconstitutional as applied to plaintiff's property. Plaintiff asked that the ordinance granting the special-use permit be declared void and further use of the Gaitroses' property for RLA purposes be enjoined.

¶ 13 In September 2009, the Gaitroses filed a motion to dismiss plaintiff's complaint. In November 2009, the trial court denied the motion to dismiss.

¶ 14 In May 2011, the trial court held a trial on plaintiff's complaint. Witness testimony was more fully set forth in our prior opinion, so we offer only a limited account here in this appeal. Scott Gaitros testified he owns approximately 500 acres in Cerro Gordo with about 160 acres used for farming. An 80-acre tract to the south of the Gaitros home contains the RLA, which runs from the southwest to the northeast. Illinois Route 32, which runs north and south, borders the east side of the Gaitros property. To the northeast of the Gaitroses' home sits plaintiff's property.

¶ 15 Plaintiff testified his property consists of 322 acres. He and his wife have developed a wildlife preserve on the property, which includes acres of timber, savannah, tall prairie grass, and a pond. In terms of development, plaintiff hoped to build one house per year. Plaintiff has observed several takeoffs and landings of the Gaitroses' gyroplanes. He stated "an hour in that gyro is like thirty airplanes taking off, because you have this continual Harley Davidson buzzing around in the sky for an hour or two."

¶ 16 Following closing arguments, the trial court issued its oral ruling. The court

stated it had "never seen a case more one-sided than this one" and ruled in favor of plaintiff. The court found the RLA was arbitrary, bore "no real and substantial relation to the public health, safety, morals, comfort and welfare and/or [was] unrelated to the health, safety, morals, comfort and welfare as applied to plaintiff's property." The court entered a declaratory judgment, finding the ordinance granting the special-use permit was unconstitutional and invalid as applied to plaintiff's property. The court also entered a permanent injunction enjoining and restraining the Gaitroses from using their property for RLA purposes, from using their property to take off and land aircraft of any kind, and from seeking another special permit application for RLA use.

¶ 17 The trial court's June 14, 2011, written order stated, in part, as follows:

I. A declaratory judgment is hereby entered finding that the use of the Gaitros property for Restricted Landing Area ("RLA") purposes, is arbitrary, bears no real and substantial relation to the public health, safety, morals, comfort, and welfare, and/or is unrelated to the public health, safety, morals, comfort, and welfare as applied to plaintiff's property.

II. A declaratory judgment is hereby entered finding that the SUP Ordinance passed by the Piatt County Board on May 12, 2009, which granted Scott T. Gaitros and Brenda J. Gaitros a special use permit for RLA purposes on the Gaitros property, is unconstitutional and invalid as applied to plaintiff's property and is, therefore, void and of no force and effect.

III. A permanent injunction is hereby entered enjoining and

restraining defendants, Scott T. Gaitros and Brenda T. Gaitros, from using the Gaitros property for RLA purposes.

IV. A permanent injunction is hereby entered enjoining and restraining defendants, Scott T. Gaitros and Brenda J. Gaitros, from using the Gaitros property to take off and land aircraft of any kind, from allowing aircraft to take off and land from the Gaitros property, and from seeking another special use permit for RLA use on the Gaitros property from County of Piatt, Illinois.

V. A permanent injunction is hereby entered enjoining and restraining defendant, County of Piatt, Illinois, from further considering or issuing a special use permit application for RLA use with respect to the Gaitros property."

¶ 18 On appeal, this court affirmed in part and reversed in part. *Robrock*, 2012 IL App (4th) 110590, ¶ 2, 967 N.E.2d 822. We found the trial court's decision that the special-use permit for the RLA was arbitrary and bore no real and substantial relation to the public health, safety, morals, comfort, and welfare of the public as applied to plaintiff's property was not against the manifest weight of the evidence. *Robrock*, 2012 IL App (4th) 110590, ¶ 61, 967 N.E.2d 822. However, we found the issuance of a permanent injunction as to the entire Gaitros property was overbroad. *Robrock*, 2012 IL App (4th) 110590, ¶ 66, 967 N.E.2d 822. The trial court's order defined the Gaitroses' property as being 435.05 acres, but we noted the focus of the case centered on the 79.5 acres on which the RLA was located as well as plaintiff's neighboring land. *Robrock*, 2012 IL App (4th) 110590, ¶ 66, 967 N.E.2d 822. We reversed the permanent injunction and

remanded to the trial court with directions that it modify the injunction to include only the 79.5-acre tract on which the RLA at issue was located. *Robrock*, 2012 IL App (4th) 110590, ¶ 66, 967 N.E.2d 822.

¶ 19 In May 2012, the trial court directed plaintiff to submit a new order in compliance with appellate court rules. Plaintiff filed a motion for entry of an order modifying the June 14, 2011, judgment order, asserting only paragraphs III, IV, and V of the order dealing with the permanent injunction should be modified. Plaintiff also noted defendants contended paragraphs I and II, dealing with the declaratory judgment, should be modified as well. Plaintiffs objected to defendants' contention, claiming it went beyond the scope of this court's mandate.

¶ 20 The Gaitroses responded, asserting the failure to amend the declaratory judgment paragraphs would be inconsistent with this court's order. Further, the Gaitroses argued the entry of a declaratory judgment as to the entirety of their property, in light of this court's opinion, would deprive them of their property rights without due process of law. The County also responded, stating it would be denied its authority to zone if the declaratory judgment is entered against the entire 435.05 acres.

¶ 21 In June 2012, the trial court heard arguments on the matter and issued its written order modifying paragraphs III, IV, and V. The court entered a permanent injunction enjoining and restraining the Gaitroses from using the 79.5 acres to take off and land aircraft of any kind, from allowing aircraft to take off and land from the 79.5-acre tract, and from seeking another special-use permit for an RLA on those 79.5 acres. The court also enjoined the County from further considering or issuing a special-use permit for an RLA on the 79.5-acre tract.

¶ 22 In July 2012, the Gaitroses filed a motion to reconsider, arguing the trial court's

order failed to reflect the letter and intent of this court's mandate. In August 2012, the court denied the motion. The Gaitroses (No. 4-12-0826) and the County (No. 4-12-0811) appealed, and this court consolidated the cases.

¶ 23

## II. ANALYSIS

¶ 24

### A. Subject-Matter Jurisdiction

¶ 25

On appeal, the Gaitroses argue the trial court erred in entering orders granting declaratory and injunctive relief over their property, claiming the court lacked subject-matter jurisdiction over acres that were not the subject of the special-use permit. They argue the only property before the court was the 5.5 acres of the 79.5-acre tract, and they ask this court to reverse the grant of injunctive relief as to the 74 acres not part of the application for the special-use permit and modify the declaratory relief to only apply to the 5.5-acre RLA parcel.

¶ 26

The County also argues the trial court lacked subject-matter jurisdiction over the Gaitroses' property that was not subject to the county board's grant for special use, which it states was 5.5 acres. Thus, the County contends, the lack of subject-matter jurisdiction over the additional property renders the court's declaratory judgment against the additional property void.

¶ 27

"[S]ubject matter jurisdiction' refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002). Our supreme court has stated "it is well settled that '[a] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally.'" *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95,

103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 861-62 (1945)).

¶ 28 In April 2008, the Gaitroses submitted an application for an RLA on 5.5 acres out of a 79.5-acre tract. Ultimately, the county board approved the special-use permit allowing the RLA. In July 2009, plaintiff filed his complaint for *de novo* judicial review and for declaratory and injunctive relief, taking issue with the special-use permit approved by the county board. Pursuant to section 5-12012 of the Counties Code (55 ILCS 5/5-12012 (West 2008)), the trial court had jurisdiction to consider the validity of the zoning ordinance, *i.e.*, that pertaining to the RLA.

¶ 29 Initially, we note the Gaitroses did not even argue the special-use permit only applied to the 5.5 acres until filing their petition for rehearing in this court, which we denied. But then, on remand, the alternative modified order espoused by the Gaitroses sought to limit the permanent injunction and declaratory relief to only the 79.5-acre tract. Now, in this appeal, the Gaitroses ask this court to further limit both the permanent injunction and the declaratory judgment to the 5.5-acre portion of the 79.5-acre tract.

¶ 30 The Gaitroses' claim is not well-taken. Attempting to limit the acreage at issue at this stage of the legal process is inappropriate given their stance throughout the bulk of this case. The 79.5-acre tract is at the heart of this case.

¶ 31 Defendants go to great lengths to argue the trial court's jurisdiction did not extend to the entirety of the Gaitroses' property. But the entirety of the property was not before the court. The special-use permit revolved around the 5.5-acre RLA located on the 79.5-acre tract of land. That is what the evidence focused on, and that is what the ordinance applied to. The

special-use permit and the ordinance did not magically sprout beyond the 79.5 acres, and the trial court's decision on the constitutionality of the ordinance could only have applied to the 79.5 acres. Granted, the relief provided by the court in issuing the permanent injunction was overbroad, but that issue was addressed in our previous appeal. *Robrock*, 2012 IL App (4th) 110590, ¶ 66, 967 N.E.2d 822.

¶ 32 We note in its reply brief that the County backs off its claim in its initial brief that the trial court only had jurisdiction over that land designated for special use, *i.e.*, the 5.5 acres. The County states "Plaintiff is probably correct when he argues that since the Gaitroses did not separate the 5.5 acres from the 79.5 acre tract, the trial court had subject matter jurisdiction over the 79.50 acre tract to enter a declaratory judgment after its § 5-12012 de novo review." The County was correct to concede this point.

¶ 33 In their reply brief, the Gaitroses do not dispute the trial court had jurisdiction to review the county board's grant of the ordinance approving the special-use permit. However, they claim the court did not have jurisdiction over their property that was not subject to the ordinance. Well, that too is a correct statement, but the declaratory judgment only applied to the land at issue in the ordinance—the 79.5 acres. It could not have applied to any other land not before the court.

¶ 34 Here, as a result of plaintiff's complaint for review, the trial court had subject-matter jurisdiction over the 79.5 acres on which the 5.5-acre RLA was located. The declaratory judgment did not apply to any land outside the 79.5 acres and could not have because no other land was before the court in considering the validity of the ordinance. Instead of trying to make arguments that they had not raised before, and before setting out on another round of litigation in

this court, the Gaitroses next step was to apply for a new special-use permit before the county board, if a RLA is feasible on their remaining property. As the court had jurisdiction to enter its June 2011 order, defendants' arguments are without merit.

¶ 35 B. Appellate Court Mandate

¶ 36 The Gaitroses argue the trial court improperly applied the mandate of this court. They claim our opinion and mandate must be read to include a modification to both the injunctive and declaratory relief. The County also argues the court failed to comply with our mandate. We disagree with defendants' arguments.

¶ 37 "The appellate court's mandate is its judgment, which, 'upon transmittal to the trial court, vests the trial court with authority only to take action that conforms with the mandate.' " *Quincy School District No. 172 v. Illinois Educational Labor Relations Board*, 366 Ill. App. 3d 1204-05, 1209, 853 N.E.2d 440, 443 (2006) (quoting *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152, 769 N.E.2d 1094, 1098 (2002)). "Where a trial court is told to proceed in conformity with the reviewing court's mandate, the trial court should consult the opinion to determine what the mandate requires." *Emerald Casino v. Illinois Gaming Board*, 366 Ill. App. 3d 113, 118, 851 N.E.2d 843, 848 (2006). "Generally, the correctness of a trial court's action on remand is to be determined from our mandate, as opposed to our opinion. [Citation.] This proposition, however, is based upon the assumption that the direction contained in our mandate is precise and unambiguous." *Bjork v. Draper*, 404 Ill. App. 3d 493, 502, 936 N.E.2d 763, 771 (2010).

¶ 38 In the case *sub judice*, this court's mandate stated as follows:

"It is the decision of this court that the order on appeal from

the circuit court be AFFIRMED IN PART, REVERSED IN PART, and the cause be REMANDED to the Circuit Court for the Sixth Judicial Circuit, Piatt County, for such other proceedings as required by the order of this court."

In our previous opinion we held the trial court's permanent injunction as to the Gaitros property was overbroad, reversed the permanent injunction, and remanded to the court with directions "to modify the injunction to include only the 79.5-acre tract on which the RLA at issue here was located." *Robrock*, 2012 IL App (4th) 110590, ¶ 66, 967 N.E.2d 822.

¶ 39 At the hearing on remand, the trial court pointed out the directive we set forth and stated it would "do nothing other than what the Appellate Court directed." As a result, the court entered a written order modifying the permanent injunction to enjoin and restrain the Gaitroses from using the 79.5-acre tract as an RLA and the County from considering or issuing a special-use permit application for an RLA on the 79.5-acre tract.

¶ 40 The trial court's modified order complied with our mandate. It set the focus of the permanent injunction on the 79.5 acres that had been the issue of the special-use permit. It was not inconsistent with the directive we set forth in our opinion. Moreover, the court's action on remand did not create an inconsistent judgment order, *i.e.*, restricting the permanent injunction to the 79.5 acres but leaving the declaratory judgment to apply to the entire Gaitros property. The declaratory judgment ruling considered the constitutionality of the ordinance, which set forth the property at issue to be 79.5 acres. No other property was before the court. Thus, modification of the declaratory judgment order was unnecessary.

¶ 41

### III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment.

¶ 43 Affirmed.