



¶ 4

## I. BACKGROUND

¶ 5 In July 2011, the City filed a nontraffic complaint and notice to appear in case No. 11-OV-139, alleging defendant unlawfully maintained junk, trash, refuse, and inoperable or unlicensed vehicles in violation of section 5-3-2:A of the Jerseyville City Code (City Code) (Code of Ordinances of the City of Jerseyville, tit. 5, ch. 3, § 5-3-2:A (1996)) on June 20, 2011. In October 2011, the City issued a notice to appear in case No. 11-OV-192, alleging defendant committed a similar offense on September 21, 2011.

¶ 6 In January 2012, defendant filed a motion to dismiss pursuant to sections 2-603, 2-612, and 2-615 of the Code of Civil Procedure (735 ILCS 5/2-603, 2-612, 2-615 (West 2012)). In January 2012, the trial court denied the motion.

¶ 7 In March 2012, the trial court conducted a bench trial on the ordinance violations. Called as a witness by the City, defendant testified he was the owner of property located at 5 Industrial Park in Jerseyville and responsible for the maintenance and upkeep of the property. On cross-examination, defendant stated his business consists of construction and manufacturing and he keeps equipment on the property for use in the business. He stated the equipment included bulldozers, paving equipment, tractors, skid loaders, concrete forms, lumber, attachments, trucks, trailers, and implements. He stated every piece of equipment was operable except for an unlicensed 1965 Thunderbird that he "brought in for [his] daughter." Some construction equipment was not licensed because "it's a huge expense." Defendant stated he received a letter from the City in July 2011 regarding complaints about the property, but he could not tell with specificity what it was complaining about. He stated he does not have junk or accumulated trash on his property.

¶ 8 The trial court's written order indicated it found defendant guilty. The court's docket entry stated, in part, as follows:

"The court orders that dirt and road debris is to be removed within 30 days thereof. Jeff Wilson is to meet with [defendant], discuss with him what the city needs for compliance and provide a letter confirming to [defendant] with a copy to the court. The court will then inspect the premises and reset these matters for further hearing. The court specifically permits [defendant] to leave unlicensed vehicles used in the business but not driven on the roads of the State of Illinois."

¶ 9 In May 2012, the City sent a letter signed by Jeff Wilson to defendant listing the City's demands as to cleaning up the property. In July 2012, the trial court conducted an inspection of defendant's property and found as follows:

"A review of the premises reveals that the dirt and road debris referenced in this court's Order of March 28, 2012 remains on defendant's property. Based on the evidence previously presented and failure to remove same, defendant is found guilty on the ordinance violation filed September 21, 2011. The court further finds that this violation is ongoing, and, pursuant to ordinance, fines are assessed per day from the date of citation (285 days) and shall continue until the problem is abated plus attorney's fees and court costs incurred. The amount of the daily fine to be determined after

further hearing."

¶ 10 In December 2012, the City's attorney filed an affidavit setting forth his attorney fees. At a hearing on the fines and fees to be imposed, the parties agreed the problem on defendant's property had abated on November 19, 2012. The trial court found defendant had been in violation of the ordinance for 422 days. For the first 285 days prior to the court's March 28, 2012, order, the court imposed a fine of \$10 per day. For the 137 days following the order, the court imposed a fine of \$25 per day. The total fine amounted to \$6,275. The court also awarded attorney fees in the amount of \$762.

¶ 11 In January 2013, defendant filed a motion to vacate judgment, arguing the City failed to sustain its burden of proof that defendant committed an ordinance violation. Defendant complained the ordinance citation listing junk, trash, and/or inoperable or unlicensed vehicles failed to identify with reasonable certainty the nature and location of the alleged objects. Further, defendant argued the photographs utilized by the trial court were not properly identified or introduced into evidence. Defendant claimed that, "while photographs were displayed and examined, the record lacks any evidence that any particular photographs identified by date, number and subject matter were properly entered into evidence." Thus, defendant argued the judgment must be vacated, with the exception to that relating to the Thunderbird vehicle.

¶ 12 In February 2013, the trial court held a hearing on the motion to vacate. The court found the photographs were presented at the hearing and were admitted into evidence and defense counsel did not offer a specific objection as to the foundation of the photographs. Even if the court erred in admitting the photographs, it stated there was "more than sufficient evidence to find the defendant guilty of the city ordinance violation." Defendant appealed, and this court

consolidated the cases.

¶ 13

## II. ANALYSIS

¶ 14

### A. Evidence of Ordinance Violations

¶ 15 Although a municipality's enforcement of an ordinance is quasi-criminal in nature, the case "is tried and reviewed as a civil proceeding." *Village of Plainfield v. American Cedar Designs, Inc.*, 316 Ill. App. 3d 130, 135, 775 N.E.2d 1002, 1007 (2000). A municipal ordinance violation must be proved by a clear preponderance of the evidence. *City of Peoria v. Heim*, 229 Ill. App. 3d 1016, 1017, 594 N.E.2d 778, 780 (1992); see also Illinois Supreme Court Rule 578 (eff. Dec. 7, 2011) (stating "[t]he prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not that the violation occurred").

¶ 16

"Generally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12, 965 N.E.2d 393; see also *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1048, 710 N.E.2d 1242, 1248 (1999) (stating a trial court's factual determinations regarding an ordinance violation will be not reversed on appeal unless they are contrary to the manifest weight of the evidence). "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 1130 (2002). Where a question of law is involved, our review is *de novo*. *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill. App. 3d 836, 871, 906 N.E.2d 751, 781 (2009).

¶ 17

In the case *sub judice*, defendant argues the City failed to prove he committed an

ordinance violation by a clear preponderance of the evidence. The City charged defendant with ordinance violations allegedly committed on June 20, 2011, and September 21, 2011, in regard to junk, trash, refuse, and/or inoperable or unlicensed vehicles. At trial, the only witness called by the City was defendant.

¶ 18 Defendant raises the issue concerning the photographs relied on by the trial court and whether they were properly admitted. For a photograph to be admitted, the proponent must establish a proper foundation by showing (1) the photo truly and accurately represents what it purports to portray and (2) the subject of the photo was in substantially the same condition as it was when the offense occurred. *Johnson v. Bailey*, 2012 IL App (3d) 110016, ¶ 13, 967 N.E.2d 961. The admission of photographs is a matter left to the trial court's discretion, and we will not disturb that ruling absent an abuse of that discretion. *Gausselin v. Commonwealth Edison Co.*, 260 Ill. App. 3d 1068, 1084, 631 N.E.2d 1246, 1257 (1994).

¶ 19 In this case, a "supplemental record" has been included containing all of the photographs within the possession of the Jersey County Circuit Clerk pertaining to these two ordinance violations. Therein, 27 photographs are included, with 1 stamped "3/26/2012," 11 stamped "3/27/2012," 4 stamped "3/28/2012," and the rest unstamped. On several of the photographs there are handwritten notations (author unknown), such as "junk," "no plate," "no license," "expired," or "concrete piles." None of the photographs are marked with exhibit stickers.

¶ 20 While defendant was on the stand, the trial judge stated "it might expatiate things if I just look at the pictures" so he asked to see them "real quick." The judge looked at the photographs and said "this one doesn't show much," "that one looks like junk to me," "that looks

a little junky to me," "how about this, it looks pretty trashy." This court has no idea which photo the judge was referring to because they are not marked and were not identified.

¶ 21 Later on in the hearing, the City's counsel asked if he needed "to go through the foundation of all of this." The trial judge stated, "I think he's already . . . acknowledges it's his." Defense counsel stated no photos from the date of the violations were included. The City's counsel stated he could "have him lay that foundation," which presumably meant someone named Jeff Wilson who spoke at the hearing but never testified. Near the end of the hearing, the following exchange occurred:

"THE COURT: Any objection to introduction of these exhibits into evidence? These will be permitted without objection.

MR. KELTY [(defense counsel)]: Objection to these judge?

THE COURT: I think this . . . the argument this shows is the ongoing nature of the offenses that . . . he's using this in an effort to contradict your client's testimony that these things come and go. They're there for a short period of time and gone. And what he's showing by these pictures is that that same stuff has been there since June and now this is March so I'm gonna rule that over your objection.

MR. KELTY: Judge those photos . . .

THE COURT: I'm gonna ignore anything that says no plate or expired.

MR. KELTY: There's no date on the photos.

THE COURT: March 27.

MR. KELTY: The other set.

THE COURT: When were these taken?

MR. KELTY: We don't know.

THE COURT: When were these taken?

JEFF WILSON: Those were taken back in the summer . . .

fall Your Honor. I didn't have a camera at that time that put the date on the photo.

THE COURT: So sometime after June 20th?

JEFF WILSON: Yes.

THE COURT: Okay. Are allowed. The court's gonna rule as follows [at] this point in time. That based upon the evidence presented there is sufficient evidence to show that on the dates in question that [defendant] was in violation of the City Ordinance violations."

¶ 22 The City argues defendant failed to object to the introduction of the photographs and could not wait to do so in his posttrial motion. However, we find defendant raised an adequate objection at trial. Defense counsel was obviously questioning the validity of the photographs as evidence given his statements as to when they were taken. Further, the trial court stated it was overruling the objection. Thus, defense counsel properly preserved the issue.

¶ 23 In considering the admission of the photographs into evidence, we find the

requisite foundation for their admission was seriously lacking. The City did not introduce them, there are no exhibit numbers on them, and the City did not ask that they be admitted. Further, no sworn witness testified to taking the pictures or identified where the alleged ordinance violation could be seen therein. The trial judge simply asked to see the pictures and then considered them in making his ruling. We note the judge, at the hearing on the motion to vacate, stated, in part, as follows:

"Is this the cleanest prettiest record? Am I gonna be proud to have this record go before the Appellate Court? Probably not. But at the end of the day it's also an ordinance violation this is kinda how those things go. But I would think, again, I think the bigger issue is objection, foundation, sustained. Or overruled. But that didn't happen so now you want me to go back and fix it. Well it's too late to fix it. I mean they're in. Right, wrong or indifferent, they're in and part of is there should have been a properly presented foundation or a properly presented objection and there wasn't."

¶ 24 The trial court's confession that this would not be the "prettiest record" is an understatement. The transcript from the hearing does not reflect an adversarial proceeding in a courtroom. The questions posed to Wilson, who apparently was in the gallery, and the court's remarks about photographs that were not even marked, introduced, or testified to by a City witness were not helpful to this court in determining whether defendant committed the alleged ordinance violations.

¶ 25 We find the trial court improperly admitted the photographs as an adequate

foundation had not been established. However, this does not automatically mean the court's findings of guilt must be overturned. Section 5-3-2:A(1) of the City Code (Code of Ordinances of the City of Jerseyville, tit. 5, ch. 3, § 5-3-2:A(1) (1996)) defines a nuisance as "[t]he storing of junk, trash or refuse on private property within the city, or any motor vehicle which is not currently licensed or operable by the state and which remains upon any street, alley, lot or premises within the city for a period of time in excess of seven (7) days." See also *City of Countryside v. Oak Park National Bank*, 78 Ill. App. 2d 313, 315 n.1, 223 N.E.2d 293, 294 n.1 (1966) (stating a trial or reviewing court may take judicial notice of an ordinance despite the ordinance not having been introduced into evidence); 735 ILCS 5/8-1001 (West 2012) (stating courts of original jurisdiction shall take judicial notice of municipal ordinances).

¶ 26 Here, the cited offenses alleged defendant had junk, trash, refuse, and/or inoperable or unlicensed vehicles on his property. We note the specific ordinance is written in the disjunctive, and the use of the disjunctive "or" indicates a choice between alternatives. See *Weydert Homes, Inc. v. Kammes*, 395 Ill. App. 3d 512, 518, 917 N.E.2d 64, 69 (2009). At the hearing, defendant, the only witness who actually testified, admitted the Thunderbird was not licensed. Defendant's motion to vacate even acknowledged the judgment against him was correct in regard to the Thunderbird, and defense counsel once again conceded this point at oral arguments. That said, defendant's admission only established a single violation, and without any other evidence, the trial court's guilty finding on the second ordinance violation cannot stand. Consequently, as the City only proved one of the four allegations, we reduce the fine by 75% to \$1,568.75.

¶ 27

B. Attorney Fees

¶ 28 Defendant argues the City was not entitled to an award of attorney fees. "Illinois follows the "American Rule," which provides that absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs.' [Citation.] If a statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees 'so long as they are reasonable.' [Citation.]" *McNiff v. Mazda Motor of America, Inc.*, 384 Ill. App. 3d 401, 404, 892 N.E.2d 598, 602 (2008). A trial court has broad discretion in awarding attorney fees and that decision will not be reversed on appeal absent an abuse of discretion. *In re Estate of Callahan*, 144 Ill. 2d 32, 43-44, 578 N.E.2d 985, 990 (1991).

¶ 29 Section 1-2-1 of the Illinois Municipal Code (65 ILCS 5/1-2-1 (West 2012)) provides "[t]he corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper." Section 11-60-2 states municipalities "may define, prevent, and abate nuisances." 65 ILCS 5/11-60-2 (West 2012); see also *Village of Northfield v. BP America, Inc.*, 403 Ill. App. 3d 55, 58, 933 N.E.2d 413, 417 (2010) (finding non-home-rule units may adopt ordinances regulating nuisances). "[T]he express statutory power to adopt an ordinance carries with it the implicit authority to adopt penalties for the violation of such ordinance." *Metropolitan Sanitary District of Greater Chicago v. On-Cor Frozen Foods, Inc.*, 36 Ill. App. 3d 239, 243, 343 N.E.2d 577, 580 (1976).

¶ 30 Here, the City of Jerseyville adopted ordinances to regulate nuisances. See Code of Ordinances of the City of Jerseyville, tit. 5, ch. 1, § 5-1-1 (1996). In addition to imposing fines for violating a code provision, "the city may also levy a charge for attorney fees, court costs and other expenses against the violator not to exceed five hundred dollars (\$500.00)." Code of

Ordinances of the City of Jerseyville, tit. 1, ch. 4, § 1-4-1:F (Ord. 1403, June 24, 2003).

¶ 31 In this case, the trial court ordered defendant to pay \$762 in attorney fees, finding it to be "an incredibly reasonable figure given the amount of time that has been devoted to this" case. However, as the City only proved defendant guilty of one ordinance violation, the City was only entitled to an award allowed under the nuisance ordinance for a single case. Thus, the award of attorney fees must be reduced to \$500.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated and pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), , we affirm the trial court's judgment finding defendant guilty of the ordinance violations, reverse as to the other guilty finding, and reduce both the fine to \$1,568.75 and the award of attorney fees to \$500.

¶ 34 Affirmed in part and reversed in part; other relief granted.