2015 IL App (2d) 140395-U
Nos. 2-14-0395 & 2-14-0665 Cons.
Order filed August 14, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BRIAN BACARDI and JEAN BACARDI, Plaintiffs-Appellants, v. THE VILLAGE OF HAWTHORN WOODS, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Lake County. No. 13-MR-671 Honorable Jorge L. Ortiz, Judge, Presiding.

BRIAN BACARDI and JEAN BACARDI, Plaintiffs-Appellants, v. THE VILLAGE OF HAWTHORN WOODS, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Lake County. No. 13-MR-1803 Honorable Jorge L. Ortiz, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) We dismissed one of plaintiffs' appeals, as plaintiffs had obtained complete relief as to the judgment in that case; (2) defendant's seizure and euthanization of plaintiffs' dog was proper: per an effective agreed order, the dog was dangerous

> and defendant could take such action if plaintiffs kept the dog on their property, and defendant's ordinance to that effect was authorized by state law and thus was not preempted by it.

¶ 2 Plaintiffs, Brian and Jean Bacardi, appearing *pro se*, appeal the trial court's orders determining that ordinances of defendant, the Village of Hawthorn Woods, were not preempted by the Animal Control Act (Act) (510 ILCS 5/1 *et seq*. (West 2012)) and upholding an administrative decision to allow their dog to be seized and euthanized. We dismiss appeal No. 2-14-0395 and affirm in appeal No. 2-14-0665.

¶ 3 I. BACKGROUND

¶ 4 On November 14, 2012, Chief Jennifer Paulus of the Hawthorn Woods police department sent plaintiffs a certified letter stating that, based on bites and numerous complaints, their dog was "vicious" under Hawthorne Woods Village Code § 4-2-3-2(Q) (amended Aug. 17, 2009) and could no longer be housed within the village. Plaintiffs appealed, and an administrative hearing was held. At the hearing, there was evidence that the dog had bitten a child, among four other reported bite incidents. Plaintiffs provided testimony that the bite to the child was an accident and that the dog was provoked. The hearing officer upheld the determination that the dog was vicious and could no longer be housed in the village. On March 21, 2013, plaintiffs filed a complaint for administrative review, in case No. 13-MR-671 (the first case). Plaintiffs contended that the village failed to follow the proper procedure and that the ordinance conflicted with and was preempted by the Act.

¶ 5 While the first case was pending, the village issued two citations to plaintiffs in regard to another dog bite, which occurred on May 26, 2013. The first ticket cited a violation of Hawthorn Woods Village Code § 5-4-2 (E)(3) (amended Apr. 10, 1995) for a dog bite. The second was a

citation for housing, keeping, or maintaining a dangerous dog under Hawthorn Woods Village Code § 4-2-3-2(S) (adopted Apr. 8, 1986). A hearing was scheduled for August 6, 2013.

¶ 6 Before the hearing, the parties entered into an agreed order under which plaintiffs stipulated to the facts of each citation, agreed to pay fines, and agreed that the dog could not be kept or housed within the village. The agreed order further stated that, if the dog were found in the village, the village was authorized to seize the dog and have it euthanized. The village could also reinstate the matter and seek additional relief. The agreement stated that the order was subject to any subsequent order entered by the trial court and that neither party was waiving any right or defense as it related to "this proceeding or any other matter." The hearing officer accepted the agreed order.

¶ 7 On September 2, 2013, the village moved to reinstate the matter, based on a violation of the agreed order, and a hearing was held. At the hearing, there was evidence that a police officer familiar with the dog had seen the dog on plaintiffs' property in the village. There was also evidence that a fine was paid late. Plaintiffs denied that the dog had been brought back onto their property. The hearing officer determined that the terms of the agreed order had been violated. The hearing officer reinstated the two citations and ordered that the dog be seized and euthanized. On October 3, 2013, plaintiffs filed a complaint for administrative review, in case No. 13-MR-1803 (the second case). Like in the first case, they alleged in part that the applicable ordinances were void because they conflicted with and were preempted by the Act.

¶ 8 On March 25, 2014, the trial court entered orders in both cases. In the first case, the court determined that the village failed to follow the procedures set forth in its ordinances when it proceeded to an administrative hearing without a review by the chief operating officer. See Hawthorn Woods Village Code § 4-2-3-2(Q) (amended Aug. 17, 2009). Thus, the court reversed

the determination that the dog was vicious. The order did not state that it was remanding the matter. The court also found that the ordinance was not preempted by the Act, and thus it denied plaintiffs' request for an order that the ordinance was void.

¶ 9 In the second case, the court found that the proper procedures were followed. The court noted that, unlike in the first case, there was no review of a finding that the dog was vicious under section 4-2-3-2(Q) of the village code, as the citations were brought under different ordinances. The court further found that the agreed order controlled. Applying the provision in the agreed order that neither party was waiving defenses, the court addressed plaintiffs' preemption argument, finding that the ordinances did not conflict with the Act. Thus, the court affirmed the administrative order allowing seizure and euthanization of the dog. Plaintiffs appealed both orders. We granted plaintiffs' motion to consolidate the appeals.

¶ 10 II. ANALYSIS

¶ 11 Before addressing plaintiffs' contentions, the village initially contends that the appeal in the first case is procedurally improper because plaintiffs were granted relief. " 'A party cannot complain of error which does not prejudicially affect it, and one who has obtained by judgment all that has been asked for *** cannot appeal from the judgment.' " *Strategic Energy, LLC v. Illinois Commerce Comm'n*, 369 Ill. App. 3d 238, 245 (2006) (quoting *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 386 (1983)). "The general rule is that the successful party cannot appeal from those parts of a decree that are in its favor in order to reverse other aspects of the decree." *Id.* "The appellate forum is not afforded to successful parties who may not agree with the reasons, conclusions, or findings below." *Id.* Further, "as noted in other contexts, our courts do not sit to render advisory opinions on abstract questions of law to guide

potential future litigation." *Steel City Bank v. Village of Orland Hills*, 224 Ill. App. 3d 412, 416 (1991).

¶ 12 Here, plaintiffs were granted full relief in the first action, as the village's finding that the dog was vicious and could not be housed in the village was reversed with no mention of a remand for further proceedings. The court's determination concerning preemption was not necessary given that it reversed based on the village's failure to follow proper procedures. Thus, even though the court found against plaintiffs on that issue, the effect of the judgment was entirely in their favor. Accordingly, we dismiss the appeal in the first case. See *Strategic Energy, LLC*, 369 Ill. App. 3d at 245.

¶ 13 In their appeal in the second case, plaintiffs first contend that the reversal of the finding that the dog was vicious in the first case negated the determination that the dog was dangerous in the second case, that it rendered the agreed order defective, and that any claim that they violated the agreed order was rendered void. The village contends that the entire matter is controlled by the agreed order, in which plaintiffs stipulated to the facts alleged in the citations and agreed that the village could seize and euthanize the dog should plaintiffs bring it back into the village.

¶ 14 Appeals from administrative hearings are governed by the Administrative Review Law. 735 ILCS 5/3-101 *et seq*. (West 2012); *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 385 (2010). The reviewing court reviews the decision of the agency, not the trial court. *Provena Covenant Medical Center*, 236 Ill. 2d at 386. An administrative agency's factual findings and credibility determinations will not overturned unless they are against the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). An administrative agency's conclusions regarding questions of law, in contrast, are not subject to deference; rather, the court's review is

independent. *Id*. Finally, an administrative agency's determinations regarding mixed questions of fact and law, that is, questions involving the examination of the legal effect of a given set of facts, are subject to the intermediate "clearly erroneous" standard of review. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204, 205 (1998).

¶ 15 At issue are two citations. One citation was issued for a dog bite under Hawthorn Woods Village Code § 5-4-2(E)(3) (amended Apr. 10, 1995), which provides that "[n]o owner of a dog shall permit such dog to bite, scratch or otherwise injure any person who is peaceably conducting himself in any place where he may lawfully be." The second was a citation under Hawthorn Woods Village Code § 4-2-3-2(S) (adopted April 8, 1986), which provides:

> "The Housing, Keeping And/Or Maintenance Of Any Dangerous Animal(s) Within The Corporate Limits Of The Village: As used in this subsection, 'dangerous animal(s)' shall mean any animal or animals which are wild or are not naturally tame and gentle, or which, because of size, number, vicious nature, unpleasant odor, poisonous venom, tendency to run at large or propensity to serve as a disease vector, or other characteristics of the same nature, could constitute a danger to human life, health or property, or produces material annoyance, inconvenience, discomfort or hurt to any person. The members of the police department are authorized to destroy any dangerous animal of any kind when it is reasonably necessary for the protection of any person or property. Any expense incurred in the handling of any animal under the provisions of this subsection shall be borne by the owner, including, but not limited to, impoundment fee."

Hawthorn Woods Village Code § 4-3-2-3(Q) (amended Aug. 17, 2009) provides definitions of dangerous and vicious dogs and contains a specific procedure for the initial determination and appeal of a determination that a dog is dangerous or vicious. Under that section, the police

initially make the determination and the owner may then appeal to the Chief Operating Officer for review. However, that provision is not included in section 4-2-3-2(S), which prohibits the keeping of dangerous animals. Hawthorn Woods Village Code § 4-2-3-2(S) (adopted April 8, 1986).

¶ 16 Here, the second case proceeded under the two citations, and plaintiffs entered an agreed order stipulating to the allegations. They also agreed that, if the dog were found again in the village, the village could seize and euthanize it. That order was binding.

¶ 17 Agreed orders are effectively the parties' private contractual agreement and as such they are generally binding on the parties. *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 28. However, exceptions can arise where one party shows fraudulent misrepresentation or coercion in the making of the agreement, the incompetence of one of the parties, gross disparity in the position or capacity of the parties, errors of law apparent on the face of the record, or newly discovered evidence. *Id*. Likewise, stipulations of fact should be construed to give effect to the intent of the parties and are binding and conclusive upon them. See *People v. Early*, 158 Ill. App. 3d 232, 239 (1987). "The parties, however, cannot bind the court by stipulating to a question of law or the legal effect of facts." *Dawdy v. Sample*, 178 Ill. App. 3d 118, 127 (1989). In addition, while a stipulation is ordinarily binding, the trial court may, in its sound discretion, relieve a party from the effect of the stipulation upon an application seasonably made and a showing that the matter is in fact untrue, violative of public policy, or the result of fraud. *Ellis v. American Family Mutual Insurance Co*., 322 Ill. App. 3d 1006, 1010 (2001).

¶ 18 Here, there were no allegations such as fraudulent misrepresentation, gross disparity in the position or capacity of the parties, errors of law apparent on the face of the record, or newly discovered evidence. Instead, plaintiffs contend that the agreed order was subject to any other

order entered by the trial court and that the trial court's reversal in the first case negated the effect of the agreed order. But contrary to plaintiffs' argument, the determination that they were harboring a dangerous dog under section 4-2-3-2(S) in the second case was not predicated on the determination that it was a vicious dog under section 4-2-3-2(Q) in the first case. The determinations in the second case involved entirely different ordinances. In the first case, the ordinance prohibiting vicious dogs in the village was at issue, under which the village, after following certain procedures, could declare a dog vicious. Section 4-2-3-2(S) does not contain the same specialized procedures set forth in section 4-2-3-2(Q). Further, nothing in section 4-2-3-2(S) requires that there first be a finding that the animal is vicious under section 4-2-3-2(Q). Thus, the agreed order was not negated by the reversal in the first case.

¶ 19 The agreed order preserved defenses relating to the matter. Thus, plaintiffs next argue, and the trial court addressed, issues concerning preemption. Specifically, plaintiffs contend that the ordinances pertaining to animals are inconsistent with and preempted by the Act.

¶ 20 The parties agree that the village is a non-home-rule unit. As a non-home-rule unit, the village is governed by "Dillon's Rule." See *Janis v. Graham*, 408 Ill. App. 3d 898, 902 (2011). Under " 'Dillon's Rule,' " " 'non-home-rule units possess only those powers specifically conveyed by the constitution or by statute; thus, such a unit may regulate in a field occupied by state legislation only when the constitution or a statute specifically conveys such authority.' " *Tri-Power Resources, Inc. v. City of Carlyle*, 2012 IL App (5th) 110075, ¶ 10 (quoting *Janis*, 408 Ill. App. 3d at 902). " '[E]ven when a non-home-rule unit is conveyed the authority to regulate in a particular field, it may not adopt an ordinance that infringes upon the spirit of the state law or is repugnant to the general policy of this state. [Citation.] An ordinance enacted

under those powers that conflicts with the spirit and purpose of a state statute is preempted by the statute.' " *Id*. (quoting *Janis*, 408 Ill. App. 3d at 902).

¶ 21 "In construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). We have a duty to uphold a statute when reasonably possible, and if a statute's construction is doubtful, we will resolve the doubt in favor of the statute's validity. *Id*. at 306-07.

¶ 22 The Act contains provisions pertaining to dangerous and vicious dogs. 510 ILCS 5/2.05a, 2.19b (West 2012). It contains procedures for determining whether a dog is dangerous or vicious by the Department of Agriculture and provisions for appeal of such a determination. 510 ILCS 5/15.1 (West 2012). However, section 24 of the Act provides:

> "Nothing in this Act shall be held to limit in any manner the power of any municipality or other political subdivision to prohibit animals from running at large, nor shall anything in this Act be construed to, in any manner, limit the power of any municipality or other political subdivision to further control and regulate dogs, cats or other animals in such municipality or other political subdivision provided that no regulation or ordinance is specific to breed." 510 ILCS 5/24 (West 2012).

Further, "[u]nder the Illinois Municipal Code, a municipality may enact any ordinance that it deems necessary for the promotion of health or the suppression of diseases." *Village of Carpentersville v. Fiala*, 98 Ill. App. 3d 1005, 1007 (1981); see 65 ILCS 5/11-20-5 (West 2012). A municipality may also pass and enforce all necessary police ordinances. *Fiala*, 98 Ill. App. 3d 1007; see 65 ILCS 5/11-1-1 (West 2012). A municipality may also define, prevent, and abate nuisances. *Fiala*, 98 Ill. App. 3d 1007; see 65 ILCS 5/11-60-2 (West 2012).

¶ 23 In *Janis*, the plaintiff was injured by dogs running at large and filed a two-count civil suit against the owners, in which she alleged negligence and cited the Act and a local ordinance that prohibited owners from allowing dogs to run at large. The trial court dismissed the count based on the local ordinance. Addressing preemption, we stated that section 24 of the Act grants municipalities the authority to regulate animals and prohibit them from running at large. However, it does not permit regulation of civil liability for incidents involving animals running at large, as the Act specifically provides such a cause of action that is not based on negligence or strict liability. *Janis*, 408 Ill. App. 3d at 901, 903; see 510 ILCS 5/16 (West 2012). We observed that, by relying on the ordinance, the plaintiff appeared to be claiming that a lesser quantum of proof was necessary to sustain the action than was required by the Act. *Janis*, 408 Ill. App. 3d at 902. To the extent that the ordinance imposed liability under a different standard, it ran afoul of Dillon's rule and could not be the basis for a cause of action. *Id*. at 903.

¶ 24 Here, unlike in *Janis*, the citations at issue concerned the village's ability to promote health and safety and abate nuisances. Plaintiffs base their argument on differences between the Act and section 4-2-3-2(Q) in regard to the definitions of dangerous and vicious dogs and the procedure for determining and appealing those findings. But, as previously noted, the definition of a vicious dog and the procedure for determining and appealing that finding were not the subject of the two citations. That determination was made in the first case, in which plaintiffs have already obtained relief based on the village's failure to follow its own procedure. Plaintiffs have not demonstrated that the sections related to the citations at issue are not authorized by Illinois law or are inconsistent with the Act. Given the clear authorization for the village to further control and regulate dogs and its authorization to promote health and safety and abate nuisances, we determine that the ordinances are not preempted by the Act.

¶ 25 Relying on civil cases, plaintiffs next argue that the trial court erred in failing to consider the effect of provocation. However, plaintiffs stipulated to the facts supporting the citations as part of their agreed order. Further, they do not show how provocation would be relevant to the citations they received, especially the citation for keeping a dangerous animal. Provocation is relevant only under section 4-2-3-2(Q), which was not the basis for the citations at issue.

¶ 26 Plaintiffs next argue that the village code does not authorize the village to euthanize the dog. However, section 4-2-3-2(S) expressly states that "members of the police department are authorized to destroy any dangerous animal of any kind when it is reasonably necessary for the protection of any person or property," and plaintiffs agreed in their agreed order that the dog could be seized and euthanized. Hawthorn Woods Village Code § 4-2-3-2(S) (adopted Apr. 8, 1986). Thus, the village is authorized to euthanize the dog.

¶ 27 Finally, plaintiffs argue that the police were illegally on their premises when they allegedly viewed the dog on the property. This argument was not raised below and is forfeited. See *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) (appellant may not seek reversal on a theory not raised in trial court).

¶ 28 III. CONCLUSION

¶ 29 Plaintiffs obtained complete relief in the first case. Thus, that appeal is dismissed. In the second case, plaintiffs are bound by their agreed order, and the ordinances are not preempted by the Act. Accordingly, the judgment of the circuit court of Lake County in the second case is affirmed.

¶ 30 No. 2-14-0395, Appeal dismissed.

¶ 31 No. 2-14-0665, Affirmed.