2016 IL App (4th) 150216-U

NOS. 4-15-0216, 4-15-0466 cons.

FILED
May 24, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF ATLANTA, Logan County, Illinois, a Municipal Corporation,	)	Appeal from
	)	Circuit Court of
Plaintiff-Appellee,	)	Logan County
v.	)	No. 13OV208
MARK ARMSTRONG,	)	
Defendant-Appellant.	)	Honorable
	)	Thomas W. Funk,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's imposition of fines for defendant's ordinance violations but vacated an improperly imposed statutory fine.

¶ 2 In December 2013, plaintiff, the City of Atlanta, Illinois (City), filed a two-count complaint against defendant, Mark Armstrong, seeking a fine for each day defendant violated the Atlanta City Code (City Code) by allowing his building located at 105 Southeast Race Street, Atlanta, Illinois to create a nuisance. Following a bench trial, on December 5, 2014, the trial court found defendant had violated the City Code each and every day since September 10, 2013, and imposed the minimum authorized $250 fine for each violation, which totaled $112,750. Defendant filed a timely posttrial motion to modify or vacate the fine imposed, which the court denied on February 23, 2015. On March 25, 2015, defendant filed a notice of appeal from the

court's December 5, 2014, and February 23, 2015, orders, docketed No. 4-15-0216.

¶ 3 On March 11, 2014, defendant filed a motion to vacate an additional $28,410 fine imposed under section 5-9-1(c) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-9-1(c) (West 2012)). On May 5, 2015, the trial court denied defendant's motion. Defendant filed a second notice of appeal, docketed No. 4-15-0466, appealing the court's May 5, 2015, order and all orders appealed from in the original March 25, 2015, notice of appeal. We have consolidated both appeals.

¶ 4 On appeal, defendant argues the fines imposed against him should be vacated or reduced, or we should remand for the trial court to recalculate the appropriate amount of each fine. We affirm in No. 4-15-0216 and vacate in No. 4-15-0466.

¶ 5 I. BACKGROUND

¶ 6 A. Complaint

¶ 7 On December 17, 2013, the City filed a two-count complaint against defendant. Count I alleged, on September 10, 2013, defendant violated the unsafe buildings ordinance contained in section 7-1-2-5 of the City Code (Atlanta City Code § 7-1-2-5) by allowing an unsafe building to create a nuisance. For purposes of appeal the parties do not dispute the ordinances contained in the record demonstrate those in effect at the time of the violations. Count I requested the trial court impose a fine under the general penalty provision contained in section 1-4-1 of the City Code (Atlanta City Code § 1-4-1) of not less than $250 and not more than $500 for defendant's first offense. Count II alleged defendant continued to violate the unsafe buildings ordinance (Atlanta City Code § 7-1-2-5) each and every day after September 10, 2013. Count II requested the court impose a fine under the general penalty provision

(Atlanta City Code § 1-4-1) of not less than $250 and not more than $500 for each and every "conviction."

¶ 8 B. Pretrial Continuances

¶ 9 Over the course of a year, several pretrial proceedings were continued by the trial court or by agreement of the parties. On April 3, 2014, a pretrial hearing was continued due to the judge's absence. On April 23, May 1, and May 15, 2014, a pretrial hearing was continued by agreement of the parties. Following a May 29, 2014, pretrial hearing, the trial court set a bench trial for July 9, 2014. On July 7, 2014, the bench trial setting for July 9, 2014, was vacated by the trial court and, on July 8, 2014, reset for August 18, 2014.

¶ 10 C. Bench Trial

¶ 11 Defendant's bench trial occurred over three days between August and December 2014. A verbatim transcript of the testimony rendered was not prepared. Instead, for purposes of appeal, the trial court prepared a certified report of the proceedings in accordance with Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The following is a summary of the relevant evidence adduced at trial.

¶ 12 1. *Day One*

¶ 13 On August 18, 2014, the trial court commenced the bench trial. Fred Finchum, the Mayor of Atlanta, testified regarding the process the City undertakes after receiving a complaint of an ordinance violation. Typically, a complaint would come from private citizens. The City would determine the record title owner of the real estate and notify the owner of the alleged violations, giving an opportunity to remedy the violations. If the violation was not remedied in the time period in the notice to remediate, the violation would be referred to the city

attorney for prosecution.

¶ 14 Finchum testified the City became aware of defendant's building through defendant's neighbor who, after previously expressing interest in purchasing the property, had been given access to view the building by defendant's brother.

¶ 15 Finchum testified defendant was sent a notice of his alleged building violation, which was admitted into evidence. The notice, dated August 21, 2013, advised defendant, "after inspection by the City," his building was deemed dangerous under the unsafe buildings ordinance (Atlanta City Code § 7-1-2-5). The notice alleged defendant allowed his building to fall into a state of disrepair and the condition of the building caused or aided, or could have caused or aided, in the spread of disease or the harboring and spread of rodents, insects, or other vermin. The notice advised defendant (1) if he did not remedy the condition or demolish the building within 15 days, the City would proceed to take legal action to do so; (2) he could be subject to a fine of not less than $250 per day nor more than $500 per day for each day the building had been or continued to remain in a dangerous condition; and (3) the City could avail itself of all of the remedies set forth in section 11-31-1 of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/11-31-1 (West 2012)). The notice provided the City would "re-inspect" the building after the 15-day period expired and, if the building was still in violation of the City Code, it would file an ordinance-violation complaint, requesting an order requiring defendant to "comply with the City Code and seeking a fine for [his] violation of the same."

¶ 16 Finchum testified the City undertook precautionary measures, such as erecting barricades around the building, to protect citizens from a possible collapse of the building.

¶ 17 Finchum opined the building constituted an unsafe or dangerous structure since at

least September 10, 2013, and for each and every day through August 18, 2014, and still continuing.

¶ 18 Chip Smith, a building contractor, testified he was hired by defendant's neighbors to inspect defendant's building and authored a report dated July 7, 2013, which was admitted into evidence. The report contained a recommendation the neighbors contact the City to disclose mold and structural-related defects with defendant's building. Smith opined the cost to rehabilitate the building was likely cost prohibitive.

¶ 19 Brian Swanson, a structural engineer, testified he inspected the building on November 26, 2013, and prepared a report for defendant, which was admitted into evidence. The report concluded the building could be salvaged. However, it also indicated concern regarding the building's south wall and recommended it be addressed in the near future to prevent "further deflection and potential toppling of the upper portion of that wall onto the sidewalk and street below."

¶ 20 In May 2014, after defendant attempted to remedy the building, Swanson again made an inspection. Swanson still had concerns the building posed a risk of collapse. Swanson feared the upper portions of the south wall presented a danger to the sidewalk below and recommended the structure be enclosed from the elements.

¶ 21 At trial, Swanson opined the structure was not structurally sound and created a risk of collapse.

¶ 22 Following this evidence, the trial court continued the matter until September 19, 2014. On September 18, 2014, by agreement of the parties, the court vacated the September 19, 2014, trial date and rescheduled for October 22, 2014.

¶ 23 2. *Day Two*

¶ 24 On October 22, 2014, the trial court reconvened the bench trial. Finchum testified he inspected the building and opined it was still dangerous, unsafe, and posed a risk to the community. Finchum testified the structure remained open to the elements and feared the structure would deteriorate at a quicker rate. Finchum testified he believed the structure remained unsafe and dangerous each and every day since August 18, 2014, and still continuing.

¶ 25 Michael O'Neil, a structural engineer, testified he was retained by the City to render an opinion and authored a report dated May 14, 2014, which was admitted into evidence. O'Neil opined the building was dangerous, unsafe, and posed a risk of collapse. O'Neil testified, although the bracing defendant installed on the south wall improved the safety of the structure, there was still a risk of collapse. He further testified the overall deterioration of the building created risks of structural failure that may not be visible with the naked eye.

¶ 26 Following this evidence, the trial court continued the matter until December 5, 2014.

¶ 27 3. *Day Three*

¶ 28 On December 5, 2014, the trial court reconvened the bench trial. Defendant testified he received the City's notice to remediate. After receiving the notice, he hired Swanson to inspect the building. Swanson informed him the building was at risk of collapse.

¶ 29 Defendant testified he never received a report from the City regarding an inspection of the building. Defendant attempted to brace the south wall of the building. Defendant acknowledged the building was open to the elements, and humans or rodents could enter the structure without much effort.

¶ 30 Finchum testified he inspected the building and opined it was still dangerous, unsafe, and posed a risk to the community. He further testified the structure was open to the elements and feared the structure would deteriorate at an even quicker rate. Finchum testified the structure remained unsafe and dangerous each and every day since October 22, 2014, and still continuing.

¶ 31 Following closing arguments, the trial court found the City had proved both counts I and II of its complaint; defendant had violated the City Code each and every day since September 10, 2013 (451 separate violations). Defendant requested the court defer the imposition of fines until an evidentiary hearing could be held to determine the reasonableness of the fine. The court denied defendant's request, finding it had no discretion to impose an amount less than the minimum authorized by ordinance. The court imposed the minimum authorized $250 fine for each violation, which totaled $112,750. A December 5, 2014, docket entry indicates "A/R added with total of $141,160."

¶ 32 On December 12, 2014, the trial court entered an order to pay fines and costs in the amount of $141,160.

¶ 33 D. Posttrial Proceedings

¶ 34 In January 2015, defendant filed a timely posttrial motion, requesting the trial court modify or vacate the $112,750 in fines imposed. Defendant argued, in relevant part, (1) the fines were unreasonable, (2) the fines violated the excessive fines clause of the eighth amendment to the United State Constitution (U.S. Const., amend. VIII), (3) the court erred by not allowing briefs or argument on the imposition of fines imposed, and (4) the City failed to assure the case was expedited in accordance with section 11-31-1 of the Municipal Code (65

ILCS 5/11-31-1 (West 2012)). Defendant also noted the City (1) inexplicably sought only fines rather than a demolition order, and (2) did not inspect the building until May 15, 2014. Following a February 23, 2015, hearing, the court denied defendant's posttrial motion.

¶ 35 E. Motion To Vacate Statutory Fine

¶ 36 On March 11, 2015, defendant filed a motion to vacate the additional $28,410 fine imposed under section 5-9-1(c) of the Unified Code (730 ILCS 5/5-9-1(c) (West 2012)) because it was (1) unauthorized and (2) improperly imposed by the circuit clerk. As to his second assertion, defendant relied on a comment from the trial court at a January 16, 2015, hearing regarding the December 5, 2014, docket entry. At that hearing, the court stated as follows: "Typically that's an entry that's made by the clerk, which I believe is an assessment of statutory costs that are based on percentages of the fine. The [c]ourt didn't make that entry, so if you have any further questions about it, I guess you could take it up with the clerk."

¶ 37 On April 9, 2015, the City filed a motion to strike defendant's pleading, asserting, in relevant part, the fine imposed was proper as (1) the trial court found defendant guilty of violating a local ordinance; and (2) the December 12, 2014, order to pay fine and costs was entered by the trial court and not the circuit clerk.

¶ 38 On May 5, 2015, the trial court issued a written decision denying defendant's motion to vacate and granting plaintiff's motion to strike defendant's pleading, which it found more akin to a motion to dismiss. As to defendant's assertion the fine was void as it was improperly imposed by the circuit clerk, the court clarified its previous comments and the December 5, 2014, docket entry. The court indicated both the docket entry and its previous comment correctly noted the circuit clerk had calculated the statutory surcharge under section 5-

9-1(c) of the Unified Code (730 ILCS 5/5-9-1(c) (West 2012)). On December 12, 2014, the court adopted the calculations of the circuit clerk by entering an order to pay fines and costs, which included the statutory fine. As the court imposed the fine, it found no error. As to defendant's assertion section 5-9-1(c) did not apply to ordinance cases, the trial court found the plain language of the statute suggested the fine applied to local ordinances.

¶ 39 This consolidated appeal followed.

¶ 40 II. ANALYSIS

¶ 41 On appeal, defendant argues the fines imposed against him should be vacated or reduced, or we should remand for a hearing to determine the proper imposition of fines.

¶ 42 A. Applicability of the General Penalty Provision to the Unsafe Buildings Ordinance

¶ 43 Defendant argues the fines imposed under the general penalty provision (Atlanta City Code § 1-4-1) must be vacated because the general penalty provision is inapplicable under the unsafe buildings ordinance (Atlanta City Code § 7-1-2-5). Specifically, defendant asserts the general penalty provision's "except as otherwise provided" clause serves as an express limitation on the ability to impose fines where the unsafe buildings ordinance otherwise provides a specific remedy. The resolution of this issue involves the interpretation of city ordinances, which is a question of law subject to *de novo* review. *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 255, 790 N.E.2d 832, 840 (2003).

¶ 44 "Municipal ordinances are interpreted under the rules governing statutory interpretation." *DTCT, Inc. v. City of Chicago Department of Revenue*, 407 Ill. App. 3d 945, 949, 944 N.E.2d 449, 453 (2011). The intent of the municipality is best shown by the plain

language of the ordinance. *Pikovsky v. 8440-8460 N. Skokie Boulevard Condominium. Ass'n, Inc.*, 2011 IL App (1st) 103742, ¶ 17, 964 N.E.2d 124. If the language is clear and unambiguous, we will not resort to extrinsic aids of statutory construction. *Pikovsky*, 2011 IL App (1st) 103742, ¶ 17, 964 N.E.2d 124. We must give ordinances "the fullest, rather than the narrowest, possible meaning to which they are susceptible." See *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 11, 919 N.E.2d 300, 306 (2009).

¶ 45 The unsafe buildings ordinance contained in section 7-1-2-5(A) of the City Code (Atlanta City Code § 7-1-2-5(A)) declares it a "nuisance for any person to cause or permit the existence of any unsafe, dilapidated or otherwise insecure building, *** which, from manner of construction, age, condition or other circumstances, is or may become a menace to the safety of persons or property." Section 7-1-2-5(C) of the City Code (Atlanta City Code § 7-1-2-5(C)) provides, in relevant part, "[i]f any building shall be found in a dangerous and unsafe condition, the mayor or any official or employee designated by the city council shall notify in writing the owner or owners thereof, directing said owner or owners to put such building in a safe condition or to demolish it."

¶ 46 Section 7-1-2-5(D) of the City Code (Atlanta City Code § 7-1-2-5(D)), titled "Failure To Comply," provides: "If after [15] days subsequent to the giving of such notice, said owner or owners fail to put such building in a safe condition or to demolish it, the mayor or any official or employee designated by the city council shall so notify the city council, requesting the council to direct the city attorney to apply on behalf of the city to the circuit court of Logan County for an order authorizing the city to demolish or repair, or to cause the demolition or repair of said building." Section 7-1-2-5(E) (Atlanta City Code § 7-1-2-5(E)) allows the costs of

demolition or repair be recoverable as provided in section 11-31-1 of the Municipal Code (65 ILCS 5/11-31-1 (West 2012)). The unsafe buildings ordinance is silent as to fines or penalties.

¶ 47 The general penalty provision contained in section 1-4-1 of the City Code (Atlanta City Code § 1-4-1) provides as follows: "Except as otherwise provided, any person convicted of a violation of any section of this code shall be fined in the sum of not less than [$250], nor more than [$500]." Section 1-4-4(A) of the City Code (Atlanta City Code § 1-4-4(A)) provides the penalty in section 1-4-1 "shall be applicable to every section of [the] code the same as though it were a part of each and every separate section." Section 1-4-4(C) of the City Code (Atlanta City Code § 1-4-4(C)) further provides: "Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of this code and there shall be *no fine or penalty* specifically declared for such breach, the provisions of this chapter shall apply and a separate offense shall be deemed committed upon each day during or on which a breach or violation occurs or continues." (Emphasis added.)

¶ 48 We find the plain language of the ordinances clear and unambiguous. The general penalty provision applies where no fine or penalty is otherwise specifically declared. The general penalty provision is applicable to a violation of the unsafe buildings ordinance because the unsafe buildings ordinance did not otherwise provide for a fine or penalty.

¶ 49 B. Dillon's Rule and Preemption

¶ 50 Defendant argues a fine imposed under the general penalty provision for a violation of the unsafe buildings ordinance violates Dillon's Rule. Specifically, defendant asserts plaintiff's application of its unsafe buildings ordinance infringes upon the legislative intent of section 11-31-1 of the Municipal Code (65 ILCS 5/11-31-1 (West 2012)). Defendant did not

present this argument to the trial court, and an issue raised for the first time on appeal is forfeited. *CBS Outdoor, Inc. v. Village of Itasca*, 2011 IL App (2d) 101117, ¶ 26, 960 N.E.2d 1212, 1219. Forfeiture aside, we find the city ordinance is not preempted by state statute.

¶ 51 We first take judicial notice the City is a non-home-rule unit of government. See *Janis v. Graham*, 408 Ill. App. 3d 898, 902, 946 N.E.2d 983, 987 (2011) ("This court may take judicial notice of easily verifiable matters, including a municipality's status *vis-a-vis* home rule powers."). As a non-home-rule unit, the City is governed by Dillon's Rule. *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 694, 808 N.E.2d 525 (2004). Dillon's Rule provides non-home-rule units possess only those powers expressly granted by the constitution or state statute, powers incident to those expressly granted, and powers indispensable to the accomplishment of the declared objects and purposes of the municipality. *Pesticide Public Policy Foundation v. Village of Wauconda*, 117 Ill. 2d 107, 112, 510 N.E.2d 858, 861 (1987).

¶ 52 Section 11-60-2 of the Municipal Code (65 ILCS 5/1-2-1 (West 2012)) provides "[t]he corporate authorities of each municipality may define, prevent, and abate nuisances." Under this broad grant of authority, non-home-rule units, such as the City, may implement ordinances regulating nuisances. *Village of Northfield v. BP America, Inc.*, 403 Ill. App. 3d 55, 58, 933 N.E.2d 413, 417 (2010). Section 1-2-1 of the Municipal Code (65 ILCS 5/1-2-1 (West 2012)) provides, in relevant part, "[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." Under sections 11-60-2 and 1-2-1 of the Municipal Code (65 ILCS 5/11-60-2, 1-2-1 (West 2012)) the City had the express authority to "define, prevent, and abate nuisances," and to implement "fines or

penalties" for causing said nuisances. As such, the City had the authority to create a general penalty provision imposing a fine for a violation of its unsafe buildings ordinance.

¶ 53 A municipality's authority to act is an issue separate from the question of whether its power has been preempted by a superior authority of another lawmaking body. *Village of Northfield*, 403 Ill. App. 3d at 58, 933 N.E.2d at 418. Defendant asserts section 11-31-1 of the Municipal Code (65 ILCS 5/11-31-1 (West 2012)) reflects the legislature's intent to preempt the field of unsafe property. Specifically, defendant asserts the legislature intended to preempt the field of unsafe property by providing a specific statutory route of recovery in section 11-31-1, which was silent as to the imposition of fines.

¶ 54 "Field preemption occurs where the legislature enacts such a comprehensive scheme of regulations as to reasonably imply that there is no room for additional regulation by local municipalities." *Village of Northfield*, 403 Ill. App. 3d at 59, 933 N.E.2d at 418. Whether a local ordinance is preempted is a question of legislative intent. *Id.* at 58-59, 933 N.E.2d at 418. This is a question of law, which we review *de novo*. *Id.* at 57-58, 933 N.E.2d at 417. Ordinances are presumed valid, and the party challenging an ordinance bears the burden of proving invalidity. *Id.* at 58, 933 N.E.2d at 417.

¶ 55 Section 11-31-1(a) of the Municipal Code (65 ILCS 5/11-31-1(a) (West 2012)) provides "corporate authorities of each municipality *may* demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings." (Emphasis added.) As such, this section grants municipalities the unique authority to elect to demolish, repair, or enclose unsafe buildings. See *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 130, 810 N.E.2d 13, 28 (2004) ("The statutory framework chosen by the legislature *** protects the rights

of the property owner while *permitting* the municipality to deal expeditiously with threats to the public health and safety." (Emphasis added.)). To avail itself of this power, a municipality must follow specific guidelines contained in the statute and the proceedings must be expedited. 65 ILCS 5/11-31-1(a) (West 2012). Where a municipality elects to proceed under this statute by repairing, demolishing, or enclosing the property at its own expense, the costs are recoverable. *Id.* Nothing in section 11-31-1(a) suggests the legislature intended to prohibit municipalities from seeking a fine for a violation of an unsafe buildings ordinance. Rather, by expressly delegating to local municipalities the authority to define and abate nuisances and impose fines or penalties as necessary to carry into effect those ordinances (see 65 ILCS 5/11-60-2, 1-2-1 (West 2012)), the legislature demonstrated it did not intend to supersede the local regulation of unsafe buildings in its entirety. See *Village of Northfield*, 403 Ill. App. 3d at 60, 933 N.E.2d at 419.

¶ 56 In addressing whether section 11-31-1 of the Municipal Code (65 ILCS 5/11-31-1 (West 2008) reflected the legislature's intent to preempt the field of unsafe property and limit a municipality's authority to define an abandoned gas station as a nuisance, the court in *Village of Northfield*, 403 Ill. App. 3d at 59-60, 933 N.E.2d at 419, found as follows: "Although section 11-31-1 of the Municipal Code provides municipalities with 'a quick and effective means of removing those unused and dilapidated structures that present danger and blight' [citation], we do not believe that the statute is so comprehensive as to demonstrate the legislature's intent to preclude additional regulation of abandoned buildings by local municipalities." Here, although the legislature provided an avenue by which a municipality may elect to demolish or repair an unsafe building, we find the statute is not so comprehensive as to demonstrate the legislature's intent to preclude municipalities from pursuing a fine for a violation of an unsafe buildings

ordinance.

¶ 57 C. Excessive Fines Clause of the Eighth Amendment

¶ 58 Defendant argues the fines imposed violate the excessive fines clause of the eighth amendment to the United State Constitution (U.S. Const., amend. VIII). Specifically, defendant asserts the fines imposed are excessive as they serve no remedial purpose and have no correlation to any injury suffered.

¶ 59 The eighth amendment provides "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. A fine is excessive " 'if it is grossly disproportional to the gravity of a defendant's offense.' " *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 856, 869 N.E.2d 964, 980 (2007) quoting *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334. Whether a fine is excessive given the facts presented is a question of law, which we review *de novo*. *People v. 1998 Lexus GS 300, VIN JT8D68S4W0028350*, 402 Ill. App. 3d 462, 466, 930 N.E.2d 582, 586 (2010).

¶ 60 The unsafe buildings ordinance serves a legitimate interest of preventing buildings from becoming a menace to the safety of persons or property. See Atlanta City Code § 7-1-2-5(A). An individual who purchases a building within the city limits and allow it to fall into disrepair and be in violation of the City Code undermines the City's interests. The general penalty provision serves a legitimate interest in securing compliance with the City Code through fines.

¶ 61 Defendant asserts when considering the nature of his violations and the time required to abate the violations, the $250-a-day fine imposed was excessive. Defendant argues his violations of the unsafe buildings ordinance was not due to his "active behavior" and curing the alleged violations by repairing the building was not something he could easily accomplish overnight. We find defendant's argument unpersuasive. Defendant chose to own a building within the city limits, binding him to the laws of the City. Defendant allowed the building to fall into disrepair and be in violation of the City Code. The City notified defendant of his violation and indicated it would seek fines for each and every day he violated the City Code. Following a bench trial, the trial court found the building was in violation of the City Code for 451 days and imposed the mandatory minimum fine for 451 separate violations. We find the $250 fine imposed for defendant's neglect and failure to bring his building within the minimum requirements of the City Code reasonable and not excessive. As the fine was not excessive, we find no violation of defendant's eighth amendment rights.

¶ 62 D. Illinois Supreme Court Rule 577

¶ 63 Defendant contends the "$112,750 fine" is unauthorized under Illinois Supreme Court Rule 577 (eff. Dec. 7, 2011). Illinois Supreme Court Rules 570 through 579 are applicable to the prosecution of ordinance violations passed under section 5-1113 of the Counties Code (55 ILCS 5/5-1113), section 1-2-1 of the Municipal Code (65 ILCS 5/1-2-1), and section 11-1301 of the Illinois Vehicle Code (625 ILCS 5/11-1301), or home-rule authority for which the penalty does not include the possibility of a jail term. Ill. S. Ct. R. 570 (eff. Dec. 7, 2011). Illinois Supreme Court Rule 577 (eff. Dec. 7, 2011) grants the right to a jury trial and describes the requirements to exercise that right. Rule 577 notes, "[b]ecause ordinance offenses do not

provide for penalties in excess of $50,000, any jury request shall result in the matter being tried by a jury of six members." Ill. S. Ct. R. 577 (eff. Dec. 7, 2011). We disagree with defendant's suggestion Rule 577 mandates the total fine for multiple ordinance violations may not exceed $50,000. Rather, Rule 577 simply notes a defendant is only entitled to a six-member jury because the ordinances passed under the various statutes or home rule authority highlighted in Rule 570 do not provide for a fine or penalty in excess of $50,000 for an individual violation. Rule 577 does not void the $250 fine imposed on each day defendant violated the City Code.

¶ 64 E. Fine Imposed for Each Ordinance Violation

¶ 65 Defendant argues, even if a fine for a violation of the unsafe buildings ordinance was authorized and constitutional, we should recalculate the amount of each fine or remand for the trial court to make such a recalculation. Defendant asserts the trial court erred in denying his request for a hearing on fines because it erroneously believed it was without discretion to impose a lesser fine and, had it granted him a hearing, he could have challenged the imposition of the fine by arguing the City (1) did not follow its own mandatory ordinances in the investigation and prosecution of its unsafe buildings ordinance, and (2) prosecuted the matter in a manner inconsistent with section 11-31-1(a) of the Municipal Code (65 ILCS 5/11-31-1(a) (West 2012)). The trial court's denial of defendant's request for a hearing based on its determination it lacked discretion to impose a fine less than $250 for a violation of the City Code is a legal conclusion, which we review *de novo*. See *People v. Hall*, 311 Ill. App. 3d 905, 910, 726 N.E.2d 213, 218 (2000).

¶ 66 We find the arguments defendant would have raised if he was given a hearing would have been forfeited. As to his claim the City did not follow its own mandatory ordinances

in the investigation and prosecution of its unsafe buildings ordinance, defendant relies on the following proposition: "[f]ailure to comply with a mandatory provision of an ordinance will render void the proceeding to which it relates, while it is not essential to strictly comply with a directory provision." *In re Application of County Collector of Kane County,* 132 Ill. 2d 64, 75, 547 N.E.2d 107, 112 (1989). Setting aside the factual dissimilarities in *County Collector of Kane County*, we find notable procedural differences. In *County Collector of Kane County*, 132 Ill. 2d at 65-66, 547 N.E.2d at 107, property owners challenged a tax levy against their property, alleging the levy was invalid as the municipality failed to follow a publication requirement in its ordinance. At trial, the trial court overruled the property owners' objections. *Id.* In *DMS Pharmaceutical Group v. County of Cook*, 345 Ill. App. 3d 430, 432-33, 803 N.E.2d 151, 153 (2003), the plaintiff filed a complaint against the county, alleging, pursuant to *County Collector of Kane County*, the county failed to comply with its mandatory competitive-bidding ordinance, rendering the proceedings void. The county filed a motion to dismiss, which the trial court granted. *DMS Pharmaceutical Group* 345 Ill. App. 3d at 433, 803 N.E.2d at 153. Unlike *County Collector of Kane County* and *DMS Pharmaceutical Group*, defendant would be attempting to raise the City's alleged failure to comply with mandatory ordinances for the first time after his bench trial, where it was found he was in violation of the City Code. We find defendant's attempt to raise such an affirmative matter would be untimely and forfeited. We likewise find the provision requiring a municipality to expedite proceedings to repair or demolish unsafe property under section 11-31-1(a) of the Municipal Code (65 ILCS 5/11-31-1(a) (West 2012)) inapplicable as the City only sought fines under the general penalty provision for a violation of the unsafe buildings ordinance.

¶ 67 After finding defendant violated the City Code, we find the trial court correctly determined it was without discretion to impose less than the minimum fine authorized by ordinance for each and every violation. See *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806, 821, 847 N.E.2d 565, 578 (2006) (noting under a similar penalty provision if a violation occurred the trial court was required to impose a fine and subsequent compliance was not an affirmative defense); *City of Chicago v. Cotton*, 356 Ill. App. 3d 1, 7, 826 N.E.2d 405, 410 (2005) (the trial court was required to assess a daily fine within the statutory range after finding a violation occurred); *City of McHenry v. Suvada*, 396 Ill. App. 3d 971, 982, 920 N.E.2d 1173, 1183 (2009) (finding a violation alone is sufficient to mandate a fine); see also Ill. S. Ct. R. 579(a) (eff. Dec. 7, 2011) ("[t]he court shall determine the amount of any fine for an ordinance violation to which these rules apply, except that any fine imposed shall not be less than the 'minimum fine' authorized by ordinance").

¶ 68 We note defendant also suggests the trial court had discretion to revoke the fines under section 5-9-2 of the Unified Code (730 ILCS 5/5-9-2 (West 2012)). Section 5-9-2 of the Unified Code (730 ILCS 5/5-9-2 (West 2012)) provides, in relevant part, "the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." Section 5-9-2 is inapplicable as it refers to fines imposed under the Unified Code. *People v. Bennett*, 144 Ill. App. 3d 184, 186, 494 N.E.2d 847, 848 (1986); *Village of Island Lake v. Parkway Bank & Trust Co.*, 212 Ill. App. 3d 115, 121, 569 N.E.2d 1362, 1366 (1991). Further, section 5-9-2 is intended to provide a defendant relief when factors, external to the original proceedings, would warrant the revocation of fines to ease a defendant's financial burden. *People v. Mingo*, 403 Ill. App. 3d 968, 972, 936 N.E.2d 1156, 1159 (2010). Following its

finding the City had proved counts I and II of its complaint, section 5-9-2 was not an avenue by which the trial court had discretion to limit the fine imposed.

¶ 69 F. Statutory Fine

¶ 70 Defendant argues the additional $28,410 fine imposed is unauthorized under section 5-9-1(c) of the Unified Code (730 ILCS 5/5-9-1(c) (West 2012)). In response, the City's argument consists solely of the following statement: "Clearly the [trial] [c]ourt was authorized to impose the additional penalty [under] section 5-9-1." Whether the fine imposed was authorized is a question of law, which we review *de novo*. *People v. Jones*, 223 Ill. 2d 569, 580, 861 N.E.2d 967, 974 (2006).

¶ 71 Section 5-9-1(c) of the Unified Code (730 ILCS 5/5-9-1(c) (West 2012)) provides as follows:

> "There shall be added to every fine imposed in sentencing for a criminal or traffic offense, except an offense relating to parking or registration, or offense by a pedestrian, an additional penalty of $10 for each $40, or fraction thereof, of fine imposed. The additional penalty of $10 for each $40, or fraction thereof, of fine imposed, if not otherwise assessed, shall also be added to every fine imposed upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision in criminal, traffic, local ordinance, county ordinance, and conservation cases (except parking, registration, or pedestrian violations), or upon a sentence of probation without entry of

judgment under Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act, or Section 70 of the Methamphetamine Control and Community Protection Act."

In ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990). The first sentence of section 5-9-1(c) provides a surcharge be added to every fine imposed in sentencing for a criminal or traffic offense. The second sentence of section 5-9-1(c) further provides the surcharge be added to every fine imposed upon a guilty plea, stipulation of facts, or findings of guilt, resulting in a judgment of conviction or order of supervision "in criminal, traffic, local ordinance, county ordinance, and conservation cases." While the statute does discuss local ordinances, we find, based on the context in which it is used, it must be a criminal, traffic, or similar ordinance for the surcharge to apply. Under the particular facts of this case, we find section 5-9-1(c) inapplicable to an ordinance violation relating to the condition of a building. We vacate the fine imposed under section 5-9-1(c).

¶ 72 As we find the fine imposed under section 5-9-1(c) was unauthorized, we need not address defendant's argument the fine was also improperly imposed by the circuit clerk.

¶ 73 III. CONCLUSION

¶ 74 In No. 4-15-0216, we affirm the trial court's imposition of fines for defendant's ordinance violations. In No. 4-15-0466, we vacate the additional fine imposed under section 5-9-1(c) of the Unified Code (730 ILCS 5/5-9-1(c) (West 2012)).

¶ 75 No. 4-15-0216, Affirmed.

¶ 76 No. 4-15-0466, Vacated.