

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FILED

March 2, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 150230-U

NO. 4-15-0230

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

VILLAGE OF CULLOM, ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
DAN BILIK,)	No. 13OV222
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment (1) imposing fines for defendant's violations of a village ordinance, and (2) ordering defendant to remove his building. The appellate court further denied defendant's request to remand the matter to allow him to submit a building-permit application.

¶ 2 In August 2013, plaintiff, the Village of Cullom, Illinois (Village), filed an ordinance-violation complaint against defendant, Dan Bilik, alleging he violated the Municipal Code of the Village of Cullom, Illinois, of 1989 (Village Code) by constructing a car port/storage shed (building) on his property without first securing a permit. Following a January 2015 bench trial, the trial court found defendant had violated the Village Code and, in February 2015, it imposed a \$50 fine for each day since defendant began construction of his building, which totaled \$41,050, and ordered defendant to remove the building. Defendant appeals, arguing (1)

the fines imposed against him should be vacated or reduced as they are unauthorized by the Village Code, (2) the trial court's order to remove his building should be vacated as the Village was without authority to seek such a remedy, and (3) we should remand to allow him the opportunity file a building-permit application as the record fails to indicate the Village followed its mandatory building-permit procedures. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Complaint

¶ 5 On August 28, 2013, the Village filed an ordinance-violation complaint against defendant, alleging he violated section 5-1 of the Village Code (Cullom, Ill. Municipal Code § 5-1 (1989)) by constructing a building on his property without first securing a permit. 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. The Village requested the trial court (1) impose a fine under section 5-9 of the Village Code (Cullom, Ill. Municipal Code § 5-9 (1989)) of not less than \$50 and no more than \$500 for each day defendant violated the Village Code, and (2) order defendant to remove the building.

¶ 6

B. Bench Trial

¶ 7 On January 29, 2015, the trial court held a bench trial, during which the following relevant evidence was introduced.

¶ 8

On November 27, 2012, defendant began construction of a building on his property without a building permit. On November 28, 2012, the then Village board president gave defendant a letter, which ordered him to stop construction until he applied for a building permit. Defendant halted construction.

¶ 9 On December 24, 2012, the village attorney sent defendant a letter, informing him his request for a building permit was denied by the village board on or about December 5, 2012. The letter ordered defendant to remove any structure already built or face a fine between \$50 and \$500 for each day any structure remained. Defendant did not remove the partially completed building.

¶ 10 On January 22, 2013, defendant, through counsel, obtained an application for a zoning permit, which was completed and submitted on or about February 8, 2013. At a March 26, 2013, meeting, the Village board denied defendant's application. On March 29, 2013, the Village's attorney sent defense counsel a letter, advising him the Village decided to give defendant until April 30, 2013, to remove the partially constructed building or face legal action. Defendant did not remove the partially completed building.

¶ 11 On May 15, 2013, the Village's attorney sent defense counsel a letter wherein the Village's attorney advised as follows: "The bottom line is that your client began building his building without applying for a permit and once he did apply for a permit, it was denied." The Village demanded defendant remove the building. Defendant did not remove the partially completed building.

¶ 12 On August 23, 2013, defendant completed construction of the building. The building remained constructed on the date of the trial. The building cost \$6,794.69.

¶ 13 Following this evidence, the trial court found defendant had violated the Village Code. Defendant requested a continuance for a hearing on the relief sought by the Village, which the court granted over the Village's objection.

¶ 14 On February 27, 2015, the trial court held a hearing on the issue of penalties for

defendant's violations of the Village Code. Defendant testified he had not removed the building. The court (1) fined defendant \$50 for each day his building was in violation of the Village Code, which totaled \$41,050; and (2) ordered defendant to remove the building within 30 days. The court's order was stayed pending this appeal.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues (1) the fines imposed against him should be vacated or reduced because the Village is only entitled to fines for the days on which construction occurred without a permit, and (2) the trial court's order to remove his building should be vacated as the Village was without authority to request such a remedy. Defendant further requests we remand the matter to the trial court to allow him to file a building-permit application as the Village failed to include in the record on appeal proof it followed its mandatory building-permit procedures.

¶ 18 A. Fines Imposed

¶ 19 Defendant asserts the fines imposed against him should be vacated or reduced because section 5-1 of the Village Code (Cullom, Ill. Municipal Code § 5-1 (1989)) permits a fine only for the days on which construction occurred without a permit. In response, the Village does not dispute the language used in section 5-1 makes it unlawful for the act of construction but asserts (1) section 5-9 mandates a fine be imposed on each day a violation of section 5-1 continues, and (2) applying section 5-1 literally would create an absurd result and be contrary to the drafter's intent. The resolution of this issue involves the interpretation of village ordinances, which is a question of law subject to *de novo* review. *Hawthorne v. Village of Olympia Fields*,

204 Ill. 2d 243, 254-55, 790 N.E.2d 832, 840 (2003); *City of McHenry v. Suvada*, 396 Ill. App. 3d 971, 980, 920 N.E.2d 1173, 1182 (2009).

¶ 20 "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 fundamental rule of statutory construction is to give effect to the intention of the legislature." *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 556, 723 N.E.2d 256, 263 (1999). As such, we must give effect to the intention of the municipality in drafting an ordinance. *DTCT, Inc.*, 407 Ill. App. 3d at 949, 944 N.E.2d at 453. 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. In ascertaining the meaning of an ordinance, it should be read as a whole, with all relevant parts considered. See *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990). Ordinances must be given "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).

¶ 21 Section 5-1 of the Village Code (Cullom, Ill. Municipal Code § 5-1 (1989)) declares it "unlawful to construct any building or structure, other than a fence, in the Village, where the cost of such construction exceeds [\$500], or to alter or remodel any building or structure so as to change the bearing walls, beams, supports or the roof thereof, without having first secured a building permit thereof." Section 5-9 of the Village Code (Cullom, Ill. Municipal

Code § 5-9 (1989)) provides an individual who violates section 5-1 "shall be fined not less than [\$50] nor more than [\$500] for each offense" and "a separate offense shall be deemed committed on each day during or on which a violation occurs or continues."

¶ 22 Although section 5-1 makes it unlawful "to construct" a building without a building permit, section 5-9 provides a violation of section 5-1 mandates a fine be imposed for each day during or on which a violation continues. Defendant violated section 5-1 by commencing construction of his building without first securing a building permit and the violation continued each day construction continued or the building stood without a permit. Although the drafters may have failed to include the language "to remain" in section 5-1 as they did in its unsafe building provision (see Cullom, Ill. Municipal Code § 5-9 (1989) ("it shall be unlawful for the owner *** of any dangerous building to permit the same to remain in a dangerous condition")), in reading section 5-1 along with the penalty provision contained in section 5-9 for a violation of section 5-1, it is clear the drafters intended a violation to occur not only on each day an individual constructs a building without a permit but also each day a building remains constructed without a permit. See *Kraft, Inc.*, 138 Ill. 2d at 189, 561 N.E.2d at 661; see also Cullom, Ill. Municipal Code § 15-4 (1989) ("All general provisions, terms, phrases, and expressions contained in this ordinance shall be liberally construed in order that the true intent of the President and Board of Trustees may be fully carried out.").

¶ 23 We further find defendant's narrow interpretation of section 5-1 would create both an absurd result and be contrary to the drafters' intent. We may consider the consequences that would result from construing an ordinance one way or another, and, in doing so, we presume the municipality did not intend to create absurd, inconvenient, or unjust results. See *People v.*

Marshall, 242 Ill. 2d 285, 293, 950 N.E.2d 668, 673 (2011). In addressing defendant's interpretation of the Village Code below, the trial court offered the following hypothetical under the defendant's application of section 5-1: "[I]f [defendant] decided to build a block structure, let's say a 10-story skyscraper on a 40 by 40 concrete footing, and it took him three days to complete that, under the ordinance, he could only be fined for three days of noncompliance." Under defendant's interpretation, to avoid penalties under section 5-1 an individual who chooses to construct a building without first following the mandatory procedures of the Village Code would be incentivized to construct a building as quickly as possible to minimize the fines. We presume the Village did not intend to create such an absurd result. To assure its citizens construct structures in conformity with its standards and zoning ordinances, rather we find reading section 5-1 in unity with section 5-9 indicates the Village intended to create penalties for each day an individual violates the Village Code by constructing or allowing a building to stand without a building permit.

¶ 24 We find the trial court did not err in imposing a fine for each day it found defendant violated the Village Code.

¶ 25 B. Order To Remove a Building in Violation of the Village Code

¶ 26 Defendant asserts the trial court's order to remove his building should be vacated because the Village was without authority under sections 5-1 and 5-9 of the Village Code (Cullom, Ill. Municipal Code §§ 5-1, 5-9 (1989)) to request such a remedy. In response, the Village does not dispute sections 5-1 and 5-9 do not provide removal as a remedy but asserts (1) it had the general authority to request the removal of buildings illegally built, and (2) the trial court had the general authority to impose orders to enforce the Village Code.

