THIRD DIVISION
September 27, 2017

No. 1-16-0534

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 14 CH 17403
NAGLE STATION, LLC, an Illinois limited liability company, and ST. GEORGE OIL GROUP, INC., an Illinois corporation,	)	
Defendants	)	
(ROSE I. RAMIREZ and KIMBERLY PEREZ, individually and as owners of the residential property commonly known as 4570 NORTH NARRANGANSETT AVENUE, HARWOOD HEIGHTS, ILLINOIS,	)	Honorable Kathleen G. Kennedy,
Petitioners-Appellants).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County which denied for lack of standing a petition to intervene in proceedings under the Illinois Environmental Protection Act against owner and operator of gas station which had leaking gas storage tanks is reversed; petitioners did not have to demonstrate standing under the Environmental Protection Act before the trial court could consider the petition to intervene as a matter of right or as a matter of the court's discretion under the Illinois Code of Civil Procedure; therefore, the cause is remanded for the trial court to consider the factors in the intervention statute.

¶ 2 Petitioners own land contaminated by leaking gas tanks under a gas station next to their property. The State of Illinois, at the request of the Illinois Environmental Protection Agency, filed a complaint against the owner and operator of the gas station under the Illinois Environmental Protection Act (Act). Petitioners sought to intervene in the proceedings. The circuit court of Cook County denied their petition on the grounds petitioners did not have standing to pursue a claim under the Act and never reached the statutory factors for intervention under the Illinois Code of Civil Procedure (Code). For the following reasons, we reverse the trial court's judgment and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 On October 28, 2014, the State filed a complaint for injunctive relief against Nagle Station, LLC (Nagle Station) and St. George Oil Group, Inc. (St. George) as a result of a gas leak in the underground petroleum tank system (UST system) at a gas station. Nagle Station owns the site of the gas station and the UST system while St. George operates the station (hereinafter, "the Site"). According to the complaint for injunctive relief, the UST system at the Site is comprised of "three twelve thousand (12,000) gallon single-walled fiberglass underground petroleum storage tanks ('USTs'), as well as the associated gasoline pumps, double-walled, fiberglass gasoline supply lines, valves, regulators, sumps, leak detector alarms, and other equipment, located at the Site which are used for the storing and dispensing of gasoline." Petitioners, Rose I. Ramirez and Kimberly Ramirez, own residential property (hereinafter, "the apartment building"

or "the building") located adjacent to the Site. Rose Ramirez lives in the residential property and petitioners had two tenants. The State's complaint alleges that on or about July 9, 2014, gasoline began leaking out of the inner portion of one of the Site's double-walled, fiberglass gasoline supply lines into one of the sumps. On October 10, 2014 the president of St. George reported the leak to the Illinois Environmental Management Agency (IEMA), which in turn notified the Illinois Environmental Protection Agency (IEPA). IEMA informed IEPA "the sump pump in the Apartment Building showed that petroleum vapors therein were registering at 23% of the Lower Explosive Limit ('LEL')[1]." The same day, a representative from the Office of the State Fire Marshal ordered St. George to close the gas station, and IEPA officials detected gasoline vapors in the second floor stairwell of the apartment building. The Village of Harwood Heights advised the residents of the apartment building to vacate the premises.

¶ 5 The State's complaint alleges that on October 14, 2014, "there continued to be a gasoline odor within the Apartment Building." On October 21, 2014 an IEPA official detected volatile organic compounds in the basement of the apartment building. The complaint alleged that at the time of filing, gasoline continued to migrate through the soil and into groundwater "at and adjacent to the Site and gasoline vapors continue to migrate through the soil at and adjacent to the Site." The State alleged the uncontrolled release of gasoline from the UST System had contaminated soil and groundwater at and adjacent to the Site and "directly harmed the health and well-being of the residents of the Apartment Building" posing a potential inhalation hazard to all persons in the vicinity of the Site, "including in and around the Apartment Building, as well as the risk of potential explosion or fire." The complaint also stated that the discharge of gasoline, such that it entered or threatened to enter groundwater at the Site or the Sanitary Sewer

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[1] The LEL is a measure of a substance's flammability.

System at and around the Site, "caused gasoline vapors to be released into the Apartment Building," and created or was likely to create a nuisance or was likely to render those waters "harmful or detrimental or injurious to public health and safety" amounting to "water pollution" under the Act. The State alleged that St. George and Nagle, "by causing and allowing liquid gasoline to leak from the UST System at the Site, have created circumstances of substantial danger to the environment, and to the public health and welfare, in direct contravention of the requirements of the Act," and caused, threatened, or allowed water pollution by causing or allowing the discharge of gasoline into groundwater at the Site. The complaint sought "an immediate and, after trial, permanent injunction and an order" against St. George and Nagle ordering them, in part, to assess and determine the extent of soil, groundwater, water and vapor contamination on and off the Site, to submit to the State a plan for remediating soil, groundwater, water, and vapor contamination both on and off the Site, and after acceptance by the IEPA, to implement the plan in accordance with the requirements of the court's order, the Act, and pertinent regulations.

¶ 6 On October 31, 2014, the trial court entered an "Agreed Immediate and Preliminary Injunction Order" (Agreed Order) between the State and St. George and Nagle. The Agreed Order required St. George and Nagle, in part, to retain an industrial hygienist "subject to the [State's] approval," to design a temporary ventilation system to ensure that the levels of certain chemicals within the apartment building are acceptable for human habitation. The Agreed Order also required St. George and Nagle to monitor the air in the basement of the apartment building for volatile organic compounds and lower explosive limits (LEL) "until the [State] has provided [St. George and Nagle] with written notice that they may discontinue the use" of the monitoring device, and to "install and maintain a positive pressure fan system in the Apartment Building, in order to reduce LEL levels." The Agreed Order required St. George and Nagle to obtain a

design and schedule for the construction of a remediation system, and design a sampling plan that would be implemented before St. George and Nagle could request to discontinue operation of the remediation system. The sampling plan was required to provide for "the taking of sufficient samples so as to ensure Indicator Contaminant levels in the Apartment Building are acceptable for human habitation." The injunction required St. George and Nagle to continue to operate the remediation system until the State gave written authorization to shut off and remove it, and required them to "make every effort to expeditiously complete the work at the Apartment Building."

¶ 7 On January 27, 2015, petitioners filed a petition for leave to intervene in the State's case against St. George and Nagle as of right or by permission and a motion to amend the October 31, 2014 Agreed Order. The petition alleged that at the time of filing neither petitioners nor their tenants had been permitted to reoccupy the apartment building as residents (a fact the State, St. George, and Nagle dispute). Petitioners hired an environmental engineer and sought consultation with St. George and Nagle, but they refused, relying on the Agreed Order. Petitioners claimed the Agreed Order is not fair or just to them because it does not obligate St. George and Nagle or the State to consult or collaborate with them regarding the remediation of their own property. Petitioners also asserted the Agreed Order "is not a final resolution on the merits of the Complaint and does not provide for any input by or consultation with the Petitioners or their retained environmentalist regarding the remediation of their own Property." (Emphasis omitted.) Finally, petitioners alleged defendants had not proposed, and the State had not required, "any specific plan governing the Petitioner's reoccupation of their residential Property, nor any long term plan for any extended periodic monitoring to ensure the continued air quality safety." Petitioners stated they sought to intervene "to ensure that their interests in the air quality and remediation of the Apartment Building are adequately represented."

¶ 8 Petitioners separately filed a "Motion to Amend the Agreed Immediate and Preliminary Injunction Order" (motion to amend). The motion to amend states the Agreed Order does not order St. George and Nagle or the State to provide petitioners, their attorney, or their retained environmental engineer with "any notice or reports regarding the construction, testing, monitoring or sampling taking place at the Site or at the Apartment Building" or to consult with them or seek their approval of the remediation plan, monitoring plan, or sampling plan. The motion to amend argues an amendment to the Agreed Order is necessary because the State's interests are not completely aligned with petitioners' interests or their personal and property rights, and without an amendment petitioners are not adequately represented regarding the remediation of their property.

¶ 9 Following a hearing, which was not transcribed, the trial court entered an order denying the petition to intervene. The order reads, in pertinent part, "the *** petition is hereby denied, as the court finds they lack standing to intervene in this case." Petitioners filed a combined motion to reconsider and motion to preclude any settlement agreements and consent orders regarding the extent of the remediation required for their property. The motion to reconsider stated, in part, that petitioners had not authorized, and would not authorize, any alteration of their property; thus, any consent order is meaningless without their participation. The motion states that if the impending consent order concerning the remediation of their property falls short of full and complete remediation petitioners will not permit St. George and Nagle to enter their property. (In a reply in support of the motion to reconsider, petitioners admitted that at that time, the Illinois Department of Public Health was not stating that petitioners may not occupy the property. The argued, however, "that does not mean it is safe to do so.")

¶ 10 At the hearing on the motion to reconsider, petitioners' attorney began by arguing that petitioners' interests were not being represented by anyone in this case. The trial court

responded that its ruling denying the petition to intervene was based on standing. The court stated "I don't think anyone would disagree that no one is representing your clients' interests in this case." The court believed the question was whether the legislature intended private individuals to be able to intervene in an IEPA enforcement action brought by the Attorney General of Illinois. The court said "it's not so much whether or not [petitioners] have met the requirements for intervention. It's just that they can't intervene in this kind of case." Petitioners' attorney then argued the State and St. George and Nagle could not enter into a settlement with regard to remediation of petitioners' property that could be constitutionally enforced because the State has no rights with regard to petitioners' property "as to what can be done or should be done to [remediate] the property." The court asked what petitioners sought in their separate action. Petitioners' attorney stated part of the prayer for relief in the separate case was "identical to the one in this case" and "mirrors the Attorney General's complaint." Petitioners' separate complaint is also seeking damages for trespass, nuisance, and negligence. The court asked why "that case isn't enough for your clients?" Petitioners' counsel opined the cases should be consolidated but St. George and Nagle objected. Petitioners' attorney stated the separate action was not enough because "there are representations that the parties in this case are going to settle the case with St. George and Nagle with regard to our clients' property."

¶ 11 The trial court denied petitioners' motion to reconsider and to preclude any settlement agreements and consent orders regarding petitioners' property. The court found "again that the [petitioners] don't have standing to be a part of this case as a party. And certainly, that means that they wouldn't have any right to ask the court to preclude any settlement agreements and consent orders that relate to their property." The court entered an order pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there is no just reason for delaying appeal of the order on the motion to reconsider.

¶ 12 This appeal followed.

¶ 13 After petitioners filed their opening brief in this court, the State and St. George and Nagle entered an agreed consent order (consent order). Petitioners asked for an extension of time in which to file their reply brief to address the change in circumstances presented by the entry of the consent order, which we allowed.

¶ 14 ANALYSIS

¶ 15 The State filed its complaint for injunctive relief against St. George and Nagle pursuant to sections 43(a), 12(a), and 12(d) of the Environmental Protection Act (Act) (415 ILCS 5/43(a), 12(a), 12(d) (West 2016)). Petitioners sought to intervene in the State's case pursuant to section 2-408(a) or 2-408(b) of the Code of Civil Procedure (Code) (735 ILCS 5/2-408(a), 2-408(b) (West 2016)). The trial court found petitioners lacked standing to proceed under the Act; therefore, they could not intervene pursuant to section 2-408 of the Code. In Illinois, standing generally "requires only some injury in fact to a legally cognizable interest." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988). The claimed injury must be (1) distinct and palpable, (2) fairly traceable to the defendant's actions, and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Id.* at 492-93. However, under section 43(a) of the Act, only "the State's Attorney or Attorney General *** may institute a civil action for an immediate injunction." Thus, this case raises the question of whether the right to proceed under the Act in the first instance is a prerequisite to intervening in a case under the Act. We hold it is not.

¶ 16 Section 408(a)(2) and 408(b)(2) read as follows:

> "(a) Upon timely application anyone shall be permitted as of right to intervene in an action: *** (2) when the representation of the applicant's interest

> by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action ***.
>
> (b) Upon timely application anyone may in the discretion of the court be permitted to intervene in an action: *** (2) when an applicant's claim or defense and the main action have a question of law or fact in common." 735 ILCS 5/2-408 (West 2016).

"The circuit court has discretion to grant or deny a petition to intervene, and we will not disturb the circuit court's decision unless the court abused its discretion. [Citation.]" *In re County Treasurer & Ex-Officio County Collector*, 2017 IL App (1st) 152951, ¶ 15 (citing *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 143 (1984)). "A party is allowed to intervene as of right when *** a party who will be bound by an order or judgment in the action will not be adequately represented by existing parties." *In re Estate of Mueller*, 275 Ill. App. 3d 128, 139 (1995). Permissive intervention may be allowed "where: (1) a statute confers a conditional right to intervene; or, (2) the intervener has a claim or defense in common with a question of law or fact in the main action [citation]." *Id.*; *Mississippi Bluff Motel Inc. v. Rock Island County*, 96 Ill. App. 3d 31, 35 (1981). "An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. [Citation.] An application of impermissible legal criteria also justifies reversal. [Citation.]" *Rosen v. Ingersoll-Rand Co.*, 372 Ill. App. 3d 440, 448 (2007).

¶ 17 On appeal, the State does not argue petitioners lack "standing" under the Act to intervene in its case for an injunction against St. George and Nagle. Rather, the State argues, first with regard to intervention as a matter of right, that petitioners cannot satisfy the requirement that they "will or may be bound by an order or judgment in the action." 735 ILCS 5/2-408(a) (West 2016). The State argues petitioners cannot satisfy this requirement because they are not a party

to the proceedings and therefore cannot be ordered to comply with any order or judgment in this case, and because petitioners are not at risk of being subject to *res judicata* or collateral estoppel based on the State's action. We find no requirement in the language of the statute that the judgment have preclusive effect on another proceeding to satisfy the "will or may be bound" requirement in section 2-408(a), nor does the State cite any authority imposing such a requirement. We note the court has held "[a]pplicants for intervention will or may be bound by an order or judgment when they stand to gain or lose by the direct legal operation and effect of the judgment." *Joyce v. Explosives Technologies International, Inc.*, 253 Ill. App. 3d 613, 618 (1993). Petitioners have argued they stand to lose from an inadequate remediation of their property. This is a situation and the type of injury intervention is meant to address. See *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 101 F.3d 503, 507 (1996) (setting forth hypothetical and concluding: "The statute might forbid intervention. But if it did not, our hypothetical property owner could intervene in the environmental agency's suit, because the resolution of that suit could as a practical matter destroy his property right.").

¶ 18 The State also argues petitioners are not entitled to permissive intervention because they failed to identify what claims or defenses they have that have a question of law or fact in common with the main action. 735 ILCS 5/2-408(b)(2) (West 2016). The State argues petitioners failed to comply with section 2-408(e) of the intervention statute, which reads as follows:

> "A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he or she proposes to file. In cases in which the allowance of intervention is discretionary, the court shall consider whether the intervention will unduly delay

> or prejudice the adjudication of the rights of the original parties." 735 ILCS 5/2-408(e) (West 2016).

Petitioners assert they satisfied the requirement of section 2-408(e) when they filed their petition to intervene and sought leave to file their "Motion to Amend the Agreed Immediate and Preliminary Injunction Order." Petitioners argue that seeking leave to file their motion to amend the Agreed Order made it clear petitioners were seeking "to be included in all decisions that impact the air quality of their home for habitability questions and the remediation of their property." Petitioners also assert they should be allowed to remedy any error in failing to file a motion or pleading on a remand to consider the section 2-408 factors.

¶ 19 We find the State has forfeited any objection to the failure of petitioners to attach a proposed pleading to the motion to intervene. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15. "Generally, arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal. [Citation.]" *Id.* In *Jorgensen v. Whiteside*, 263 Ill. App. 3d 998, 1001-02 (1994), the plaintiff argued the intervener's motion for summary judgment on the intervener's claim to enforce a lien against the plaintiff's recovery in the underlying personal injury suit was properly denied because the intervener failed to file any pleadings with its petition to intervene in the underlying action in violation of section 2-408(e) of the Code. *Jorgensen*, 263 Ill. App. 3d at 1001-02. This court found that, "[u]ndoubtedly, all defects in the pleadings which are not objected to in the trial court are considered waived. [Citation.]" *Id.* at 1002. The plaintiff in *Jorgensen* did not object in the trial court to the motion to intervene or the granting thereof. *Id.* This court found the plaintiff had waived any argument on the intervener's failure to comply with the procedural requirements of section 2-408. *Id.* In this case, petitioners did file a motion to amend the Agreed Order, which the State argued could not be amended without their consent. Regardless, neither the State, St. George, nor Nagle attacked in the trial court the sufficiency of

petitioners' petition to intervene on the ground they failed to attach a motion or pleading they proposed to file. The argument the petition to intervene does not comply with the requirement to attach the motion or pleading the proposed intervener proposes to file is forfeited. See *Boler*, 2012 IL App (1st) 111464, ¶ 24.

¶ 20 Finally, the State failed to cite any authority for its claim the trial court's order denying the petition to intervene should be affirmed because petitioners' separate complaint allegedly provides full protection of their private interests and remand would allegedly be "pointless." The State cites authority for the proposition that we may affirm the trial court's judgment on any basis supported by the record but cites no authority for the proposition that a separate cause of action touching similar issues to the matter in which intervention is sought is itself a barrier to intervention. "Arguments that are not supported by citations to authority fail to meet the requirements of Supreme Court Rule 341(h)(7) and are procedurally defaulted. [Citation.]" *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5.

¶ 21 Petitioners argue section 2-408 contains no independent requirement a party seeking to intervene show they have standing in the proceeding. Instead, petitioners argue, our supreme court construes section 2-408(a) "as requiring a petitioner to establish a 'sufficient interest,' and an 'enforceable or recognizable right' in a case, in order to intervene as a matter of right." (Emphasis omitted.) In *John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d at 144, the court found that "an enforceable right or tangible detriment" fulfills the requirement that the petitioner "will or may be bound" by the judgment in the action in which the petitioner seeks to intervene. See 735 ILCS 5/2-408(a) (West 2016). In *Cooper v. Hinrichs*, 10 Ill. 2d 293 (1957), our supreme court noted that section 26.1(2) of the Civil Practice Act (now section 2-408(b) of the Code) "is patterned after Federal Rule 24(b) (28 U.S.C.A.) which has been interpreted to require that the applicant have an enforceable or recognizable right and more than a 'general

interest' in the subject matter. [Citations.]" *Cooper*, 10 Ill. 2d at 277. The language in *John Hancock* and *Cooper* addresses the factors a petitioner for intervention must satisfy under section 2-408. We agree with petitioners that the trial court in this case never reached the requirements of the intervention statute because it found a threshold requirement that petitioners must be able to file a complaint under the Act for injunctive relief against St. George and Nagle in their own right before they could seek to intervene in the State's case for injunctive relief.

¶ 22 In support of their argument petitioners do not have to demonstrate standing to proceed with an original complaint under the Act to be entitled to intervene as a matter of right in the State's case under the Act, petitioners cite *Solid Waste Agency of Northern Cook County*, 101 F.3d 503, a federal decision construing Federal Rule 24(a)(2), the rule on which section 2-408(a) of the Code is based. See *Cooper*, 10 Ill. 2d at 277; *Cook County v. Triangle Sign Co.*, 40 Ill. App. 3d 202, 214 (1963) (section 26.1 of the Civil Practice Act (now section 2-408 of the Code) "is the same as federal rule 24"). We find *Solid Waste Agency* instructive. There, a local municipality and a group of its residents (the interveners) sought to intervene in a case brought by a consortium of 23 other municipalities (calling themselves the Solid Waste Agency of Northern Cook County, hereinafter the Agency) against the Army Corps of Engineers. *Solid Waste Agency of Northern Cook County*, 101 F.3d at 504. The Agency sued to overturn the Corps' denial of a permit to build a landfill, and the interveners sought to intervene on the side of the Corps. *Id.* The interveners believed the landfill would lower property values and produce noise, dust, and odors in the adjacent residential areas, "and that it would deprive the [municipality's] residents of the environmental amenities that the site affords in its present undeveloped state." *Id.* The interveners were afraid the Corps' attorney (the Department of Justice) "may settle the suit on terms that do not fully protect the would-be interveners' interest, or that it may decide not to appeal a judgment in favor of [the Agency] should one be rendered."

Id. Federal "Rule 24(a)(2) of the Federal Rules of Civil Procedure confers a right of intervention upon one who 'claims an interest relating to' the subject matter of the suit in which he wants to intervene, provided that the disposition of the suit might 'impair or impede' his ability to protect that interest and the interest is not 'adequately represented' by a party to the suit." *Id.* at 505. The lower court believed the interveners lacked the requisite "interest." *Id.*

¶ 23 On appeal, to clarify "what 'interest' is required to support a right of intervention" the court began by noting that had the permit been granted rather than denied, the interveners "would have a sufficient interest to give them standing to challenge the grant of the permit in federal court" (*id.*) based on "[a] reduction in property values *** and an assault on the senses by noise, dust, and odors" (*id.*). "Less clear" was whether the "deprivation of the pleasure of watching birds and trees on another person's property is the kind of harm for which the [interveners] can seek a remedy in federal court." *Id.* On the question of whether the interveners had to have standing, the court questioned whether " 'interest' in Rule 24(a)(2) [is] identical to the interest that is required to confer standing." *Id.* at 506. The court wrote the interest required by Rule 24(a)(2) "could be less, since by assumption there are parties with standing already in the case. Or it could be more, or different." *Id.* Rule 24(a)(2) required an interest that is "direct, significant, and legally protectable." *Id.* The court found that the "clearest example of such an interest [(the one required by the rule)], *** is where the would-be intervener has a legal claim that could be made the basis of an independent suit against the defendant in the action in which he seeks to intervene." *Id.* The court found that scenario, however, does not present "the clearest case for intervention as a matter of right" (*id.*) because "if they could bring their own suit, they might not be able to show that they had to intervene in someone else's suit to protect their rights. [Citation.] They might be able to show [they had to intervene in someone else's suit] if the remedy in [that] suit would as a practical matter preclude the remedy they wanted. If

not, it would be a case for permissive intervention." *Id.* Rather, the court found, the "strongest case for intervention is not where the aspirant for intervention could file an independent suit, but where the intervener-aspirant has no claim against the defendant yet a legally protected interest that could be impaired by the suit. [Citation.] For it is here that intervention may be essential." *Id.* at 507.[2]

¶ 24 We hold the trial court abused its discretion in imposing a standing requirement for either intervention as of right or permissive intervention not found in section 2-408 of the Code. See *id.* See also *Madison Two Associates. v. Pappas*, 227 Ill. 2d 474, 494 (2008) ("it is the provisions governing the procedures to be followed in the particular tribunal, not[, in this case, the Act] itself, which fixes the terms for intervention"); *North Spaulding Condominium Ass'n v. Cavanaugh*, 2017 IL App (1st) 160870, ¶ 46 ("If a trial court's decision rests on an error of law, then it is clear that an abuse of discretion has occurred, as it is always an abuse of discretion to

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[2] The intervener would have a sufficient interest, that is an interest that is "direct, significant, and legally protectable" so long as their interest was more than "a purely theoretical possibility that the suit [in which they sought to intervene] might impair an interest" that is "so attenuated as to fall outside even the most expansive" view of Article III standing, which requires only that the interest fall "arguably within the zone of interest to be protected" by the statute claimed to have been violated. *United States v. 36.96 Acres of Land, More or Less, Situated in LaPorte County, State of Indiana*, 754 F.2d 855, 859 (7th Cir. 1985); *Sierra Club v. Morton*, 404 U.S. 727, 733 (1972). The federal courts do not universally require interveners to possess "the minimal standing required by Article III." *Solid Waste Agency of Northern Cook County*, 101 F.3d at 507. The Seventh Circuit has held Article III standing, alone, does not suffice to establish the required Rule 24(a) "interest." *City of Chicago v. Federal Emergency Management Agency*, 660 F.3d 980, 984 (7th Cir. 2011). The United States Supreme Court requires an intervener to demonstrate Article III standing "when it seeks additional relief beyond that which the plaintiff requests." *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017). See also *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 233, (2003) overruled on other grounds by *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010) ("The National Right to Life plaintiffs argue that the District Court's grant of intervention to the intervener-defendants, pursuant to Federal Rule of Civil Procedure 24(a) and BCRA § 403(b), must be reversed because the intervener-defendants lack Article III standing. It is clear, however, that the Federal Election Commission has standing, and therefore we need not address the standing of the intervener-defendants, whose position here is identical to the FEC's.").

base a decision on an incorrect view of the law."). The purpose of section 2-408 "is to liberalize the practice of intervention so as to avoid *** relitigation of issues in a second suit which were being litigated in a pending action." *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 57 (2002). To intervene, "a party need not have a direct interest in the pending suit" so long as the intervener has "an interest greater than that of the general public, so that the party may stand to gain or lose by the direct legal operation and effect of a judgment in the suit." *Id.* at 57-58. The ability to file a complaint for the relief sought in the case in which intervention is sought is not required, and "a court may not add provisions that are not found in a statute, nor may it depart from a statute's plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express." *Madison Two Associates*, 227 Ill. 2d at 495.

¶ 25 Having found no requirement petitioners first establish their right to proceed under the Act for injunctive relief, then, with respect to intervention as of right, the court's discretion should have been limited to determining if the petition is timely, whether there is inadequacy of representation, and whether there is sufficiency of interest in the case. *John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d at 144. "[O]nce these threshold requirements have been met, the plain meaning of the statute directs that the petition be granted." *Id.* Conversely, section 2-408(b) "establishes a minimal 'commonality' requirement for permissive intervention, and expressly commits the decision whether to allow intervention or not to 'the discretion of the court.' [Citation.]" *Id.*

¶ 26 In this case the trial court did not reach any of the factors under section 2-408(a) or 2-408(b), having found that as a threshold requirement petitioners were required to demonstrate standing to proceed under the Act. The result of the trial court's error was that the trial court

failed to exercise its discretion with regard to petitioners' intervention.[3] See *Solid Waste Agency of Northern Cook County*, 101 F.3d at 509. The proper remedy is to remand this matter to the trial court for a proper exercise of the court's discretion. See *Madison Two Associates*, 227 Ill. 2d at 496; *McDonald v. Health Care Service Corp.*, 2012 IL App (2d) 110779, ¶ 30.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Cook County is reversed and the cause is remanded for further proceedings not inconsistent with this order.

¶ 29 Reversed and remanded.

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[3] Petitioners argued for a *de novo* standard of review since the trial court based its ruling on a purely legal determination petitioners lacked standing under the Act. We have no need to resolve that particular dispute between the parties because doing so would have no affect on our disposition. "As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). But see *Madison Two Associates*, 227 Ill. 2d at 485-86.