

NOTICE
Decision filed 10/22/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140463-U

NO. 5-14-0463

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

CITY OF SPARTA, a municipal corporation,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Randolph County.
)	
v.)	No. 14-OV-86
)	
TIM PAGE,)	Honorable
)	Eugene E. Gross,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's ruling that raising of chickens in a residential district was not an agricultural use and was merely incidental to the permitted residential use of the property was not against the manifest weight of the evidence.

¶ 2 Plaintiff, City of Sparta, a municipal corporation, brought an ordinance violation action against defendant, Tim Page, alleging that Page was conducting an unpermitted use in a residential district, contrary to the provisions of the local zoning ordinance. After a bench trial in the circuit court of Randolph County, the trial court found in favor of Page. Plaintiff appeals contending that the court's decision is against the manifest

weight of the evidence and contrary to law. Page is acting *pro se* for this appeal. We affirm.

¶ 3 Plaintiff is a home rule municipality and, as such, has established a zoning ordinance. The zoning ordinance put in place by plaintiff provides for a myriad of different uses which may be conducted in various zoning districts.

¶ 4 Defendant Page resides on a one and one-half acre tract of land within the city limits in an R-4 residential district as established by plaintiff's zoning ordinance. He has been raising chickens for approximately four years on his property utilizing a movable fence which can be relocated throughout his property. Page considers his three chickens as pets, and does not use them for any commercial enterprise. No evidence was presented at trial that he sells either the chickens or their eggs.

¶ 5 In the summer of 2013, plaintiff's city animal control officer discovered that Page was raising chickens at his residence. The officer claimed that he warned Page to remove the chickens. Page denied speaking with the officer or being warned about raising chickens on his property. In March of 2014, Page called in a complaint to plaintiff's police department reporting that a stray dog had attacked one of his chickens. The city animal control officer responded to the call. Upon discovering that Page had not abided by his previous warning to get rid of the chickens, and after observing three chickens walking freely about the property, the officer issued Page a citation. The citation listed a violation of the city municipal code pertaining to harboring certain animals including swine, cattle, horses, mules or game birds within city limits. The charge was later

amended to a zoning violation for conducting a prohibited agricultural use in a residential district.

¶ 6 The trial court found that raising pet chickens was not prohibited by the city code. Because Page's activities were not commercial in nature, they did not constitute agricultural use. Rather, his use was merely incidental to a permitted residential use of his property, much the same as having a vegetable garden. The court further noted that the ordinance with which Page was originally charged with violating prohibited keeping certain animals within the city limits but poultry was not included by name in that list. The court concluded that Page's use was residential, and the chickens, which were not otherwise prohibited, were an incidental permitted use of the property. The court therefore found Page not guilty.

¶ 7 Prosecution for violation of a municipal ordinance is tried and reviewed as a civil proceeding. See *City of Highland Park v. Curtis*, 83 Ill. App. 2d 218, 222, 226 N.E.2d 870, 873 (1967). The standard of review of an appeal of an action based upon an alleged violation of a municipal ordinance is whether the trial court's judgment is against the manifest weight of the evidence. *City of Palos Heights v. Pakel*, 121 Ill. App. 2d 63, 72, 258 N.E.2d 121, 125 (1970). If the question on review involves construction of the municipal ordinance, however, then it becomes a question of law subject to *de novo* review. *City of Chicago v. Taylor*, 332 Ill. App. 3d 583, 585, 774 N.E.2d 22, 25 (2002).

¶ 8 Home rule communities have broad discretion to determine what the interests of the public welfare require and to take the steps necessary to secure those interests. Courts generally will not disturb any exercise of police power merely because there is room for a

difference of opinion about the wisdom or necessity of its exercise. *Kalodimos v. Village of Morton Grove*, 113 Ill. App. 3d 488, 493-94, 447 N.E.2d 849, 852 (1983). Here, plaintiff adopted regulations contained within its zoning ordinance that restrict the presence of agricultural uses to agricultural districts. Clearly, this is an acceptable regulation for the good of the public. Plaintiff argues that its ordinance is broad enough to cover more than just for-profit farming enterprises, however. According to plaintiff, Page, by raising chickens on his land, is conducting an agricultural use which is not acceptable in a residential district. We disagree and follow the reasoning of the trial court.

¶ 9 It is clear that the primary use of Page's property is residential. Page and his wife live in the house on the property as part of their normal everyday life. Normal incidental uses of residential homes and property include having pets. Incidental uses include anything usually connected with the principal use, something which is necessary, appertaining to or depending upon the principal use. *Bainter v. Village of Algonquin*, 285 Ill. App. 3d 745, 754, 675 N.E.2d 120, 127 (1996). Plaintiff's zoning code does not specifically permit dogs, vegetable gardens or fruit trees for instance, in a residential district, but all of these uses are incidental to residential use and clearly are not prohibited. Given, that no commercial agricultural use pertaining to the chickens was established, Page's owning of and keeping three pet chickens on his property does not constitute agricultural use as contemplated by the zoning code. Plaintiff counters that allowing Page to have chickens on his residential property will lead to other residents in residential districts having pet horses, cows or pigs at their homes as well. Other

provisions of the zoning code, however, specifically prohibit swine, cattle, horses, mules or game birds within residential neighborhoods. As the trial court recognized, a chicken is not a game bird. Prohibiting Page from possessing his pet chickens on his property would mean that any person who has agricultural products such as fruit trees and vegetable gardens would also be in violation of the zoning code. We agree that Page's use of his property is residential, and the chickens, which are not otherwise prohibited, are an incidental permitted use of the property.

¶ 10 Affirmed.