No. 3--09--0261
(Consolidated with No. 3--09--0262)

Order filed January 7, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A. D., 2011

COUNTY OF WILL,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Nos. 07--OV--7626 and
	)	07--OV--7628
GREG BENUSKA and	)	
RYAN GRANRATH,	)	Honorable
	)	Stephen D. White,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

Held: The appeal of a cease and desist order preventing the defendants from operating a tattoo parlor in a prohibited zone was not rendered moot by a subsequent change in the zoning ordinance and the trial court did not abuse its discretion in issuing the order to cease and desist.

The plaintiff, the County of Will (Will County), charged the defendants, Greg Benuska and Ryan Granrath, with violating a zoning ordinance by operating a tattoo parlor in a zone where it

was prohibited. Following a bench trial, the court: (1) found that the defendants violated the ordinance; (2) ordered each of the defendants to pay a $1,500 fine; and (3) ordered them to cease and desist from operating the tattoo parlor. On appeal, the defendants argue that the court erred in issuing the cease and desist order by failing to first balance the equities. We affirm.

I. BACKGROUND

As a preliminary matter, we note that the report of proceedings supplied to this court contains transcripts of the hearing on the defendants' motion to dismiss on April 22, 2008, and the trial on February 10, 2009. The record does not contain a transcript, a bystander's report, or an agreed statement of facts concerning any other proceeding in this matter.

On September 20, 2007, Will County filed two substantially similar complaints against the defendants alleging that they were violating a county zoning ordinance by operating a tattoo parlor in Lockport. On April 22, 2008, the defendants filed a motion to dismiss, arguing that the zoning ordinance was unconstitutionally void for vagueness. The court held a hearing on the motion the same day it was filed. At the conclusion of the hearing, the court took the matter under advisement. On September 17, 2008, the court issued a written decision in which it denied the motion to dismiss without prejudice, ruling that there was "insufficient

evidence to determine the constitutionality of the ordinance."

The court held the trial on February 10, 2009. At the conclusion of the proceeding, the court took the matter under advisement. The docket sheets indicate that on February 17, 2009, the court found that the defendants had violated the ordinance. This docket entry does not indicate that the parties or their attorneys were present when the court found the defendants guilty. The entry shows that the clerk was to notify the parties of the court's decision.

A docket entry indicates that the court held the sentencing hearing on March 24, 2009, with the parties and their attorneys present. The court issued two substantially similar sentencing orders for the defendants that same day, stating that they each were fined $1,500 and were "ordered to cease and desist from running a tattoo parlor." The defendants appealed.

II. ANALYSIS

A. Mootness and Jurisdiction

Initially, we feel that we must clarify a statement by the defendants concerning the possible mootness of issues on appeal. In their appellants' brief, the defendants asserted that the Will County zoning ordinances were amended on June 24, 2009, to permit body art studios, thereby "rendering many of the appealable issues moot." The defendants did not further explain this statement concerning mootness. In this statement, the defendants

did not identify any appealable issues they did not raise because of mootness. We note that the only issue raised by the defendants on appeal concerns the cease and desist order. The defendants do not specifically contend that this issue is moot.

In a footnote in its reply brief, Will County asserted, without further comment, that the amendment to the ordinances concerned C-3 zones. The record shows that Will County charged the defendants with violating an ordinance by operating a tattoo parlor in a C-1 zone. The parties have not explained what relationship, if any, an amendment concerning C-3 zones has to the original charge concerning a C-1 zone.

We have an obligation to consider our jurisdiction *sua sponte*. *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 909 N.E.2d 912 (2009). Ordinarily, courts of appeal lack jurisdiction to consider moot issues. *In re Michael H.*, 392 Ill. App. 3d 965, 912 N.E.2d 703 (2009). Nonetheless, it is the appellant's obligation to provide a sufficient record for us to determine the issues raised on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 459 N.E.2d 958 (1984).

In this case, the record supplied by the appellants is insufficient for us to decide whether the amendment concerning C-3 zones would have affected the status of the defendants' tattoo parlor in a C-1 zone. Therefore, we cannot determine whether the issue raised in this appeal is, in fact, moot because

of the amendment to the Will County zoning ordinances. See *Foutch*, 99 Ill. 2d 389, 459 N.E.2d 958. We also cannot determine whether other "appealable issues" might be moot because the defendants have not identified any such issues.

Furthermore, regarding the issue raised in this appeal, the defendants may ask the trial court to lift the cease and desist order, if, in fact, the amendment to the ordinances now permit the defendants to operate a tattoo parlor on their property. See *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446, 906 N.E.2d 556 (2009). To the extent that the defendants may seek to lift the cease and desist order, the issue they have raised is not moot. Therefore, we rule that we have jurisdiction over this matter. See *Michael H.*, 392 Ill. App. 3d 965, 912 N.E.2d 703.

B. Cease and Desist Order

The defendants contend that the trial court erred in issuing the cease and desist order, which is a form of injunction, by failing to first balance the equities.

In this case, the following statute authorized the court to issue an injunction regarding the defendants' zoning ordinance violation:

> "In case any building *** is used in violation of *** any ordinance, *** the proper authorities of the county *** may institute any appropriate action or proceedings in the

circuit court *** to restrain *** such violation *** in or about such premises." 55 ILCS 5/5--12017 (West 2008).

Ordinarily, in order to obtain injunctive relief, the party seeking the injunction must establish that it: (1) has no adequate remedy at law; (2) possesses a certain and clearly ascertainable right; and (3) will suffer irreparable harm if no relief is granted. *County of Kendall v. Rosenwinkel*, 353 Ill. App. 3d 529, 818 N.E.2d 425 (2004). In addition, generally, a court should balance the equities when considering whether to issue an injunction. *Rosenwinkel*, 353 Ill. App. 3d 529, 818 N.E.2d 425.

However, where, as here, the government was expressly authorized by statute to seek injunctive relief, the traditional equitable elements necessary to obtain an injunction need not be satisfied. See *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 786 N.E.2d 139 (2003). The government need only show that the statute was violated and that the statute relied upon specifically allowed for injunctive relief. *Cryns*, 203 Ill. 2d 264, 786 N.E.2d 139. We review a trial court's decision to issue an injunction for abuse of discretion. *Rosenwinkel*, 353 Ill. App. 3d 529, 818 N.E.2d 425.

In the present case, the defendants do not challenge the court's decision that they violated a Will County zoning ordinance. Once the ordinance violation was established, the

court was authorized by statute to issue the cease and desist injunction on behalf of Will County. See 55 ILCS 5/5--12017 (West 2008). Because the injunction was specifically authorized by statute, the defendants are incorrect to assert that the court first should have balanced the equities. See *Cryns*, 203 Ill. 2d 264, 786 N.E.2d 139.

The defendants cite *Rosenwinkel*, 353 Ill. App. 3d 529, 818 N.E.2d 425, for the proposition that the court was to balance the equities before issuing the injunction even though it was authorized by statute. As the State notes, the *Rosenwinkel* court, in turn, relied upon *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill. App. 3d 494, 624 N.E.2d 913 (1993), for this proposition. In *Midland*, the appellate court considered whether the trial court had erred in denying the government statutory injunctive relief concerning three construction projects that the government alleged had encroached on setbacks. Regarding one of the projects, the appellate court held that the trial court lacked jurisdiction to deny injunctive relief based on review of a permit. Concerning the second project, the *Midland* court ruled that the trial court erred by applying general equitable principles in refusing to issue a statutory injunction. Regarding the third project, the appellate court held that the application of general equitable principles in denying the statutory injunction was appropriate under the extraordinary

facts of the case, based on the doctrine of *laches*. In summary, the three holdings of *Midland* did not stand for the proposition that a trial court was to balance the equities before issuing a statutory injunction. In fact, its second holding was to the contrary. See *Midland*, 226 Ill. App. 3d 494, 624 N.E.2d 913. Therefore, we reject that defendants' argument concerning balancing the equities.

The defendants also cite *Rosenwinkel* for the more specific proposition that the trial court was required to balance the equities unless it made a finding that the ordinance violation was intentional. See *Rosenwinkel*, 353 Ill. App. 3d 529, 818 N.E.2d 425. The defendants assert that because the trial court in this case made neither an oral nor a written finding that the ordinance violation was intentional, the court erred by failing to balance the equities before issuing the injunction.

We note that the defendants have taken a proposition from *Rosenwinkel* out of context. In *Rosenwinkel*, the court said:

> "[W]here [a setback] encroachment is deliberate, the court may issue a mandatory injunction without considering the relative hardships. [Citations.] Thus, a court need not balance the equities before enjoining a zoning ordinance violation if the violation is intentional [citation], but such balancing is permissible." *Rosenwinkel*, 353 Ill. App. 3d at 539-40, 818 N.E.2d at 435.

The citation in the second sentence quoted above in *Rosenwinkel* was to *Reiter v. Neilis*, 125 Ill. App. 3d 774, 466 N.E.2d 696 (1984). *Reiter*, in turn, relied upon *Taubert v. Fluegel*, 122 Ill. App. 2d 298, 258 N.E.2d 586 (1970).

We observe that *Rosenwinkel*, *Reiter*, and *Taubert* concerned whether property owners had violated zoning ordinances by encroaching on setbacks. See *Rosenwinkel*, 353 Ill. App. 3d 529, 818 N.E.2d 425; *Reiter*, 125 Ill. App. 3d 774, 466 N.E.2d 696; *Taubert*, 122 Ill. App. 2d 298, 258 N.E.2d 586. The appellate courts in these cases considered whether the trial courts had determined if the property encroachments were intentional, and if so, whether the trial courts had balanced the equities before issuing statutory injunctions. The instant case, however, did not concern a property setback encroachment. Thus, we find that the propositions in *Rosenwinkel* concerning whether an ordinance violation was intentional were inapplicable to this case.

III. CONCLUSION

We hold that the trial court in the present case did not abuse its discretion by ordering the defendants to cease and desist from operating their tattoo parlor. Consequently, we affirm the judgment of the Will County circuit court.

Affirmed.