

NOTICE
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2013 IL App (5th) 120473-U

NO. 5-12-0473

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).

THE CITY OF ALTON, ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	Nos. 12-OV-100726,
)	12-OV-100727, &
MICHAEL R. STOREY,)	12-OV-100728
)	
Defendant-Appellant.)	Honorable Dean E. Sweet,
)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the City proved that the defendant committed the ordinance violations by a clear preponderance of the evidence, the judgment of the circuit court is affirmed.
- ¶ 2 In case number 12-OV-100726, the defendant was charged with having high weeds and grass in excess of 10 inches on his property in violation of section 5-1-3B of the Alton City Code (Code) (Code last updated December 19, 2012). In case number 12-OV-100727, the defendant was charged with having junk and trash on private property within the city limits in violation of section 5-1-1B of the Code. In case number 12-OV-100728, the defendant was charged with having construction debris on the premises in contravention of Property Maintenance Code 302.1 as adopted by Alton City Code section 9-1-1A (Code last updated December 19, 2012). After a bench trial, the defendant was found guilty of all three charges. On appeal, the defendant argues that the circuit court erred when it did not rule in

favor of his motion for mistrial, when it considered the City's response to his motion even though the response was untimely, when it made a determination based on a date that the defendant argues was improper, when it determined that the construction material on the defendant's property was in "public view," and when it allowed the City to submit photographs into evidence that the defendant argues were unclear. The defendant also argues that he should not be held liable for trash that was allegedly dumped on his property by vandals without his knowledge, and without him being given an opportunity to correct the violation. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 The defendant owned property that was located within the city limits of Alton, Illinois. On April 25, 2012, the City of Alton building and zoning inspector, Mike Harvey, inspected the defendant's property for violations of the Code. The inspector cited the defendant for several violations, specifically that there were high weeds, wood, plastic piping, trash, concrete, an old television, bags, garbage, and construction debris on the premises. The defendant pled not guilty to the violations. The three separate cases were consolidated.

¶ 5 A bench trial was held on the three cases on July 13, 2012. The defendant appeared *pro se*. The court took judicial notice of the Code. While no transcript of the proceeding was taken, the court certified a bystander's report.

¶ 6 According to the bystander's report, the City called Mike Harvey, the city inspector, to testify. Harvey testified that he had inspected the defendant's premises on April 25, 2012, and on subsequent dates prior to the bench trial. He testified that the property had high weeds, wood, plastic piping, trash, concrete, an old television, bags, garbage, and construction debris. He testified that the property was not clean, safe, or in a sanitary condition.

¶ 7 The City moved to have photographs of the premises from the date of the violation admitted into evidence. The defendant conceded that the photographs accurately depicted the property on the dates indicated on the photographs, but the defendant objected to the photographs that were not taken on April 25, 2012. Only the photographs from April 25, 2012, were admitted into evidence at that time. Harvey then went on to testify as to the condition of the premises on the various dates of his inspections.

¶ 8 The City then attempted to introduce evidence regarding the removal of dirt from the premises. The defendant objected, arguing that such evidence had no relevance to the three violations with which he was charged. The court sustained his objection, and no such evidence was admitted into evidence or considered by the court.

¶ 9 On cross-examination, Harvey testified that he was not sure as to the status of other portions of the property. He admitted that after April 25, 2012, the defendant contacted Harvey and they discussed how the defendant could remedy the violations. He testified that though the defendant took remedial measures to cure the violations, the property still had violations on it at the time of trial. Harvey then testified that he did not believe that the materials in the photographs were building materials, but that even if they were, outside storage of the materials was not permitted.

¶ 10 Next, the City called the defendant as an adverse witness. He testified that the photographs were a true and accurate depiction of the property. He did not agree with Harvey about the cleanliness of the property or the height of the weeds. He testified that the junk and debris that Harvey claimed to have seen were actually building materials that he used in his business, and that he was storing those materials on his property for future use.

¶ 11 The defendant testified in his own defense. He testified that he had not been on or seen the property for an extended period of time prior to April 25, 2012. He testified that vandals must have placed junk and debris on his property because he did not do so. The

defendant believed that after he had contacted Harvey about remedial measures, he had corrected all of the problems they discussed. The defendant attempted to introduce evidence of the condition of other properties in Alton, but the City objected, and the evidence was not admitted or considered by the court. The defendant testified that photographs taken subsequent to April 25, 2012, showed the remedial measures he had taken. The court admitted those photographs into evidence to support his claim that he had made efforts to address the issues on the property. At the close of the bench trial, the court took the matter under advisement.

¶ 12 On July 16, 2012, the defendant filed a motion for mistrial. In that motion, the defendant argued that the evidence regarding dirt removal on the defendant's property was presented to influence the judge, thereby prejudicing the defendant. On July 19, 2012, the defendant filed an affidavit. In that affidavit, he stated (1) that not all of the property in question was actually located in Alton, (2) that someone had dumped trash and debris on the property without his knowledge, (3) that the City never disputed the fact that someone else had dumped trash on the property, (4) that he removed the trash within five days of discovering it, (5) that the defendant removed the sewer pipe from the property, (6) that the defendant had the grass cut once in May and once in June and had moved some dirt on the property to correct some issues with holes, ruts, and grade, and did so to better maintain the premises, (7) that the defendant used the dirt to correct the issues because he believed he was permitted to do so pursuant to City Code 9-5-5A, (8) that there were still building materials at the rear of the property but that they were over 500 feet off the public street and the view of the materials was blocked by different obstacles, (9) that he believed the materials were exempt from the City Code, which states that trash and junk cannot be stored in an area open to public view, (10) that the plaintiff failed to present any evidence that any of the remaining items were within public view, (11) that photographs taken by the city inspector were taken

on the defendant's private property in an area posted with a "no trespassing sign," (12) that the defendant felt that he had eliminated the offenses in a timely manner, and finally, (13) that the court should only allow photographs of building materials being stored outside to be submitted as evidence if those photographs were taken from public property. On August 10, 2012, the court entered an order on pending issues. In that order, the court found the defendant guilty of the offenses and fined the defendant \$150 for each offense. While the court did not explicitly deny the defendant's motion for a mistrial, the order on pending issues effectively did so.

¶ 13 On September 5, 2012, the defendant filed a motion to reconsider. In that motion, the defendant presented the same arguments as his arguments in his motion for mistrial, but also added that the City was late in filing a response to the defendant's previous affidavit, and the court should not have considered the late filing. The court denied the motion on September 21, 2012. The defendant appeals.

¶ 14 ANALYSIS

¶ 15 Ordinance violations proceedings are quasi-criminal. *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1048 (1999). The ordinance violation itself must be proven by a clear preponderance of the evidence. *Id.* We address the defendant's arguments in turn.

¶ 16 I. Mistrial Ruling/Motion to Reconsider Ruling

¶ 17 The defendant filed a motion for mistrial after the bench trial. He attached his motion to reconsider to his appellate brief. The City, in its brief, did not address the defendant's motion for mistrial, but rather his motion to reconsider. In the interest of being thorough, we will address both the defendant's motion for mistrial and motion to reconsider.

¶ 18 A motion to reconsider allows a party to bring before the court newly discovered evidence, changes in the law, or errors in the court's prior application of existing law. *Koczor v. Melnyk*, 407 Ill. App. 3d 994, 1002 (2011). A circuit court's ruling on a motion

to reconsider will not be overturned absent an abuse of discretion. *Id.* An abuse of discretion will be found where no reasonable person would take the view adopted by the circuit court. *Fennel v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 12.

¶ 19 Here, the court specifically stated that it based its ruling on the testimony and evidence presented at the bench trial. Harvey testified that the property in question still had violations on it. The City also presented photographs that showed the high weeds and debris on the property. Thus, we cannot find that the court abused its discretion when it denied the defendant's motion to reconsider. The defendant failed to present any new evidence or change in law that would have warranted a grant of the motion to reconsider.

¶ 20 A ruling on a motion for mistrial is within the sound discretion of the circuit court, and a ruling denying the motion is proper absent a demonstration of prejudice to the defendant. *People v. Westpfahl*, 295 Ill. App. 3d 327, 333 (1998). Again, an abuse of discretion occurs where no reasonable person could agree with the position taken by the circuit court. *People v. Gist*, 2013 IL App (2d) 111140, ¶ 11.

¶ 21 In this case, the defendant argues that the court should have granted his motion for mistrial because the City presented evidence of dirt removal on the defendant's property, which had nothing to do with the violations with which the defendant was charged. He argues that the presentation of such evidence prejudiced him and improperly influenced the circuit court. However, when the City presented the evidence, the defendant objected, the court sustained the defendant's objection, and the court did not consider the evidence about dirt removal. We therefore do not agree with the defendant that he was prejudiced when the City attempted to introduce the evidence of dirt removal. The court specifically noted that it did not consider the dirt removal when it found the defendant guilty of the violations.

¶ 22

II. Late Filing

¶ 23 The decision to accept a late filing is within the sound discretion of the circuit court,

and we will not reverse that decision unless it was an abuse of discretion. See *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 439 (2010). In this case, the court stated that the City's late filing was of no consequence because nothing in the filing affected the ruling of the court. The court based its ruling on the testimony and evidence presented at the bench trial, as well as upon the supporting documents provided by the defendant. The defendant was not prejudiced by the late filing because the court did not use the late filings when making its determination.

¶ 24

III. Factual Determinations

¶ 25 On review, the circuit court's factual determinations regarding ordinance violations will not be reversed unless those determinations are contrary to the manifest weight of the evidence. *Anthony*, 304 Ill. App. 3d at 1048. Factual findings and credibility determinations are against the manifest weight of the evidence if the opposite conclusion is clearly apparent. *City of Highland Park v. Kane*, 2013 IL App (2d) 120788, ¶ 11. With respect to the circuit court's consideration of the date of the violations, the credibility of the witnesses, and the introduction of photographic and other evidence, we find that the City proved the violations by a preponderance of the evidence. *Anthony*, 304 Ill. App. 3d at 1048.

¶ 26

A. Date of Violation

¶ 27 The defendant argues that the circuit court erred when it considered the condition of the property on April 25, 2012, rather than at the time of trial. Section 5-1-5B of the City Code allows for a reasonable time for abatement of the violations of not less than 2 days but not more than 10 days. At the time of trial, Harvey testified that the property was still in violation of the Code. The court, however, noted that the defendant had made an effort to correct some of the issues, and therefore reduced the amount of the fine from what the City suggested. Thus, we find that the court did not err when it considered the April 25, 2012, violation date as it also considered the condition of the property at the time of the trial.

¶ 28

B. Evidence and Witnesses

¶ 29 In a bench trial, the circuit court, as the trier of fact, is in the best position to ascertain the credibility of witnesses. *People v. Jackson*, 358 Ill. App. 3d 927, 941 (2005). The circuit court is able to view the witnesses, determine the weight to give to certain testimony and evidence, and make reasonable inferences therefrom. *Id.* It is within the sound discretion of the circuit court to determine the credibility of witnesses and weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 527 (2004). A reviewing court may not substitute its judgment for that of the circuit court, and it is not our duty to retry the defendant. *People v. Connolly*, 322 Ill. App. 3d 905, 919 (2001).

¶ 30 Here, the defendant argues that the photographs that were taken of his property were of poor quality and did not demonstrate any violations of the ordinance. However, according to the bystander's report, the defendant agreed that the photographs clearly and accurately depicted the property on the date in question. Also, the court considered the testimony of the city inspector and deemed his testimony credible. Any deficiencies in the photographic evidence were clearly resolved by the defendant's own admission and Harvey's supporting testimony.

¶ 31 According to section 5-1-1B of the Code, "junk, trash, and refuse is further defined to include any materials which may be used or intended to be used in building improvements, landscaping or construction projects of any kind if those materials are stored in an area open to public view." The defendant admitted that the materials were for a construction project, which falls within the definition of junk and debris. The record is unclear as to whether the construction debris was within an area "open to public view." The defendant claims that the photographs showing the construction materials were taken from somewhere on the premises, and that the area was not visible from the public road. However, the defendant did not object to the introduction of the April 25, 2012, photographs

that showed the construction material. Nor did the defendant file a motion to suppress the photographs. In order to preserve an issue for appeal, the defendant must raise an objection at trial and include the objection in a posttrial motion. *People v. Bui*, 381 Ill. App. 3d 397, 405 (2008). While the defendant did include the "public view" argument in his motion for mistrial, he did not initially object to the April 25, 2012, photographs at the time of trial. Thus, the defendant waived the "public view" argument.

¶ 32 Finally, the defendant argues that he should not be punished for the actions of vandals who dumped trash on the property, and that the court erred when it did not consider his testimony credible when he testified about the vandals. The circuit court aptly noted that vandals did not cause the high weeds. Also, the defendant admitted that the building and construction materials on the property were for his business. The defendant also admitted that he had not been on or seen the property for a long time prior to the date of the violations. The court stated that the defendant was responsible for keeping his property in compliance with the Code, regardless of whether someone else caused there to be a violation on the property. Further, the section 5-15A Code provides that "[a]ny property owner *** who allows a nuisance to exist shall be fined." The Code does not include any provision that exempts a property owner from a violation if someone else committed the violation on the owner's property. Therefore, the court did not err when it found that it was the defendant's duty to maintain his property.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 35 Affirmed.