2023 IL App (4th) 221067-U

NO. 4-22-1067

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 18, 2023
Carla Bender
4th District Appellate
Court, IL

CITY OF SOUTH BELOIT,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
MARICRUZ CASIQUE and MARIA ELLA MUNOZ,	)	No. 20MR538
Defendants-Appellants.	)	
	)	Honorable
	)	Ronald Anthony Barch,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cavanagh and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Due to defendants' noncompliance with Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020), they forfeited their claim on appeal that municipal fines imposed against them were excessive; however, even absent forfeiture, defendants' claim lacks merit.

(2) Defendants' claim that municipal fines were imposed against them without any evidentiary basis lacks merit, and the trial court's judgment as to those fines is affirmed as modified.

¶ 2 Defendants, Maricruz Casique and Maria Ella Munoz, appeal the trial court's imposition of fines for their violation of various ordinances of plaintiff, the City of South Beloit (City). On appeal, they argue the fines were (1) excessive and in violation of the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and (2) improperly entered without a sufficient evidentiary basis. We affirm the court's judgment as modified.

¶ 3 I. BACKGROUND

¶ 4 In July 2020, the City filed a two-count complaint against defendants, alleging they owned property within the City located at 731 Wheeler Avenue and that defendants' property violated the City's code of ordinances (Code) in several respects. In particular, the City maintained 20 separate ordinance violations had been observed in connection with six structures on defendants' property, which were identified as a (1) "Tree House," (2) "Small Shed," (3) "Doghouse / Chicken Coop," (4) "Wood Gazebo/Detached Pavilion," (5) "Detached Garage w[ith] Addition," and (6) "Covered Patio." The City alleged (1) all six structures were constructed or maintained absent an application to the City's zoning officer and without the issuance of zoning permits (South Beloit, IL, Code of Ordinances (Code) § 118-85 (adopted April 2, 2001)), (2) four of the structures—the tree house, the wood gazebo or detached pavilion, the detached garage with addition, and the covered patio—were constructed and maintained in violation of the City's building and electrical codes (*id.* §§ 14-61, 14-85), (3) four of the structures—the small shed, the wood gazebo or detached pavilion, the detached garage with addition, and the covered patio—were constructed and maintained in violation of the Code's "setback" provisions (*id.* § 118-163(f)), (4)) the tree house was constructed in excess of the City's building height requirements for defendants' zoning district (*id.* § 118-163(g)), and (5) defendants impermissibly kept chickens on their property (*id.* § 10-2).

¶ 5 According to the City's complaint, the violations on defendants' property were found during property inspections on August 1, 2018, December 17, 2018, February 20, 2019, March 20, 2019, April 17, 2019, May 12, 2020, and June 9, 2020. The City alleged that on September 18, 2018, it issued defendants "a Notice of Code Violation," but that the violations continued to exist. In count I of its complaint, the City sought injunctive relief that prohibited continued violations and required defendants to bring their property into compliance with the

Code. In count II, the City sought a judgment for municipal fines for continued violations. It alleged section 1-8 of the Code provided for the imposition of fines of not less than $100 and not more than $750 for each offense and that a separate offense was " 'deemed committed on each day that a violation occurs or continues.' " *Id.* § 1-8. The City asked the trial court to impose fines of $750 for each day the violations set forth in its complaint continued since September 18, 2018, the date it issued the "Notice of Code Violation" to defendants.

¶ 6 On August 6, 2020, defendants were served with summons and a copy of the complaint. However, they neither entered an appearance in the case nor responded to the complaint. On September 17, 2020, the trial court conducted a hearing in the matter, at which only counsel for the City appeared. At the City's request, the court entered a default judgment in the City's favor and continued the matter "for status on remediation as well as entry of an order for municipal fines, costs[,] and attorney[ ] fees."

¶ 7 At the next hearing on October 15, 2020, both defendants appeared *pro se*. The City represented that nothing had "been remediated yet on the property" and there had been "no changes." Defendant Munoz informed the trial court that defendants had "asked for a permit" and that they were waiting for the City "to approve those permits." The City responded that only "partial applications" had been submitted by defendants and that it had "requested additional information as well as the payment of the permit fees." Again, the court continued the matter for status on remediation.

¶ 8 Following hearings in November 2020 and January 2021, the trial court entered orders requiring defendants to continue cooperating with the City and to remediate all of the Code violations on their property. The matter was further continued following virtual hearings in March and May 2021.

¶ 9 In July 2021, the trial court conducted a hearing, during which counsel for the City informed the court that defendants had received "zoning clearances" for the property but that inspections still needed to occur and there continued to be electrical and plumbing issues that had "to be addressed with the county." Counsel also requested an order requiring defendants "to remove the unauthorized chickens" from the property. Defendant Casique appeared *pro se* and represented to the court that although there had been a chicken on the property that was a gift for her son, the chicken was "not there any longer." She also asserted that an inspector had been on the property "two weeks ago," but additional work on the property had been finished the day before and she intended to call the inspector again. Following the hearing, the court entered a written order, stating as follows:

> "1) The Defendants continue to be enjoined and prohibited from using the property in violation of the Code ***, including, but not limited to, the keeping of:
>
> a. Fowl (water and land fowl);
>
> b. Poultry (chicken, turkey, roosters, etc.);
>
> c. Geese;
>
> d. Guinea hens.
>
> 2) All such prohibited animals shall be removed from the property within 14 days of this order.
>
> 3) The defendants shall continue to proceed with the remediation of all [C]ode violations as previously ordered by the Court."

¶ 10 On October 7, 2021, the City filed a petition for rule to show cause for indirect civil contempt and for attorney fees. It noted the trial court's July 2021 order and alleged that defendants (1) continued to keep unauthorized birds on their property contrary to both the court's order and

the Code and (2) "failed or refused to comply with the Court's Order related to the property" at issue. On October 15, 2021, the court entered an order directing defendants to appear before the court and show cause why they should not be held in indirect civil contempt.

¶ 11 On October 28, 2021, the trial court conducted a hearing on the rule to show cause. The record does not contain a transcript of the hearing, but docket entries reflect both defendants failed to appear and the court found them in indirect civil contempt. On November 4, 2021, the court entered a written order, finding defendants in indirect civil contempt and ordering as follows:

> "The Defendants *** are Ordered to comply with all previously entered orders of this Court, and shall remain in contempt of court until removing such unauthorized animals from said property, and obtaining such required permits, inspections, and certificates from the City previously ordered, and as required by City Ordinance."

¶ 12 On January 3, 2022, the City filed a petition for attorney fees and costs and a petition for municipal fines. With respect to the latter petition, the City alleged that the Code violations set forth in its July 2020 complaint had continued, and it requested the trial court order defendants to pay fines that, when combined, totaled $13,245,000. The City cited the general penalty provision of its Code, which states as follows:

> "Where an act or omission is prohibited or declared unlawful in this Code ***, the violation of any such provision of this Code or any ordinance shall be punished by a fine of not less than $100.00 and not more than $750.00 for each offense, such amount being in addition to any court costs and/or attorney[] fees applied by the court. A separate offense shall be deemed committed on each day that a violation occurs or continues." South Beloit, IL, Code of Ordinances § 1-8(a) (adopted April 2, 2001).

¶ 13 The City also attached an exhibit to its filing, which contained a breakdown of the fines requested for each of defendants' 20 alleged continuing violations of the Code. The City asked the trial court to impose maximum fines of $750 per day with respect to each violation. It alleged each of the six zoning permit violations under section 118-85 of the Code (*id.* § 118-85) continued from September 18, 2018, to January 4, 2021—a total of 839 days—and it sought a total fine of $3,775,500 for those six violations. For the eight violations of section 14-61 of the building code (*id.* § 14-61) and section 14-85 of the electrical code (*id.* § 14-85), the City alleged violations continuing from September 18, 2018, to March 10, 2021—a period of 904 days—and it sought a total fine of $5,424,000 for those eight violations. For each of the four violations of setback provisions under section 118-163(f) of the Code (*id.* § 118-163(f)), the City alleged continuing violations from September 18, 2018, to January 4, 2021—a total of 839 days—and it sought a total fine of $2,517,000. The City further alleged defendants' violation of the height requirements for buildings within their zoning district under section 118-163(g) of the Code (*id.* § 118-163(g)) continued from September 18, 2018, to January 4, 2021—a period of 839 days—and it sought a total fine of $629,250 for that violation. Finally, for defendants' possession of unauthorized animals under section 10-2 of the Code (*id.* § 10-2), the City alleged a continuing violation from September 18, 2018, to December 30, 2021—a period of 1199 days—and it sought a total fine of $899,250.

¶ 14 By March 2022, defendants obtained counsel, who entered his appearance in the case on their behalf. In October 2022, the trial court conducted a hearing on the City's petition for municipal fines. Counsel for both parties appeared, but defendants were not personally present. At the hearing, the parties presented argument to the court. The City contended that although defendants had "extensive opportunity to remediate" their Code violations, there continued to be

"major issues" on the property at issue. The City pointed to the court's prior orders in the case as evidence of defendants' continued noncompliance. It indicated that although defendants had made some recent progress after the "cutoff date[s]" set forth in its petition, they were "still not in compliance" in that they needed "to actually have the structures adjusted and changed and brought into compliance."

¶ 15 In response, defendants' counsel acknowledged that there had been a default judgment against defendants and a finding of indirect civil contempt; however, he suggested the evidence was insufficient to support the imposition of fines beyond that time period, stating as follows:

> "And, you now, then the argument as far as what has happened, you know, beyond the fact that there was a complaint that they're defaulted on whatever is contained in the complaint and the fact that they were found in contempt for not complying with the ordinance. I don't think there's any other—well, the evidence of those things that happened with the chicken got away [*sic*] or that's a—that's just argument. There's no evidence made on those things."

Defendants' counsel also argued that the fines requested by the City and authorized by the Code were unreasonable. He asserted that the "issues" on the property did not constitute a danger to others or their property and there had "to be some kind of reasonable cap to a penalty." He suggested the court impose a fine in the nature of $3000 for each violation.

¶ 16 The trial court determined that there was "a litany" of "flagrant" violations on defendants' property, which did present health and safety concerns. It found defendants had "ignored" the underlying court proceedings and stated it did not view the case "as something that's nominal or excusable." It noted that the Code provided that ordinance violations "shall be punished

by a fine of not less than [$]100 and not more than $750 for each offense." The court further stated as follows:

> "It goes on to say a separate offense shall be deemed committed on each day that the violation occurs or continues. So it doesn't have that discretionary component in it ***. And so what, what we have is a $100 per day minimum [and a] $750 Maximum. A $100 fine in and of itself for a violation is not extraordinary. It's not punitive. It's not—it's not unreasonable I should say. The only reason this is seemingly unreasonable, because in aggregate it's massive. But as [case authority] points out, it was [defendants] that controlled the duration of this fine those components. I have no—I have no basis to conclude that there were not 20 violations. I wasn't part of the default I wasn't part of the contempt. All I knew is [defendants] had a chance to contest all this, these 20 different violations per day ongoing for this period and failed. I still don't have pleadings contesting any of this. And the period that they're looking for is a date of the violation, the beginning date of September 18 of '18. So now we're talking about a massive amount of time all the way through. In this particular case, the dates in the petition are up to March 10, 2021. So *** the Courts [*sic*] going to impose the $100 minimum *** per day fine for each day those offenses continued as argued in this petition and uncontested by the defendants."

The court ordered the City to recalculate the fines based upon its ruling. In November 2022, the trial court entered an amended written order that was consistent with its oral ruling and imposed municipal fines for defendants' 20 violations of the Code, totaling $1,766,000. The court also granted the City's request for attorney fees and costs and entered a judgment for the City and

against defendants in the amount of $1,768,483.11.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Excessive Fine Claim

¶ 20 On appeal, defendants first argue that the fines imposed against them were excessive and in violation of the eighth amendment of the United States Constitution (U.S. Const., amend. VIII). Initially, however, we find defendants have forfeited this claim due to their lack of compliance with the Illinois Supreme Court Rules for appellate briefs.

¶ 21 Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) provides that an appellant's brief must contain an "Argument" section, which sets forth "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." The rule states that "[p]oints not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." *Id.*

¶ 22 Ultimately, appellate courts are entitled to have the issues in a case clearly defined with cohesive legal arguments, and they "are not depositories where litigants may dump the burden of argument and research." *In re Marriage of Hundley*, 2019 IL App (4th) 180380, ¶ 82, 125 N.E.3d 509. "The well-established rule is that mere contentions, without argument or citation of authority, do not merit consideration on appeal." *Bank of Illinois v. Thweatt*, 258 Ill. App. 3d 349, 362, 630 N.E.2d 121, 130 (1994). "An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7)." *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855, 869 N.E.2d 964, 979 (2007).

¶ 23 Here, defendants' argument that the trial court imposed excessive fines is conclusory and not supported by any reasoned analysis. In connection with their claim, defendants

cite law relating to the eighth amendment and its prohibition against excessive fines and they reference the allegations against them as set forth in the City's July 2020 complaint. However, defendants offer essentially no discussion of how the cited legal authority applies to the particular facts of their case. At most, defendants' actual analysis of their claim consists of two conclusory sentences: "The City neither proved nor presented evidence that any of the [defendant's] alleged violations of the [City's] municipal code relate to the imposition of a $1,768,483.11 fine [*sic*]. On their face these fines and judgment violate the Eighth Amendment of the U.S. Constitution."

¶ 24 Notably, in *Express Valet*, one of the two cases defendants cite on appeal, the First District also found that the appellants in that case had forfeited their claim that municipal fines entered against them were excessive due to noncompliance with the Illinois Supreme Court Rules. *Id.* In so holding, the court stated as follows:

> "In this case, petitioners have offered virtually no analysis as to why the fines imposed are excessive and unconstitutional. The record shows that petitioners committed 1,287 violations of the Code, yet petitioners have failed to address the propriety of any of the individual fines imposed on those violations or the conduct that each represents. Most significantly, petitioners have failed to address that they committed over 1,000 violations of the Code by operating without a valid valet parking license, that each day Express Valet operated in such a manner constituted a separate offense punishable by its own fine, and that the fines imposed for each violation are mandatory and provided by statute. Instead, petitioners have simply aggregated the fines imposed for those violations and claimed that this amount is 'excessive.' Moreover, petitioners have cited no Illinois case law applying the excessive fines clause to statutory fines such as those in this case, and they do not

even argue that the clause should be applied to the type of fines involved here. The cases petitioners do cite as authority for such an application involve civil forfeiture provisions that are different from the penalty provisions in this case. [Citations.] In light of petitioners' failure to adequately present a challenge to the fines imposed, we conclude that this issue is waived." *Id.*

¶ 25 Defendants' arguments in the present case suffer from the same deficiencies as the appellants' argument in *Express Valet*. Defendants even cite the same case authority relied upon by the appellants in that case and which the First District found distinguishable. See *United States v. Bajakajian*, 524 U.S. 321 (1998). Given defendants' lack of analysis and consequent noncompliance with Rule 341(h)(7), we find their excessive fine claim has been forfeited.

¶ 26 We note that in *Express Valet*, the First District concluded that even setting aside the appellants' "waiver" of their excessive fine claim, the claim lacked merit. *Express Valet*, 373 Ill. App. 3d at 855. The court pointed out that the constitutionality of an ordinance is subject to *de novo* review. *Id.* at 854. It also noted the eighth amendment's prohibition against excessive fines and that "[a] fine is considered excessive 'if it is grossly disproportional to the gravity of a defendant's offense.' " *Id.* at 856 (quoting *Bajakajian*, 524 U.S. at 334). The court went on to find that the municipal code provisions at issue served legitimate interests and that the City of Chicago, the municipality in that case, also "ha[d] a legitimate interest in securing compliance with [its municipal code] through penalties." *Id.* The reviewing court determined the appellants in the case "misleadingly aggregate[d] the fines imposed" to claim that they were excessive. *Id.* at 857. The court stated the appellants' argument ignored "that almost all of the [the aggregate fine] amount [was] based on a per-offense penalty, and that it was [appellants] who controlled the extent of those fines." *Id.* It concluded the fines imposed were not grossly disproportionate to the gravity of

the offenses when considering the amount of each fine, the appellants' conduct, and the City of Chicago's legitimate interests that were served by its municipal code. *Id.*

¶ 27 Again, similar circumstances are presented by the case at bar. Defendants have made no argument either below or on appeal that the provisions of the City's Code that are at issue serve no legitimate interest or that the City had no legitimate interest in securing compliance with its Code through penalties. Notably, the trial court in this case determined the provisions of the Code at issue were meant to address health and safety concerns, and it declined to find defendants' violations of those provisions "nominal or excusable." The record presents no basis upon which to disturb those findings. Moreover, on review, defendants reference only the aggregate amount of the fines imposed when claiming that they are excessive. Although the aggregate amount is large, defendants ignore that the amount was based upon 20 separate violations of the Code, each of which continued unabated for a lengthy period of time. Like the appellants in *Express Valet*, defendants ultimately "controlled the extent of [the] fines." *Id.* Accordingly, even if we were to excuse defendants' forfeiture in this case, we would find that their excessive fine claim lacks merit.

¶ 28 B. Sufficiency of the Evidence Claim

¶ 29 On appeal, defendants next argue that the trial court's judgment for municipal fines lacked evidentiary support. They contend "it was the City's burden to prove their fines," but it presented "no evidence or testimony" at the October 2022 hearing on its petition.

¶ 30 Again, we note defendants have provided very little in the way of analysis with respect to their claim of error. However, because we find their argument is at least minimally sufficient with respect to the requirements of Rule 341(h)(7), we address the merits of their claim.

¶ 31 A trial court may enter a default judgment when a party has failed to appear and file an answer to the complaint. *City of Joliet v. Szayna*, 2016 IL App (3d) 150092, ¶ 47, 66 N.E.3d

875. "Where a party has not answered, there are no factual issues raised, and a trial court has the discretion to enter default judgment without an evidentiary hearing." *Id.* However, default judgments are comprised of two judicial determinations: "(1) a finding of the issues for plaintiff; and (2) an assessment of damages." (Internal quotation marks omitted.) *Id.* ¶ 53. "[F]undamental fairness requires that [the] plaintiff be required to prove up its default damages and entitles [the] defendant the opportunity to be heard on said matter." *Id.* ¶ 57.

¶ 32 Here, the City filed a petition for municipal fines, alleging defendants' continuous violations of the Code. It specifically alleged that defendants' eight violations of its building and electrical codes continued for 904 days, from September 18, 2018, to March 10, 2021. It alleged defendants' 11 violations of its zoning code, including its permit, height, and setback requirements, each continued for 839 days, from September 18, 2018, to January 4, 2021. Finally, the City alleged defendants' possession of unauthorized animals continued for 1199 days, from September 18, 2018, to December 30, 2021.

¶ 33 In October 2022, the trial court conducted a hearing on the petition. As defendants point out on appeal, no evidence was presented at the hearing. However, instead, the court relied upon the default judgment against defendants and its previous orders in the case to find defendants' continuing violations of the Code. Notably, the City sought fines for each violation, beginning on September 18, 2018. In its original complaint, filed July 31, 2020, the City alleged 20 separate violations of the Code by defendants; that "A Notice of Code Violation" was issued to defendants on September 18, 2018; and that all of the violations continued through the date of the City's filing. On September 17, 2020, a default judgment was entered against defendants, meaning they never contested the allegations of the complaint.

¶ 34 Thereafter, the trial court entered several orders requiring defendants to remediate

the violations and, on November 4, 2021, it entered an order finding them in indirect civil contempt for not complying with an order that required them to remove unauthorized animals from the property and otherwise "proceed with the remediation of all [C]ode violations as previously ordered." The record does not contain a transcript of the civil contempt proceedings; however, it does show the court entered the following order.

> "The Defendants *** are Ordered to comply with all previously entered orders of this Court, and shall remain in contempt of court until removing such unauthorized animals from said property, and obtaining such required permits, inspections, and certificates from the City previously ordered, and as required by City Ordinance."

¶ 35 The trial court's default judgment and subsequent orders are indicative of defendants' continuing violations of the Code through the date of the court's contempt finding. At the October 2022 hearing on the City's fine petition, defendants did not present any evidence to contest the City's claims. Additionally, they did not challenge the City's reliance on, or the court's consideration of, the prior orders in the case, and they make no such challenge on appeal. Significantly, the record in this case reflects defendants, in fact, acknowledged the court's prior orders, specifically the default judgment and the finding of indirect civil contempt, and suggested only that there was insufficient evidence of continuing violations *beyond* the date of the court's contempt finding.

¶ 36 Here, the default judgment and the trial court's subsequent orders through the date of the indirect civil contempt finding on November 4, 2021, provided a sufficient evidentiary basis for finding defendants' continuing violations of the Code. We note that for all but one of the 20 violations, the City alleged time periods that ended well before the indirect civil contempt finding, *i.e.*, January 4, 2021, and March 10, 2021. Accordingly, we find no error with respect to the trial

court's imposition of fines through those dates. However, the City alleged the remaining violation, which concerned defendants' possession of unauthorized animals, continued beyond the date of the court's civil contempt finding on November 4, 2021, to December 30, 2021. The record reflects no evidentiary basis for finding any continuing violation of the Code after November 4, 2021, nor did defendants concede to any continuing violation after that date. Accordingly, we find the court erred by imposing a $100-per-day fine against defendants for the 56-day period between November 4 and December 30, 2021, and we modify the court's judgment by reducing the aggregate fine imposed by $5600.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we reduce the aggregate fine imposed by $5600 and affirm the trial court's judgment as modified.

¶ 39 Affirmed as modified.