No. 129164

In the

Supreme Court of Illinois

CITY OF ROCK FALLS
an Illinois Municipal Corporation,

Petitioner-Appellee,

vs.

AIMS INDUSTRIAL SERVICES, LLC,
An Illinois Limited Liability Company,

Respondent-Appellant,

On Appeal from the Illinois Appellate Court,
Fourth Judicial District, No. 4-22-0208.
There Heard on Appeal from the Circuit Court of the Fourteenth Judicial Circuit
Whiteside County, Illinois, No. 2019 CH 85
The Honorable **Stanley B. Steines**, Judge Presiding.

REPLY BRIEF AND ARGUMENT FOR RESPONDENT-APPELLANT

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ORAL ARGUMENT REQUESTED

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ARGUMENT

I. THE CITY'S REQUEST FOR AN INJUNCTION PURSUANT TO THE MUNICIPAL CODE MAY NOT BE CONSTRUED AS A REQUEST FOR "STATUTORY" RELIEF FOR PURPOSES OF THE RULE SET FORTH IN *CRYNS*.

Citing this Court's decision in *Sherman v. Cryns*, 203 Ill. 2d 264 (2003), the Fourth District held that when a governmental body seeks injunctive relief, all equitable considerations are improper, and the governmental body need only show that (1) the *statute* was violated; and (2) that the *statute* relied upon specifically allowed for injunctive relief. (Emphasis added.) *Aims Industrial Services, LLC,* 2022 IL App (4th) 220208-U, ¶ 45. In *Cryns*, this Court addressed violations of the Nursing and Advanced Practice Act (225 ILCS 65/20-75 (West 2000)), a statutory scheme which specifically empowered governmental entities to petition the circuit court to enjoin any violation of or to enforce compliance with the Act. *Cryns*, 203 Ill. 2d at 267-68. This Court instructed that "[o]nce it has been established that a *statute* has been violated, no discretion is vested in the circuit court to refuse to grant the injunctive relief authorized by that *statute*." (Emphasis added.) *Id*. at 278; See *People v. Keevan*, 68 Ill. App. 3d 91, 97 (1979) (referencing violations of the Illinois Environmental Protection Act); See *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill. App. 3d 494, 504 (1993) (referencing violations of the Rivers, Lakes, and Streams Act).

In its response brief, the City concedes that *Cryns*, *Keevan*, and *Midland Enterprises, Inc.* involve the application and enforcement of state statutes, not municipal

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ordinances. (City Br. at 8). Nonetheless, the City maintains that no distinction exists between state statutes and municipal ordinances for purposes of the rule promulgated in *Cryns*. (City Br. at 8). The City is mistaken.

The crux of the City's argument rests upon this court's decision in *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 4-12 (2009). In *Landis*, this court was tasked with deciding whether a municipal ordinance violation was encompassed within the term "statutory penalty" for purposes of the applicability of section 13-202 of the Code of Civil Procedure. *Id.*; 735 ILCS 5/13-202 (West 2004). After applying the general principles of statutory interpretation, the *Landis* court found that though the term "statutory" was ambiguous, the legislature must have intended the term "statutory" to have a broad meaning within the context of section 13-202, which encompassed municipal ordinances. *Landis*, 235 Ill. 2d at 11-12.

In contrast to *Landis*, the issue before this court is not one of statutory interpretation. This court's analysis should be wholly devoid of concerns relating to legislative intent. The issue is whether the City's prayer for injunctive relief, which was based solely on the alleged violation of section 32-186(h) of the Rock Falls Municipal Code, may now be construed as a request for "statutory" relief.

It is well settled that unlike the General Assembly, municipal corporations lack inherent power and may only exercise those powers delegated to them by the General Assembly. *Bryant v. City of Sherman*, 204 Ill. App. 3d 583, 588 (1990); *Chicago Real Estate Board, et al. v. City of Chicago*, 36 Ill. 2d 530, 537 (1967). It is also well settled that (1) the Illinois General Assembly is separate and distinct from a local municipality (See Ill. Const. 1970, art. I, §§ IV, VII.); and (2) statutes and municipal ordinances are distinct

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enactments. See *City of Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶¶ 19, 24 (holding that municipal ordinances and State laws are distinct enactments and that the term "State law" under section 7(1)(a) of the Freedom of Information Act "must be afforded its plain and ordinary meaning, which necessarily excludes municipal ordinances."); see also *Village of Mundelein v. Hartnett*, 117 Ill. App. 3d 1011, 1015 (a State statute is the strongest indicator of public policy, and when a conflict arises between a statute and an ordinance, the ordinance must give way); see generally *People v. Williams*, 393 Ill. App. 3d 77, 86 (2009) (Municipal police department's rules and regulations, even if ordinances, were not laws for purposes of the offense of official misconduct.)

The rule established in *Cryns* applied specifically to the violation of State statutes, not municipal ordinances. The City's Verified Petition for Injunctive and Other Relief made no reference to the statute under which the requested relief was authorized. Rather, the City's petition was based solely on the alleged violation of a municipal ordinance. As such, to obtain injunctive relief, the City was required to establish the traditional elements for obtaining an injunction, and the Fourth District erred in holding otherwise.

II. TRIAL COURTS MUST REMAIN EMPOWERED TO BALANCE THE EQUITIES WHEN DECIDING WHETHER AN INJUNCTION SHOULD ULTIMATELY ISSUE AND DOING SO DOES NOT RESULT IN A VIOLATION OF SEPARATION OF POWERS DOCTRINE.

In its response brief, the City posits that when the Government seeks injunctive relief that is specifically authorized by ordinance, courts have no authority to deny the Government's request once a violation of the ordinance has been established. (City Br. at

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10). The City urges this Court to disregard the Second District's decision in *County of Kendall v. Rosenwinkel*, 353 Ill. App. 3d 529, 539 (2004), wherein the Second District held that a court considering injunctive relief could, and perhaps should, balance the equities, "even where the three traditional elements necessary to secure a permanent injunction are supplanted by statute expressly authorizing the State or governmental agency to seek injunctive relief." The City further asserts that by citing *Rosenwinkel*, "Aims attempts to insert an additional element into the analysis that has never existed – one that would by necessity require a court to balance the equities each and every time a statutory injunction is sought by a governmental agency." (City Br. at 13). In so arguing, the City insinuates that the Second District Appellate Court formulated its discussion of the equities in *Rosenwinkel* out of thin air. In fact, *Rosenwinkel* drew its guidance from this court.

In *Village of Wilsonville v. SCA Services, Inc.*, 86 Ill. 2d 1, 6 (1981)[1], the Village of Wilsonville and the Attorney General of Illinois, *et al*. (plaintiffs), filed complaints for injunctive relief. The complaints generally alleged that the defendant's chemical waste disposal site presented a public nuisance and a hazard to the health of the citizens of the Village, the County, and the State. Following an extensive trial, the circuit court held that the site constituted a nuisance and issued a permanent injunction that enjoined the defendant from operating its landfill in the Village. *Id*. On appeal before the Illinois Supreme Court, the defendant argued that the circuit court erred in failing to balance the equities, either in finding a prospective nuisance or in fashioning relief. *Id*. at 14. This court rejected the defendant's argument, but not on the grounds that a balancing of the equities

[1]Though likely, it remains unclear to Aims as to whether some of the complaints brought in the *Wilsonville* case were based on alleged ordinance violations in addition to alleged violations of the Environmental Protection Act.

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would have been improper based on the plaintiff's status as a governmental entity. Rather, this court extensively highlighted the circuit court's decision to balance the equities and/or hardships when deciding to issue the permanent injunction and the propriety of the court's decision to do so. *Id*. at 23-31.

Illinois jurisprudence has long recognized that balancing the relative equities is an important part of a court's consideration of a request for an injunction. See *Midland Enterprises*, 226 Ill. App. 3d at 505 (balancing the equities after determining that the traditional elements to obtain an injunction need not be established); See also *Oak Run Property Association, Inc. v. Basta*, 2019 IL App (3d) 180687, ¶ 62 ("Generally, a trial court considering injunctive relief also balances the equities."). Balancing the equities is a duty separate and apart from the court's consideration of the traditional elements necessary to obtain an injunction. See *JL Properties Group B, LLC v. Pritzker*, 2021 IL App (3d) 200305, ¶¶ 58-60 (even if a plaintiff makes a showing as to each of the elements, the court may not issue a preliminary injunction unless the balances of the hardships and public interests weigh in favor of granting the injunction); See also *Granberg v. Didrickson*, 279 Ill. App. 3d 886, 890 (1996) (holding that, in addition to making a *prima facie* showing on the other elements, plaintiffs must establish that "they would suffer more harm without an injunction than defendants will suffer with it.").

This balancing of the equities remains necessary because a mandatory injunction represents an extraordinary remedy, the granting of which may only occur through the exercise of "sound judicial discretion in cases of great necessity." *JCRE Holdings, LLC v. GLK Land Trust*, 2019 IL App (3d) 180677, ¶ 20; citing *Taubert v. Fluegel*, 122 Ill. App. 2d 298, 302 (1970); see *Wilson v. Illinois Benedictine College*, 112 Ill. App. 3d 932, 937

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(1983) (mandatory injunctions are not favored and are issued only "with caution and in the sound discretion of the court"); see *Village of Riverdale v. American Transloading Services*, 2023 IL App (1st) 230199-U, ¶ 1 (finding that the trial court improperly granted the Village of Riverdale's request for a preliminary injunction, based on a section of the Riverdale Municipal Code authorizing injunctive relief, where the court failed to balance the equities, and granting relief would result in permanent closure of defendant's business); see *Beloit Foundry Co. v. Ryan*, 28 Ill. 2d 379, 392 (1963) ("A court of chancery may grant relief upon such terms as it deems equitable, and it will not require the doing of an act which will result in little benefit to one but great hardship to another.").

Balancing the equities when considering injunctive relief has long been the province of the Illinois judiciary. Aims makes no attempt "to insert an additional element into the analysis that has never existed." Rather, like any other equitable remedy, a request for injunctive relief should not be controlled entirely by technical legal rules devoid of considerations of fairness and equity. The analysis must instead remain subject to the discretion and conscience of the circuit court, taking into account the equities and potential hardships on a case-by-case basis. See *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit School No. 4*, 396 Ill. App. 3d 1105, 1119 (2009).

Ultimately, the Fourth District's decision in the instant matter deprives the trial court of any discretion on remand. Under its rationale, the trial court would be forced to compel Aims, a small business in rural Illinois, to expend $157,010.45 to abandon an active, functioning, private system that was not and is not a threat to public health. Alternatively, if Aims were to instead sell the property, to whom could it be sold? The Fourth District's decision would make any prospective sale contingent upon connection,

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effectively doubling the purchase price. Inequities of this magnitude demand judicial checks on otherwise unbridled municipal power.

Furthermore, the City's argument that balancing the equities risks treading upon constitutional separation of power is baseless. (City Br. at 16). The City posits that when courts are empowered to determine whether certain equitable relief is reasonable and necessary, they are exercising a legislative, rather than a judicial function, leading to improper determinations about what is in the best interests of the public. (City Br. at 17).

Certainly, as the City notes, the legislative, executive, and judicial branches are separate and may not exercise powers properly belonging to the other. Ill. Const. 1970, art. II, § 1. That said, this constitutional requirement was not designed to achieve complete divorce among the three branches of government, "[n]or does it prescribe a division of governmental powers into rigid, mutually exclusive compartments." *People v. Walker*, 119 Ill. 2d 465, 473 (1988). Rather, separation of powers doctrine contemplates a government of separate branches having certain shared or overlapping powers, and as such, this constitutional requirement "does not prohibit every exercise of functions by one branch of government which is ordinarily exercised by another." *Id*. at 473-74; see *People v. Mayfield*, 2023 IL 128092, ¶ 26. It is within the power of the judiciary to determine when, and under what circumstances, a violation of separation of powers occurs. *People v. Hammond*, 2011 IL 110044, ¶ 52.

Generally, the legislative branch enacts laws, the executive branch enforces laws, and the judicial branch construes laws. *Mayfield*, 2023 IL 128092, ¶ 27, *Murneigh v. Gainer*, 177 Ill. 2d 287, 302 (1997). For example, the legislature has the power to proscribe certain types of conduct as crimes and to determine sentences for those crimes. *Hammond*,

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2011 IL 110044, ¶ 57. But the power to impose a sentence is an exclusive function of the judiciary. *Id*. ¶ 60.

Similarly, in accordance with the legislative power granted to it by the General Assembly, the City enacted the ordinance at issue. The trial court, in accordance with its inherent judicial power, construed the ordinance, and applied its provisions to the facts before the court. See *People v. Ballard*, 2022 Ill. App. (1st) 210762, ¶ 27 (Judicial power includes adjudication and application of the law.). The trial court was well within its inherent constitutional authority to assess and apply the provisions of the ordinance.

Curiously, it is by the very power of the judicial branch that the City in this matter is enabled to argue that its status as a governmental entity exempts it from establishing the three traditional elements necessary to secure a permanent injunction. Stated differently, this proposition stems wholly from prior decisions of the Illinois Supreme Court, not from any legislation enacted by the General Assembly.

The trial court was well within its inherent authority when it applied the ordinance at issue to the facts in this matter. Maintaining the power of a trial court to balance the equities when determining whether a permanent injunction should ultimately issue does not violate separation of powers doctrine. Trial courts must remain empowered to employ equity and fairness when deciding whether to issue such injunctions.

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CONCLUSION

For these reasons, the Fourth District's decision should be reversed and the trial court's order denying the City's Request for Injunctive and Other Relief should be affirmed.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 8 pages.

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CERTIFICATE OF FILING AND SERVICE

James W. Mertes, Attorney for Respondent/Appellant, states that he has electronically filed the Appellant's Reply Brief with the Clerk of the Illinois Supreme Court, and has served the foregoing Appellant's Reply Brief to counsel for Petitioner/Appellee on May 19, 2023, by transmitting the same by email to the following named individual, at the email address cole@wmpj.com, on such date.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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