2023 IL App (5th) 220305-U

NOS. 5-22-0305, 5-22-0306 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE CITY OF ALTAMONT, ILLINOIS, a Municipal Corporation,	)	Appeal from the Circuit Court of Effingham County.
Plaintiff-Appellee,	)	
v.	)	Nos. 21-OV-6, 21-OV-7
AARON FRITCHER and EMILY FRITCHER,	)	Honorable Kevin S. Parker,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Boie and Justice McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court properly granted the plaintiff's motion for summary judgment where the defendants violated a municipal ordinance and defendants were not selectively prosecuted or entitled to a reasonable accommodation.

¶ 2 The defendants, Aaron Fritcher and Emily Fritcher, appeal the April 19, 2022, orders entered by the circuit court of Effingham County granting summary judgment in favor of the plaintiff, the City of Altamont, pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2020)). For the following reasons, we affirm the circuit court's orders.

¶ 3 I. BACKGROUND

¶ 4 This appeal stems from consolidated cases, 21-OV-6 and 21-OV-7, which are ordinance violation proceedings brought by the plaintiff against the defendants, Aaron Fritcher and Emily

Fritcher, respectively. The 21-OV-6 case against Aaron Fritcher was filed on January 28, 2021, and the 21-OV-7 case against Emily Fritcher was filed on January 29, 2021. Despite being separate filings, the allegations against each defendant, in each case, are identical. In the complaints, the plaintiff alleges in 10 counts (one count for each day of violation) that the Fritchers "violated Paragraph (M) of Section 25-3-2 of the Revised Code of Ordinances of the City of Altamont, Illinois, [(City Code)] in that [the defendants] placed an obstruction or encroachment upon a public easement in, on, around, or about the premises located [on the Fritchers' residence]." The "obstruction" complained of by the plaintiff is a backyard fence which was constructed underneath overhanging power lines and in between power line poles. Before we can proceed to the issues presently before us, a discussion of prior relevant facts is necessary.

¶ 5 The defendants are husband and wife who own real property located in Altamont, Illinois, where they reside together. The plaintiff was granted a 15-foot public utility easement (easement) which stretches across the defendants' backyard. Electrical overhead powerlines are located on the easement. The defendants initially constructed a privacy fence in their backyard which stopped short of the easement in September 2012. The defendants obtained a building permit for that initial fence. However, a short time later, without obtaining a building permit, they modified that fence and added to it a chain-link fence which crossed the easement underneath the power lines and extended towards an outbuilding at the rear of their property. The fences remained in place until the defendants removed the chain-link fence and extended the wood privacy fence on or about June 30, 2020.

¶ 6 The defendants have two children, one of whom is 14 years old and suffers from various disabilities including autism spectrum disorder, developmental delays, and epilepsy. According to the defendants, this child is highly susceptible to elopement and bolting (such as darting into traffic

or running or jumping into open water) and is unable to perceive the risks related to those activities. On June 29, 2020, the 14-year-old child attempted to flee from the defendants' property and stated that he would try again to get out of the fenced area. This occurrence led them to decide to extend the privacy fence.

¶ 7 In anticipation of extending the fence, the defendants phoned JULIE, to have the city locate underground electrical utilities. As a result of this, Gary White, the City of Altamont zoning administrator, learned of the defendants' intent to extend their privacy fence across the easement and underneath the power lines. Mr. White phoned the defendants to discuss the defendants' plans to build a fence across the easement. According to the defendants, when Mr. White called, he was "screaming and cursing" at them. This is denied by Mr. White and the plaintiff. Nevertheless, during the conversation, the defendants explained they were extending their fence "for emergency purposes" for the safety of their child with autism. Mr. White explained that a building permit was required for construction of the fence and that no permit would be granted if the fence encroached on the plaintiff's easement.

¶ 8 The defendants went forward with construction of the fence. The fence crossed the power line easement on both the north and south sides of the defendants' property. The defendants did put in place a 15-foot-wide double gate on the north side of the fence. Because the extended fence was located on and enclosed a portion of the public utility easement, the plaintiff sent a notice to abate to the defendants on July 27, 2020, demanding that the extension of the fence be removed. In response, the defendants submitted a notice to appeal to the plaintiff demanding that they be allowed to maintain the extended fence on the utility easement as a reasonable accommodation for the safety of their disabled child. The plaintiff then informed the defendants that the fence could remain if the defendants put in place another 15-foot-wide double gate on the south side of the

fence so that equipment could continue along the easement unimpeded when both gates were opened. After, the plaintiff followed up with the defendants through its attorney in a December 9, 2020, correspondence. That correspondence contained a "licensing agreement" which extended the easement and required the defendants to build the additional gate as previously discussed. It also allowed the encroachment and the remaining portions of the fence once the defendants agreed. In the correspondence, the plaintiff articulated that this was being offered "as a manner to resolve the easement encroachment matter between you and [the plaintiff]." The correspondence went on to note that the license agreement was being offered "in lieu of proceeding to enforce the [City Code]." The defendants responded by indicating that another gate was unnecessary given the small size of the backyard and that installing the gate would be more troublesome because of the configuration of the fence on the south side. However, they agreed to extend the easement a few feet onto their property so that the second gate could be constructed, but only if the plaintiff covered the expenses for such an alteration and the lock for said gate was located on the outside of the fence where their son could not access it.

¶ 9 Following this response, the plaintiff filed the ordinance violation action against the defendants. After the initial filing, the defendants did not file a formal answer to the complaint. The plaintiff filed a motion for summary judgment on September 10, 2021, and an amended motion for summary judgment on October 14, 2021. In the motions for summary judgment, the plaintiff argued that the extended fence constituted a nuisance as defined by the City Code, that the defendants were not entitled to a reasonable accommodation, but that the plaintiff nevertheless offered one which the defendants rejected. The defendants filed their response on October 18, 2021. In the response, the defendants admitted and denied the facts as articulated by the plaintiff and as recited above. In response to the plaintiff's argument, the defendants, in a total of four

sentences, responded that issues of material fact existed as to whether the fence constituted a nuisance, issues of material fact existed as to whether the plaintiff selectively enforced its ordinances against the defendants, and that the United States Constitution provides that no state shall deny any person equal protection of the laws. No analysis of the facts or further articulation of the defendants' position was stated. Affidavits were attached from the defendants articulating their version of facts. Importantly, in support of their claim of selective prosecution, the affidavits also included a list of 10 other properties which the defendants alleged violate the ordinance, but which they claim the plaintiff has not prosecuted.

¶ 10 The plaintiff filed its reply on November 19, 2021, in which it reiterated its points as to the issues above and responded to the claims of selective prosecution based upon the other violations allegedly not prosecuted. In support of its arguments, especially that of selective prosecution, the plaintiff attached an affidavit from Gary White, its zoning administrator, who addressed each claimed violation of the easement in the defendants' affidavits. Notably, Mr. White attested that only five of the alleged properties actually had structures that encroached on the easement, and that the plaintiff did not have notice of the construction or installation of those structures, or the structures were constructed prior to the adoption of the City Code.

¶ 11 On April 17, 2022, the circuit court entered an order of summary judgment. In that order, the circuit court found that no genuine issue of material fact existed, that the defendants' extended fence constituted a public nuisance in violation of a municipal ordinance, that the plaintiff did not selectively enforce or prosecute the ordinance against the defendants, and that "no genuine or material fact exists that the [plaintiff] failed to offer reasonable accommodations to the Defendant as required by law." The circuit court then granted the motion for summary judgment in favor of the plaintiff without further explanation.

¶ 12 II. ANALYSIS

¶ 13 The defendants raise two arguments on appeal which we will address in turn. First, we review the well-settled law regarding our review of a dismissal based upon summary judgment.

> " 'Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.' *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43. 'Where a case is decided through summary judgment, our standard of review is de novo.' *Id.* 'A defendant moving for summary judgment bears the initial burden of proof.' *Siegel Development, LLC v. Peak Construction LLC*, 2013 IL App (1st) 111973, ¶ 109. 'The defendant may meet his burden of proof either by affirmatively showing that some element of the case must be resolved in his favor or by establishing that there is an absence of evidence to support the nonmoving party's case.' (Internal quotation marks omitted.) *Id.* 'Where a plaintiff has moved for summary judgment, the materials relied upon must establish the validity of the plaintiff's factual position on all the contested elements of the cause of action.' *Beltran*, 2013 IL App (1st) 121128, ¶ 43." *Village of New Athens v. Smith*, 2021 IL App (5th) 200257, ¶ 15.

¶ 14 At the outset, we note that the defendants have only appealed two issues, whether issues of fact exist regarding selective prosecution against the defendants that would preclude summary judgment and whether issues of fact exist regarding reasonable accommodation, or lack thereof, which would preclude summary judgment. Notably, on appeal, the defendants do not argue in their initial brief, as they did in the trial court, that an issue of fact exists relating to whether the fence constituted a nuisance or actually encroached upon the easement as defined under the City Code. Because the defendants did not raise that issue in their opening brief, it is forfeited. See Ill. S. Ct.

R. 341(h)(7) (eff. Oct. 1, 2020) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Therefore, there is no issue as to whether the defendants actually were violating the City Code, but only whether or not the City Code was being selectively enforced against them or they were entitled to a reasonable accommodation because of their son's disability.

¶ 15 A. Selective Prosecution

¶ 16 The defendants' first argument is that the plaintiff selectively prosecuted them by enforcing the ordinance in violation of the fourteenth amendment of the United States Constitution. According to the United States Supreme Court in *United States v. Armstrong*, 517 U.S. 456 (1996), in order to succeed on a selective prosecution claim, the claimant must demonstrate that the prosecutorial policy implemented had a discriminatory effect and was motivated by a discriminatory purpose. *Id.* at 465. A decision to prosecute may not be based on "an unjustifiable standard such as race, religion, or other arbitrary classification." (Internal quotation marks omitted.) *Id*. at 464. To establish a discriminatory effect on a protected class, the claimant must show that similarly situated individuals outside of the protected class were not prosecuted. *Id.* at 465. However, a prosecuting entity has broad discretion to enforce its laws and there is a presumption that the prosecutor has not violated equal protection. *Id.* at 464-65. "In order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present 'clear evidence to the contrary.' " *Id.* at 465.

¶ 17 As noted above, the claimant must demonstrate that the prosecution, here, the plaintiff, was motivated by a discriminatory purpose *and* provide clear evidence that similarly situated individuals outside the protected class were not prosecuted. See *id*. This is true whether the

claimant seeks to proceed with a claim based on discrimination due to either the claimant's membership in a protected class or a "class of one," theory. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Savino v. Town of Southeast*, 983 F. Supp. 2d 293, 301 (S.D.N.Y. 2013); *LeClair v. Saunders*, 627 F.2d 606, 609 (2d Cir. 1980); *Armstrong*, 517 U.S. at 465. Here, it is not immediately apparent which theory the defendants are proceeding under; however, whether they are primarily claiming discrimination based upon their disabled son, or under a "class of one" analysis because of some animus on the part of the plaintiff, their claim fails.

¶ 18 First, there is simply no evidence that the plaintiff is seeking to enforce the City Code against the defendants because of their disabled son. The ordinance at issue in no way could be construed to target disabled individuals. The ordinance's purpose and impact is the same for everyone: that the city maintain unfettered access to the electrical power lines and the land upon which those lines are located and traverse. The fact that the defendants assert their son's disability is the reason for which they have constructed a fence that encroaches upon the plaintiff's easement does not, *ispo facto*, require that the reason for the plaintiff's enforcement of the action is because of that disability. The plaintiff's offering of a license agreement with a modification of the fence which would allow the fence to remain in place despite its encroachment upon the easement further demonstrates that the plaintiff's decision to prosecute this matter is not related to the child's disability. Additionally, the defendants have not provided any information establishing that the owners of the other identified properties which the plaintiff allegedly has not prosecuted for violations of the ordinance are not members of the same protected class that the defendants are claiming.

¶ 19 To the extent the defendants argue that the alleged cursing and screaming towards them by Mr. White, the plaintiff's zoning administrator, is evidence of malice, intent to injure, or

discrimination to support selective prosecution under a "class of one" analysis, we disagree. Assuming the alleged behavior of Mr. White is true and animus by him against the defendants existed, there is no evidence in the record that Mr. White participated in or had any control over the plaintiff's decision to prosecute the defendants. Thus, they have failed to prove a sufficient nexus between Mr. White and the plaintiff which would have allowed Mr. White's animus to be imputed to the plaintiff. See *People v. Fields*, 322 Ill. App. 3d 1029, 1032 (2001); *United States v. Monsoor*, 77 F.3d 1031, 1035 (7th Cir. 1996). Additionally, the record demonstrates that Mr. White handled the review of and ultimately approved the permit which the defendants obtained when they constructed their backyard fence in 2012, a fence that complied with the ordinance at issue. The defendants have alleged no facts that would explain why Mr. White would have developed animus towards them since he last approved their previous fence construction.

¶ 20 Despite the foregoing, we do not even need to reach the conclusions above for the claim of selective prosecution to be thwarted. The defendants have put forth alleged evidence of similarly situated individuals who have violated the ordinance and yet not been prosecuted by the plaintiff. The defendants list a total of 10 properties in their affidavits which they claim violate the ordinance and which the plaintiff has failed to enforce the City Code against. The plaintiff filed a response to this evidence in an affidavit of the city zoning administrator in which he outlined that of the properties listed, only five of those properties had structures that potentially violated the ordinance and encroached upon the easement. He distinguished these five properties from the defendants because the plaintiff did not receive any notice in advance of the construction or installation of these potentially encroaching structures. Thus, unlike the defendants, where they received direct notice that their fence would be in violation of the ordinance and they went forward and built the fence in violation of the ordinance anyway, the plaintiff never had prior knowledge of the intent

of the other property owners to build structures which may violate the ordinance. Thus, the plaintiff never had the opportunity to instruct those property owners not to carry out their plans or to seek a variance, only to have them ignore that notice. Therefore, because the plaintiff had advance knowledge of the violation by the defendants and the plaintiff informed the defendants of such, the other property owners listed by the defendants cannot be said to be "similarly situated" with the defendants. Here, the defendants intentionally constructed a fence in violation of an ordinance and intentionally failed to obtain the required permit in order to construct the fence, after being given notice. The other property owners did not. A prosecutor's discretion certainly allows for the consideration of whether the defendant deliberately violated an ordinance after being instructed not to, versus a defendant who violated an ordinance unknowingly or without prior warning. This fact alone establishes a rational basis for the difference in treatment between the defendants and the other listed property owners.

¶ 21 The defendants also stated that following the construction of their backyard fence in 2012, which they obtained a permit for, they constructed an extension made of chain-link fencing. This chain-link fence was located upon the easement at issue. The defendants did not obtain a permit for this fence. There is no evidence that the plaintiff had any knowledge of this fence. This situation is similar to that of the other properties listed by the defendants in that they had constructed a structure in violation of the ordinance without the plaintiff having knowledge. Notably, the plaintiff never took action against the defendants for the construction of the chain-link fence because the plaintiff had no knowledge of the violation. This is additional proof that the plaintiff did not selectively prosecute the defendants, but instead, was forced to prosecute because the plaintiff had knowledge of the violation, the defendants intentionally ignored the plaintiff's

instruction not to build, and the defendants refused to remove the violation or make the modifications requested by the plaintiff following the fence's construction.

¶ 22 In light of this reasonable, nondiscriminatory, basis for the plaintiff's decision to enforce its ordinance, the defendants have failed to provide any facts that demonstrate the plaintiff selectively prosecuted the ordinance violation against the defendants. Therefore, the trial court did not err when it found that the plaintiff did not selectively enforce the ordinance against the defendants.

¶ 23 B. Reasonable Accommodation

¶ 24 The second issue raised by the defendants is that the circuit court erred in granting the motion for summary judgment because there was a genuine issue of material fact as to whether the defendants were entitled to and denied a reasonable accommodation because of their disabled son under the Americans with Disabilities Act (ADA) (42 U.S.C. § 12131 *et seq.* (2012)) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701 to 794 (2012)). The defendants' position is that they are entitled to a reasonable accommodation because their son requires the fence due to his disability. The circuit court found in favor of the plaintiff "that no genuine or material fact exists that the City failed to offer reasonable accommodations to the Defendant as required by law." The court did not expand further on its ruling.

¶ 25 The Fair Housing Amendments Act (FHAA) (42 U.S.C. § 3601 *et seq.* (2012)) and the ADA require a public entity to reasonably accommodate a disabled person by making modifications to rules, policies, practice, or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled. *Good Shepherd Manor Foundation, Inc. v. City of Momence*, 323 F.3d 557, 561 (7th Cir. 2003). However, this duty is limited in that a city is only required to make these accommodations when its rules, policies,

practices, or services "hurt handicapped people *by reason of their handicap*, rather than that hurt them solely by virtue of what they have in common with other people, such as a limited amount of money to spend on housing [or the need for water to service their property]." (Emphasis in original and internal quotation marks omitted). *Id.* Courts have further held that this same standard exists for those accommodations requested pursuant to the Rehabilitation Act. *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737, 748 (7th Cir. 2006) (holding that the Rehabilitation Act helps those with disabilities obtain access to benefits only when they have trouble obtaining those benefits "by reason of" their disabilities, and not because of some quality that they share with the public generally).

¶ 26 In *Good Shepherd*, the plaintiff was an entity that provided housing for developmentally disabled adults. *Good Shepherd*, 323 F.3d at 560. The plaintiff claimed that the city failed to provide a reasonable accommodation where it refused to reconsider its decision to turn off the water supply to the plaintiff's newly constructed residential properties. *Id*. at 560-61. The city had shut off the water because the plaintiff had failed to extend the water and sewer lines in accordance with a prior agreement the parties had reached. *Id*. The Seventh Circuit affirmed the reasoning of the district court, which held as follows:

> " 'In this case, the service of water is something that is needed by all people. Therefore, the City's failure to provide the "reasonable accommodation" of providing water to Plaintiff's group homes did not hurt Plaintiff's residents by reason of their handicap but, instead, hurt them solely by virtue of what they have in common with other people, the need of water.' " *Id*. at 561.

¶ 27 Explaining its holding, the *Good Shepherd* court specifically discussed the plaintiff's argument that the city's shutting off of water was actually denying the disabled adults the benefit

of group living (which the constructed residence would have provided) from which they gain a specific benefit. However, the court found this reasoning was too attenuated. *Id.* at 562. This was because the city did not deny the disabled adults group living, *per se*; it merely denied water to the property which prevented that property from being inhabitable by the disabled adults, or anyone else. *Id.* Therefore, the disabled adults were no differently affected by the lack of water than any other potential resident would have been. *Id.* This is important because "[t]he whole purpose behind the FHAA and ADA reasonable accommodation provisions is to ' "prohibit[ ] local governments from applying land use regulations in a manner that will … give disabled people less opportunity to live in certain neighborhoods than people without disabilities.' " *Id.* (quoting *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002), quoting *Smith & Lee Associates, Inc. v. City of Taylor, Michigan*, 102 F.3d 781, 795 (6th Cir. 1996)).

¶ 28 Thus, the Seventh Circuit in *Good Shepherd* ultimately held that the plaintiff was not entitled to a reasonable accommodation because the plaintiff failed to put forward any evidence to suggest that the alleged actions of the defendant affected the disabled adults any differently than those actions affected other people. *Id.* at 564. We find the same is true in this matter.

¶ 29 The defendants have failed to put forth any evidence as to how this ordinance has hurt their disabled son by reason of his handicap as opposed to how it would impact any other individual. While we acknowledge that the defendants' disabled son's autism makes him a flight risk, and we sympathize with the defendants and their son, we are still left with the fact that the ordinance impacts all citizens in the same manner by limiting the use of the land within the easement to protect the plaintiff's right to have unimpeded access to the utilities located thereon. The easement prevents any person from placing structures that obstruct or encroach upon the easement located

on his or her property. Further, we note that this is not an issue that would prevent a disabled individual from living in this residence. The defendants' son has presumably been living in this home since at least 2012; therefore, there is no concern that the ordinance here is limiting housing for disabled persons or preventing them from having access to certain housing.

¶ 30 Further, the First Circuit Court of Appeals in *Summers v. City of Fitchburg*, 940 F.3d 133 (1st Cir. 2019), stated that "a plaintiff is not entitled to a waiver of a zoning or building-code rule if the waiver is so 'at odds with the purposes behind the rule that it would be a fundamental and unreasonable change.' " *Id.* at 140 (quoting *Oconomowoc*, 300 F.3d at 784). This further supports our conclusion that the defendants were not entitled to an accommodation, because the purpose of the easement is to prevent structures from being built that would interfere with the city's ability to maintain, install, repair, and fully access public utilities located on that property. However, the defendants seek an accommodation to do exactly what the easement was intended to prevent. Thus, because the accommodation sought is antithetical to the purpose of the ordinance, the defendants are not entitled to an accommodation.

¶ 31 Even if we were to have decided that an accommodation was required, the defendants would still not prevail. First, they failed to seek the accommodation prior to building their fence. The defendants were informed of the issue prior to building the fence when Mr. White instructed them that if they constructed the fence as intended, it would violate the City Code because it would encroach upon the easement. He further explained that they needed a permit and that a permit would not be granted if the structure encroached upon the easement without them being approved for a variance. However, despite this knowledge, the defendants built the fence in knowing violation of the ordinance without a permit. They were aware of the requirement of a permit because they secured one prior to building the initial backyard fence in 2012. It was only after they

constructed the expanded fence and were given a notice to abate, instructing them to remove the expanded portion, that the defendants requested that they be allowed to keep the fence, in violation of the ordinance, as a reasonable accommodation. The law is clear that a party asserting a refusal of a reasonable accommodation must show he actually requested an accommodation such that the municipally had "the ability to conduct a meaningful review of the requested accommodation to determine if such an accommodation is required by law." (Internal quotation marks omitted.) *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1219 (11th Cir. 2008); see also *United States v. Village of Palatine, Illinois*, 37 F.3d 1230, 1233 (7th Cir. 1994) (where claim was dismissed alleging discrimination based on a failure to provide a reasonable accommodation where the plaintiff never actually invoked the procedures that would have allowed the city to make such an accommodation). While we do acknowledge that the defendants in this case did request an accommodation eventually, they did so only after disregarding the city's instruction and forcing the city to seek action to have the encroachment removed.

¶ 32 Additionally, the defendants' claim would also fail because in this matter, the plaintiff *did* offer a reasonable accommodation. Despite the defendants blatantly disregarding the ordinance and encroaching on the easement, the plaintiff still attempted to reach an agreement with the defendants. The plaintiff offered a licensing agreement which would extend the easement and require the defendants to install another gate so that at both points that the easement entered and exited the defendants' properties the fence could be opened. This would allow employees and equipment working on the power lines to maneuver unimpeded and for possible future installments of utilities to be easily and fully implemented and accessed without any unmovable structure being located on the easement. However, the defendants refused to agree to this accommodation. While the defendants attempt to argue that the accommodation is unreasonable because they already have

a gate in place and a second is unnecessary, they readily admit that if the plaintiff would pay for the cost of installing the gate they would accept the accommodation. Thus, the issue regarding the proposed accommodation by the plaintiff is not whether it is "reasonable"—it is, because it allows for the defendants to have the fence they want for their son and the plaintiff gets its unfettered access to its easement—but instead, is an issue of who should bear the cost. However, this court is aware of no case law, and the defendants have put forth none, which suggests that the plaintiff in this matter would be responsible for bearing the costs of installing the gate so that it could maintain unobstructed access to the easement it already has rights to, especially where the defendant created the need for the accommodation by intentionally ignoring the zoning administrator's warning and constructing the offending structure in interference with the plaintiff's easement. If the defendants had simply sought an accommodation or variance prior to knowingly building their fence in violation of the ordinance, the parties could have reached an agreement prior to construction and there would have been no need for additional costs to be incurred by either party. However, the defendants' actions have created the issue, and therefore, the plaintiff cannot be responsible for incurring those costs. Thus, we would find that the plaintiff had offered a reasonable accommodation had it been required to offer an accommodation at all.

¶ 33 Therefore, because the defendants constructed a fence in violation of the City Code, the plaintiff did not selectively prosecute the defendants, and the defendants are not entitled to a reasonable accommodation, we affirm the circuit court's granting of summary judgment in favor of the plaintiff.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we find the circuit court of Effingham County did not err in its April 19, 2022, orders granting summary judgment in favor of the plaintiff.

¶ 36 Affirmed.