2013 IL App (2d) 120408-U
Nos. 2-12-0408 & 2-12-1064 cons.
Order filed June 7, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KERRY FRIEDMAN, Plaintiff-Appellant, v. GOPAL BHALALA and RAJUL BHALALA, Defendants-Appellees (The City of Lake Forest, an Illinois home rule and special charter municipal corporation, Intervenor Defendant-Appellee).	)))))))))))))	Appeal from the Circuit Court of Lake County. No. 11-CH-5405 Honorable Mitchell L. Hoffman, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in dismissing plaintiff's complaint where she failed to exhaust administrative remedies. Further, trial court did not err in denying plaintiff's motion to disqualify attorneys, or in determining clarification of its orders was unnecessary.

¶ 2 Defendants, Gopal and Rajul Bhalala, wish to build a home on their property. Abutting neighbor and plaintiff, Kerry Friedman, objects that such construction will violate various

regulations and ordinances. Accordingly, plaintiff moved for a temporary restraining order (TRO) and filed a complaint seeking injunctive relief.

¶ 3 The trial court denied the TRO. On March 7, 2012, the court entered an order: (1) allowing the City of Lake Forest to intervene as a defendant; (2) denying plaintiff's motion to disqualify the City's attorneys; and (3) granting the City's motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)). On April 5, 2012, in appeal No. 2-12-0408, plaintiff appealed the court's March 7, 2012, order.

¶ 4 Thereafter, defendants moved for sanctions against plaintiff. On May 4, 2012, we ordered appeal No. 2-12-0408 stayed, pending the trial court's resolution of the motion for sanctions or until it issued an Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) finding. Subsequently, plaintiff filed before the trial court a motion to clarify the March 7, 2012 order, and a petition, pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). On August 30, 2012, after ruling on defendants' motion for sanctions, the court ruled that it did not have jurisdiction to consider plaintiff's motion to clarify or the section 2-1401 petition but that, if it did, it would deny them. Plaintiff, in appeal No. 2-12-1064, appeals the court's August 30, 2012, order. This court consolidated plaintiff's two appeals. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 Plaintiff owns a residence at 51 West Onwentsia Road in Lake Forest. Defendants own property at 27 West Onwenstia Road (the subject property), which abuts plaintiff's property. Prior to January 1981, the subject property and plaintiff's property were one parcel, and plaintiff's residence was the only residence thereon. In 1981, the then-owner of the parcel divided the single parcel into two parcels and recorded a plat of subdivision. After plaintiff bought her residence,

defendants purchased the subject property and they have owned it, devoid of any structures, for more than 15 years. The westerly line of the subject property lies at the center line of the Skokie drainage ditch (which plaintiff alleges is the "Skokie River"). According to plaintiff, almost one-half of the property lies in a regulatory floodway, part lies in a regulatory floodplain, and a narrow portion leading to Onwentsia Road lies in neither. Plaintiff claims that the southerly portion of the access area to the road lies in a "flood-fringe" area and, within the regulatory floodplain area, there exist substantial isolated wetlands regulated by the State and the Lake County Stormwater Management Commission.

¶ 7 In 2009, defendants hired an architect, engineer, and contractor to plan and obtain permits for construction of a residence on the subject property.[1] On June 25, September 8, September 23, and October 25, 2010, defendants' attorney, contractor, engineers, and architects met with City representatives to develop building plans. On November 3, 2010, the City of Lake Forest Building Review Board (BRB) held a public hearing regarding defendants' request for approval of their plans. As a result of the hearing, on November 9 and December 7, 2010, defendants' contractors met with City representatives to revise plans. On April 6, 2011, the BRB held a second public hearing and received public input. As a result, the BRB formed a subcommittee to work with defendants' architect, and the subcommittee approved the final plans. On May 4, 2011, the BRB held a third hearing wherein it requested and received public input regarding defendants' request for approval of their building plans. On May 19, 2011, defendants' representatives met with the City's engineering staff. On June 1, 2011, the BRB held a fourth hearing regarding defendants' building

[1]The timeline of events preceding plaintiff's complaint is found primarily in defendants' answer.

plans but, because there was no voting quorum present, continued that meeting until July 6, 2011. On that day, after public input was requested and received, the BRB unanimously approved defendants' project.

¶ 8 On July 20, 2011, plaintiff appealed the July 6, 2011, decision to the BRB, allegedly raising concerns about the project being in a floodplain, water storage, and the size of the project. On September 6, 2011, a hearing on the appeal was held before the City Council and plaintiff apparently presented her arguments. At the end of the hearing, the City Council unanimously denied plaintiff's appeal.

¶ 9 Between September 9, and 28, 2011, defendants received various permits and, on October 5, 2011, work commenced on the subject property. Plaintiff did not, at that time, seek to enjoin construction. On October 19, 2011, the City's Administrative Officer issued defendants a building permit. Plaintiff did not, at that time, seek to enjoin construction.

¶ 10 More than two months later, on Friday, December 2, 2011, plaintiff filed an appeal with the Zoning Board of Appeals (ZBA), challenging the October 19, 2011, building permit. Plaintiff challenged the legality of the permit and set forth seven provisions of the City's building and zoning ordinances and state floodway laws that the permit allegedly violated.

¶ 11 One business day later, Monday, December 5, 2011, plaintiff filed in the circuit court a complaint for injunctive relief, alleging that, despite notice of her ZBA appeal and in violation of section 46-21(E)(4) of the City's zoning code (The Lake Forest Zoning Code § 46-21(E)(4) (2011)), which provides "an appeal [to the ZBA] shall stay all proceedings in furtherance of the action appealed ***," defendants did not cease construction on their property. The complaint listed as plaintiffs both "The City of Lake Forest, *ex rel*., Kerry Friedman," as well as plaintiff individually.

The complaint attached plaintiff's ZBA appeal and summarized her allegations that the building permit was improperly issued because the project: (1) failed to meet the minimum lot square footage requirement and did not have the required 50-foot setback from the front lot line; (2) exceeded the maximum square footage for a building on the lot's size; and (3) was in a floodway and floodplain, governed by state, federal, and local laws. Further, plaintiff alleged that the project: (1) violated 2009 approvals from the Lake County Stormwater Management Commission and the United States Army Corps of Engineers because those approvals were based on plans different from those for which the permit was issued; and (2) included construction in a floodway, which is "absolutely prohibited by State law." Plaintiff alleged that the project will devalue her property by cutting off light and air and by changing the natural drainage pattern, thus causing stormwater to back up onto her property. She claimed her injuries were not readily capable of being measured in dollars, she did not have an adequate remedy at law, and that her injuries would "only worsen if the construction on the subject property is not stopped pending a decision on [plaintiff's ZBA] appeal of the issuance of the building permit." Plaintiff requested a TRO, preliminary injunction, and a permanent injunction, enjoining defendants from performing construction on the subject property. Plaintiff also separately moved for a TRO.

¶ 12 On December 8, 2011, the trial court denied plaintiff's TRO motion, noting, among other things, that the alleged "emergency" started when construction commenced in October, not in December. The court granted plaintiff leave to file an amended complaint and motion for preliminary injunction.[2]

[2]On December 12, 2011, plaintiff appealed and moved this court for an emergency TRO (appeal No. 2-11-1258). In a December 19, 2011 minute order, a panel of this court denied

¶ 13 On December 16, 2011, plaintiff filed an amended complaint. The amended complaint essentially raised the same allegations as the original complaint, but it more specifically identified the purported reasons why the permit violated various ordinances and laws. In addition, plaintiff asserted two claims: (1) for common-law injunctive relief; and (2) injunctive relief pursuant to section 11-13-15 of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/11-13-15 (West 2010)). Again, the amended complaint alleged that plaintiff's injuries would continue "if the construction on the subject property is not stopped pending a decision on plaintiff's [ZBA] appeal of the issuance of the permit." Plaintiff requested: (1) a TRO; (2) preliminary and permanent injunctions, enjoining defendants from constructing any improvements upon the property; (3) for the court to order defendants to remove all concrete and other improvements added to the property and to restore the natural grade and landscaping to the property; and (4) attorney fees.

¶ 14 In the amended complaint, plaintiff sued only individually (*i.e.*, the complaint no longer identified plaintiff as suing on the City's behalf). Further, in her claim under section 11-13-15 of the Municipal Code, plaintiff alleged that she had served a copy of "the complaint" upon the Chief Executive Officer (*i.e.*, the Mayor) of the City. However, the City apparently did not receive service of the *amended* complaint, but, rather, had received only the original complaint. Thus, still under the impression that plaintiff's claims were being pursued on its behalf, the City (in February 2012) moved to formally intervene as a plaintiff and, simultaneously, to dismiss the claims against defendants pursuant to section 2-1009 of the Code (735 ILCS 5/2-1009 (West 2010) (voluntary dismissals)). The City's motion noted that it had issued a permit for the construction plaintiff was challenging, plaintiff had appealed to the ZBA, the ZBA had held a hearing and was considering the

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plaintiff's emergency motion for a TRO. The TRO is not at issue in the instant appeal.

appeal, and, pursuant to sections 11-13-12 and 11-13-13 of the Municipal Code (65 ILCS 5/11-13-12, 11-13-13 (West 2010)), plaintiff could appeal the ZBA's final decision pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2010)). The City further argued that it wished to voluntarily dismiss the complaint with prejudice because: (1) a governmental plaintiff has the right to dismiss a case brought by a relator when a valid governmental interest justifies the dismissal and the dismissal will further that governmental interest; (2) a prior pending action relating to the permit and residence existed, making the complaint duplicative and improper; and (3) there existed an available local remedy (the ZBA appeal) and plaintiff had not exhausted that remedy prior to filing the complaint. The City finally argued, in sum, that there existed a prior pending action, rendering dismissal of the complaint appropriate, and that plaintiff did not first exhaust her local administrative remedies before turning to the court. Thereafter, plaintiff served the City with the amended complaint.

¶ 15 On February 15, 2012, plaintiff moved the court to disqualify the City's attorneys—the law firm of Holland & Knight, LLP. Plaintiff argued that the City, through its counsel, had moved to intervene, dismiss the complaint, and to quash plaintiff's subpoenas and, therefore, had taken a position adverse to her. Prior to those filings, however, an attorney at Holland & Knight appeared at the hearing before the ZBA and represented and counseled that board. Plaintiff argued that the impartiality of the ZBA's decision was compromised, and that, by representing the City while simultaneously representing the ZBA, the law firm was engaged in an impermissible conflict under Rule 1.7 of the Rules of Professional Conduct (Ill. S. Ct. Rs. Prof. Conduct, R. 1.7 (eff. Jan. 1, 2010)).

¶ 16 On February 27, 2012, after a hearing (held January 23, 2012) wherein both plaintiff and defendants presented testimony and documentary evidence, the ZBA issued a written decision rejecting plaintiff's appeal. First, it noted that the plat of subdivision had been recorded in 1981 and, on its face, set forth that the subject property was intended to be a buildable lot. Plaintiff, who purchased the property in 1988, after the plat was recorded, was aware at that time that the subject property was separately owned. For years, plaintiff had used the subject property for her own purposes, including for storage and gardening, and she built a fence and installed a sprinkler system on the subject property. According to the ZBA's findings, plaintiff believed she had been " ' afforded the right' to use the subject property, and acknowledged that [defendants] had 'been extremely gracious over the years.' " Plaintiff argued that the construction would negatively affect the value of her home because it was " ' basically designed as a glass house in the woods. And there is now no privacy for the entire actually east side or south side of the house.' " Further, the ZBA rejected many of plaintiff's claims on timeliness issues, but also found that, even if timely, there was no merit to plaintiff's allegations that the permit and construction on the subject property violated ordinances or regulations. The ZBA affirmed the decision to issue the permit and noted that its order was a final administrative order.

¶ 17 On March 7, 2012, after a hearing (the transcript of which does not appear in the record), the court denied plaintiff's motion to disqualify the City's attorneys. Further, it allowed the City to orally amend its motion to intervene from one requesting intervention as a plaintiff to one requesting intervention as a defendant. In light of that change, it also allowed the City to orally amend its motion to dismiss from one under section 2-1009 of the Code to one under section 2-619 of the Code. The court then granted the 2-619 motion to dismiss *with* prejudice.

¶ 18 On April 2, 2012, defendants filed a motion for sanctions against plaintiff. That same day, plaintiff filed a new complaint, seeking administrative review of the ZBA decision.[3]

¶ 19 On April 5, 2012, plaintiff filed a notice of appeal with this court, challenging the trial court's March 7, 2012, rulings (appeal No. 2-12-0408). However, we granted a stay of the appeal pending the trial court's resolution of defendant's motion for sanctions or until the court issued a Rule 304(a) finding.

¶ 20 On May 25, 2012, (more than 30 days after the order) plaintiff moved the trial court to clarify the March 7, 2012 order. Specifically, she alleged that defendants had moved to dismiss her administrative review action on the basis that the March 7, 2012, order had dismissed, with prejudice, the same claims and, therefore, that plaintiff was estopped from pursuing her administrative review claim. Accordingly, plaintiff moved the court to clarify that its prior order was based on jurisdiction, in that plaintiff had failed to exhaust administrative remedies, and was *not* a dismissal on the merits.

¶ 21 On May 31, 2012, the trial court denied defendant's motion for sanctions. Two weeks later, on June 15, 2012, plaintiff filed a section 2-1401 petition, incorporating her motion to clarify, and asking the court to clarify that the dismissal of her complaint was not, despite being with prejudice, a dismissal on the merits.

¶ 22 On August 30, 2012, after a hearing, the trial court determined that it did not have jurisdiction to consider plaintiff's motions, in light of the fact that plaintiff had appealed and the appeal was

[3]At oral argument, plaintiff's attorney represented that the administrative review action is stayed, pending resolution of this appeal.

stayed only pending resolution of defendant's motion for sanctions which had, by then, been resolved. Further, the court noted that, even if it had jurisdiction, it would not grant the motions because the March 7, 2012 order needed no clarification, "the basis for the ruling is apparent from the record," and section 2-1401 was not a proper avenue for seeking clarification. On September 6, 2012, plaintiff appealed the court's August 30, 2012, order (appeal No. 2-12-1064).

¶ 23 II. ANALYSIS

¶ 24 A. Appeal No. 2-12-0408

¶ 25 1. Decision Allowing the City to Intervene

¶ 26 Plaintiff argues first that the trial court erred in permitting the City to intervene as a defendant. Specifically, she argues that "part of her complaint was based on section 11-13-15 of the Municipal Code, but that section does not permit a private cause of action against a city or municipality." Thus, plaintiff argues, by permitting the City to intervene as a defendant, the trial court allowed something forbidden by law and, therefore, abused its discretion. We disagree.

¶ 27 First, we agree with plaintiff that she did not necessarily forfeit this argument by not raising it in her response to the City's original motion to intervene as a *plaintiff*. As the City's intervention as a *defendant* did not arise until oral argument on the motion, plaintiff possibly raised her argument at the earliest opportunity. We use the term "possibly" because the record does not contain a transcript of that hearing and, therefore, we do not know what, if any, arguments plaintiff made in response to the City's oral motion to amend its petition to intervene as a defendant.

¶ 28 Second, even if plaintiff did not forfeit her argument, we reject it. Generally, a trial court's decision to permit intervention pursuant to section 2-408 of the Code (735 ILCS 5/2-408 (West 2010)) is a matter of sound judicial discretion and will not be reversed absent an abuse of discretion,

i.e., where no reasonable person would adopt the trial court's view. *Argonaut Insurance Co. v. Safeway Steel Products*, 355 Ill. App. 3d 1, 7 (2004). Section 2-408 is to be liberally construed so as to permit parties with an interest in the litigation to avoid a multiplicity of actions. *Id*; see also *In re Marriage of Hartian*, 172 Ill. App. 3d 440, 450 (1988). Here, plaintiff does not argue that the City lacked a sufficient interest in the action such that the court abused its discretion in permitting intervention. Rather, she argues more broadly that a municipality may not intervene as a defendant in an action brought by a private party pursuant to section 11-13-15 of the Municipal Code. Thus, plaintiff asserts that our review of this issue might instead be a legal question to be reviewed *de novo*. See *Household Finance Corp. III v. Buber*, 351 Ill. App. 3d 550, 553 (2004) (where no disputed facts, legal questions reviewed *de novo*). Under either standard, we conclude that intervention was not improper.

¶ 29 The purpose of section 11-13-15 of the Municipal Code is to prevent zoning violations. See *Bull v. American National Bank & Trust Co.*, 112 Ill. App. 2d 32, 36 (1969). Section 11-13-15, entitled "Standing to Maintain Suit," provides, in relevant part:

> "In case any building or structure, including fixtures, is constructed, reconstructed, altered, repaired, converted, or maintained, or any building or structure, including fixtures, or land, is used in violation of an ordinance *** *the proper local authorities or any owner* or tenant of real property, within 1200 feet in any direction of the property on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation, *in addition to other remedies*, may institute any appropriate action or proceeding (1) to prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance, or use, (2) to prevent the occupancy of the

building, structure, or land, (3) to prevent any illegal act, conduct, business, or use in or about the premises, or (4) to restrain, correct, or abate the violation. *When any such action is instituted by an owner or tenant, notice of such action shall be served upon the municipality at the time suit is begun, by serving a copy of the complaint on the chief executive officer of the municipality, no such action may be maintained until such notice has been given*.

In any action or proceeding for a purpose mentioned in this section, the court with jurisdiction of such action or proceeding has the power and in its discretion may issue a restraining order, or a preliminary injunction, as well as a permanent injunction upon such terms and under such conditions as will do justice and enforce the purposes set forth above." (Emphases added.) 65 ILCS 5/11-13-15 (West 2010).

¶ 30 Plaintiff correctly notes that, unless the municipality is being sued as the offending landowner, section 11-13-15 has been held to *not* provide a private right of action against a city. See *Ruisard v. Village of Glen Ellyn*, 406 Ill. App. 3d 644, 663 (2010). Further, plaintiff argues that the fact that the City did not wish to pursue a claim against defendants (*i.e.*, as a plaintiff) did not give it the right to intervene and act to thwart plaintiff's private cause of action against defendants. However, the fact that the statute did not provide *plaintiff* with a right to sue the City as a defendant, does not necessarily mean that the *City* did not have an interest in intervening. Indeed, the fact that the statute both permits the City to bring the action and requires that, before a private party brings the action, the City be notified, suggests it clearly has an interest in any litigation seeking to enforce local ordinances.

¶ 31 Further, plaintiff's argument essentially suggests that a city may never intervene as a defendant in any section 11-13-15 action brought by a private party. However, other than authority

that a plaintiff may not, via section 11-13-15 directly sue a municipality, she cites no authority for such a blanket prohibition against a city's intervention. In addition, while plaintiff's action here did not act to challenge the validity of any existing ordinances, in certain situations, section 11-13-15 is a vehicle by which a private party may do so. See *e.g.*, *Ruisard*, 406 Ill. App. 3d at 653 (the plaintiffs argued, via section 11-13-15, that an enacted ordinance violated another existing ordinance). In such situations, where a plaintiff is challenging an existing ordinance, section 2-408(d) of the Code provides that the municipality may intervene. 735 ILCS 5/2-408(d) (West 2010) (in all cases involving the validity of an ordinance or regulation of a municipality, the municipality may, in the court's discretion, be permitted to intervene). Therefore, to hold that the City may never intervene as a defendant in a section 11-13-15 action could run counter to section 2-408(d) of the Code.

¶ 32 We also find relevant here the context that precipitated the City's initial motion to intervene. Plaintiff initiated her suit both as an individual *and* as the City's relator, *i.e.*, on the City's behalf. The City, when it learned of this, informed plaintiff that she had no permission to do so. Because it did not wish to sue defendants for beginning construction based on a permit it had issued, and because plaintiff's issues were already pending before the ZBA, the City moved to intervene as a plaintiff and dismiss the action. In the meantime, however, plaintiff amended her complaint, dropped her "relator" status, and allegedly failed to properly notify the City of that change. Accordingly, when the time came to argue the motion, the City, which again did not wish to sue defendants, apparently asserted that it still wished to intervene and dismiss the complaint because, in light of the pending ZBA appeal, multiple proceedings could create inconsistent results and waste of City resources. Given those circumstances, and the lack of a clear prohibition against

intervention, we cannot conclude that the trial court abused its discretion in granting the City's motion to intervene.

¶ 33 Finally, we note, as does plaintiff, that her two-count amended complaint was based only *partially* on the Municipal Code. Count one of the complaint was for common-law injunctive relief which would, in effect, halt defendants' construction in compliance with the permit issued by the City. Plaintiff does not allege that intervention as to the common-law claim was improper (and, again, she does not argue that the City did not have the interest required for intervention). Instead, plaintiff's argument focuses solely on the alleged illegality of the court's decision to permit the City to intervene as a defendant, where section 11-13-15 would not have permitted her to sue the City in the first instance. For the foregoing reasons, we reject plaintiff's argument that the court erred in permitting the City to intervene.

¶ 34 2. Dismissal of Amended Complaint

¶ 35 Plaintiff argues next that the trial court erred where it granted the City's motion to dismiss. Plaintiff asserts that the court erred on two bases: first, to the extent it dismissed on the basis that she had failed to exhaust administrative remedies; and, second, to the extent it dismissed, pursuant to section 2-619(a)(3) of the Code (735 ILCS 5/2-619(a)(3) (West 2010) (allowing dismissal where there is another "action pending between the same parties for the same cause")) on the basis that there existed another pending action (*i.e.*, the ZBA appeal). A section 2-619 motion to dismiss is generally reviewed *de novo*; however, dismissal pursuant to section 2-619(a)(3) may be reviewed for an abuse of discretion. See *Workforce Solutions v. Urban Services of America, Inc.*, 2012 IL App (1st) 11140, ¶ 74. We may affirm the trial court's decision for any basis in the record. See

Treadway v. Nations Credit Financial Services Corp., 383 Ill. App. 3d 1124, 1128-29 (2008). For the following reasons, we affirm.

¶ 36 First, plaintiff contends that her action was filed "primarily" because, after she filed her ZBA appeal, defendants failed to cease construction. The decision to continue construction, plaintiff argues, was not the result of an administrative decision and, therefore, there was no right or avenue for an administrative review of defendants' actions. We do not necessarily disagree with plaintiff's contention that, where regulations required construction to cease pending the ZBA appeal and where defendants did not do so, seeking an injunction with the circuit court was an available option. However, both the original and amended complaints sought an injunction "pending a decision on plaintiff's [ZBA] appeal of the issuance of the permit." When the court dismissed the complaint, the ZBA appeal had concluded, and not in plaintiff's favor. Further, plaintiff had already appealed the ZBA decision in an administrative review action. Accordingly, in practical terms, even if this court were to determine that, to the extent the complaint sought injunctive relief pending the ZBA appeal, the trial court erred in dismissing it, there is currently no remedy for that error. See *e.g.*, *In re India B.*, 202 Ill. 2d 522, 542 (2002) (where intervening events have rendered it impossible for the reviewing court to grant the complaining party effectual relief, the issue is moot).

¶ 37 Second, the complaint went beyond requesting that construction cease only during the ZBA appeal. Specifically, it also detailed plaintiff's allegations regarding the permit's alleged violations of various ordinances and regulations. In accordance with those allegations, plaintiff requested that the court *permanently* enjoin defendants' construction and for the court to order defendants to remove all concrete and other improvements added to the property and to restore the natural grade and landscaping to the property. To obtain such injunctive relief, plaintiff would have needed to

establish a likelihood of success on the merits, *i.e.*, that the permit was improperly issued. See *e.g.*, *Village of Riverdale v. Allied Waste Transportation Inc.*, 334 Ill. App. 3d 224, 228 (2002). Similarly, a request that the court order defendants to remove their improvements is, essentially, a request that the court find that defendants' actions in reliance on the permit was improper because the permit was improperly issued. However, as explained below, the question of whether the permit was properly issued was a question, first, for the ZBA and, after the ZBA issued its final decision, was subject to administrative review.

¶ 38 Generally, a party aggrieved by an administrative action must first pursue all available administrative remedies before resorting to the courts. *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 934 (2004). The purpose behind the exhaustion-of-remedies doctrine is to allow the administrative body to both apply the special expertise that it possesses and to develop a factual record. *Id.* at 934-35. Further, if the aggrieved party succeeds before the administrative body, the need for judicial involvement is obviated and judicial resources are conserved. *Id.* at 935; see also *Wright v. Puckinski*, 352 Ill. App. 3d 769, 773 (2004) (a party aggrieved by an administrative decision generally cannot seek judicial review without first pursuing all available administrative remedies; exhaustion of remedies "protects agency processes from impairment by avoidable interruptions, allows the agency to correct its own errors," and "conserves judicial resources by avoiding piecemeal appeals"). Further, "where the Administrative Review Law [(735 ILCS 5/3-101 *et seq.* (West 2002))] is applicable and provides a remedy, a circuit court may not redress a party's grievance through any other type of action. The court's power to resolve factual

and legal issues arising from an agency's decision must be exercised within its review of the agency's decision and not in a separate proceeding." *Wright*, 352 Ill. App. 3d at 773.

¶ 39 Plaintiff is correct that section 11-13-15 provides a citizen with a right of action "in addition to" other relief; however, that section must be construed *in pari materia* with the rest of the Municipal Code. *222 East Chestnut Street Corp. v. Lakefront Realty Corp.*, 256 F.2d 513, 516 (7th Cir. 1958) (analyzing Illinois law and the Municipal Code section that preceded section 11-13-15). As applicable here, section 11-13-13 of the Municipal Code provides that "[a]ll final administrative decisions of the [zoning] board of appeals under this Division 13 shall be subject to judicial review pursuant to the provisions of the Administrative Review Law [735 ILCS 5/3-101 *et seq.* (West 2010)]." 65 ILCS 5/11-13-13 (West 2010). Section 11-13-3(f) of the Municipal Code provides, "In all municipalities[,] the board of appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted under this Division 13." Corresponding thereto, section 46-20 of the City's zoning code provides for an administrative officer who shall, in part, enforce the zoning code and issue building permit in compliance thereof (The Lake Forest Zoning Code § 46-20 (2011)). Finally, section 46-21 provides that a person aggrieved by the administrative officer's decision may appeal to the ZBA (The Lake Forest Zoning Code § 46-21 (2011)), and section 46-21(E)(7) provides: "All final administrative decision of the Board shall be subject to judicial review pursuant to the provisions of the 'Administrative Review Act' [.]" The Lake Forest Zoning Code § 46-21(E)(7) (2011).[4]

[4]We also note that section 11-13-15 affords relief to private landowners where municipal

¶ 40 Despite the foregoing provisions of the Municipal Code and the City's zoning code, plaintiff argues that section 11-13-15 vests a private plaintiff with standing to assert a cause of action directly against a private defendant without the need to exhaust administrative remedies. However, the overriding purpose of section 11-13-15 is to prevent zoning *violations*. "It is obvious that [section 11-13-15] applies *only* where there is a violation of the zoning ordinance and of course where there is no such violation [section 11-13-15] is inapplicable." *222 East Chestnut*, 256 F.2d at 516. In *222 East Chestnut*, the plaintiff sought to enjoin the defendants from issuing a building permit for a garage that would allegedly violate an ordinance. However, the zoning board of appeals had authorized the construction, the circuit court affirmed the zoning board's decision, and, ultimately, the supreme court affirmed. On appeal, the court noted that the statute was designed to provide a landowner a private right to enjoin construction that would violate a zoning ordinance. However, noting that the purpose of the statute was to prevent violations, *i.e.*, "unauthorized uses," the court held that, where there is no violation, the purpose of the statute "collapses;" moreover, the statute "does not create another method of judicial review of an order of the Zoning Board of Appeals. When the Zoning Board of Appeals has heard the matter and rendered its decision authorizing a proposed construction, whether by a finding of permitted use or by granting a variance, *there is no right of action under* [section 11-15-13]." *Id.* at 516-17; see also *Dixon v. City of Monticello*, 223

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officials are slow or reluctant to act, or where their actions do not protect the landowner's interests. *Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629, 638 (2009). There is no evidence that municipal officials were slow or reluctant to act here, particularly given the fact that plaintiff filed her lawsuit only one business day after filing her ZBA appeal.

Ill. App. 3d 549, 556-57 (1991) (section 11-13-15 provides to private citizens enforcement authority when municipal officials are slow or reluctant to act, or are otherwise not protective of the private citizen's interests; where there is nothing indicating the zoning board of appeals would not adequately protect the private citizens' interests in the event objections are filed regarding a permit, "objectors ought first to exhaust their administrative remedies"); *Builder's Supply & Lumber Co. v. Village of Maywood*, 22 Ill. App. 2d 283, 295 (1959) (noting a distinction between attacking the validity of an ordinance and the refusal of a permit based on an ordinance; under the latter, and pursuant to the Municipal Code, the decision of an administrative agent to not issue the permit was appealable to the zoning board of appeals and any decision of the zoning board would be a final decision reviewable under the Administrative Review Act).

¶ 41 Here, plaintiff availed herself of the administrative review process; however, before the ZBA could render a final decision, plaintiff filed her complaint. We have found no support for plaintiff's suggestion that, by virtue of its language "in addition to other remedies," section 11-13-15 was meant to allow parties to an administrative process to collaterally attack an administrative decision. Nor does plaintiff provide any authority reflecting that administrative review may be skirted in such a manner, *i.e.*, where an administrative body issued a permit, the aggrieved party availed itself of the administrative process and appealed to the zoning board but, with no subsequent determination through the administrative process that the permit was *improperly* issued, the plaintiff was permitted to go directly to court. Moreover, here, when the court *granted* the motion to dismiss, the ZBA had issued its final decision, validating the permit, which was appealable only under Administrative Review Law.

¶ 42 The three cases plaintiff does cite are distinguishable. First, in *Bull v. American National Bank & Trust Co.*, 112 Ill. App. 2d 32 (1969), the defendants filed two applications for permits, the second after the first was *denied*. When the defendants began its construction, the plaintiff, who was unaware of the second permit, sued under section 11-13-15 of the Municipal Code because, to her knowledge, the zoning administrator and the zoning board of appeals had declared that construction would violate a zoning ordinance. *Bull*, 112 Ill. App. 2d at 36. Under the unique facts of that case, the court held that the plaintiff's complaint was not improper and need not be dismissed solely because she did not appeal the second permit, of which she was unaware, to the ZBA. *Id*. at 37-38. Rather, the court held, the defendants erred in not appealing the ZBA's decision denying the first permit and, instead, seeking a second permit; as such, the denial of the first permit was a final order not subject to collateral attack. *Id*. Second, *Village of Riverdale* is clearly distinguishable because there, the Village acted as the plaintiff and it sued the defendants because they were operating a facility without obtaining the requisite permits and licenses pursuant to applicable statutes and ordinances. *Village of Riverdale*, 334 Ill. App. 3d at 226-27. Third, in *Dunlap*, the plaintiff argued that the Village improperly granted a variance to the plaintiff's neighbors (the other defendants); the court considered the fact that the issue of whether a variance was valid, or whether the Village had a rational basis for the variance, is reviewed *de novo* and did *not* mean that the court would "step into the Village board's shoes and exercise our independent judgment on whether the [defendants] should be entitled to a variance[.]" *Dunlap*, 394 Ill. App. 3d at 648. As the court's question required *de novo* review, it did not consider or discuss exhaustion of remedies and, unlike here, it was not asked to consider whether the defendants were entitled to a permit.

¶ 43 We also reject plaintiff's arguments that the injunctive relief she sought was predicated not only on violations of the City's zoning code, but also violations *not* in the ZBA's purview (such as violations of Lake County stormwater regulations and federal regulations enforced by the Army Corps of Engineers) and that there was no need for factfinding from the ZBA to resolve her appeal. Plaintiff asserts these arguments in attempt to argue that the ZBA could not address all the issues she raised and, therefore, at least part of her complaint belonged before the court. We disagree; the ultimate question is whether the ZBA could have granted plaintiff full relief. We answer that question in the affirmative because, had it reversed the zoning administrator's decision, the permit would have been revoked. Further, plaintiff made the aforementioned arguments to the ZBA and the ZBA ruled. Accordingly, any challenges plaintiff has to the ZBA's rulings on those issues are now to be raised in the administrative review action.

¶ 44 In sum, we conclude that the trial court properly dismissed the complaint because, to the extent the complaint asked the court to declare the permit invalid, plaintiff failed to exhaust administrative remedies. Further, to the extent it asked the court to issue an injunction pending resolution of the ZBA appeal, the request for relief is moot.

¶ 45 3. Motion to Disqualify Attorneys

¶ 46 Plaintiff argues that the trial court improperly denied her motion to disqualify the City's attorneys. Plaintiff argues that the City has taken a position adverse to her and that, by representing both the City and the ZBA, the law firm of Holland & Knight, LLP, created an impermissible conflict under Rule 1.7 of the Rules of Professional Conduct (Ill. S. Ct. Rs. Prof. Conduct, R. 1.7 (eff. Jan. 1, 2010)). Plaintiff argues that, having advocated in the trial court that the City properly

issued the building permit, it is difficult to believe that counsel for the City was neutral in providing advice to the ZBA on that issue. The decision whether counsel should be disqualified rests in the trial court's sound discretion and will not be reversed absent an abuse of that discretion. *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997).

¶ 47 We reject plaintiff's argument. Plaintiff has no standing to assert a conflict or violation of Rule 1.7, which applies to "current clients" and is designed, therefore, to protect clients Ill. S. Ct. Rs. Prof. Conduct, R. 1.7. Plaintiff does not allege that she is a current or former client of Holland & Knight, LLP, and, therefore, does not meet her burden of establishing an attorney-client relationship as required by Rule 1.7. See *In re Stephenson*, 2011 IL App (2d) 101214, ¶ 29.

¶ 48 Further, we note that the law firm's representation of the ZBA, an extension of the City, is representation of the *same* client, not multiple clients. Plaintiff argues that the fact that the ZBA is a City board does not dispose of the conflict, asserting that comment 34 to the rule states that an attorney's representation "of the City does not make him or her the attorney for any constituent or affiliated organizations, such as the ZBA in this case." In fact, comment 34 provides:

> "A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either

> the organizational client or the new client are likely to limit materially the lawyer's representation of the other client." Ill. S. Ct. Rs. Prof. Conduct, R. 1.7, Committee Comment 34 (eff. Jan. 1, 2010).

Not only does comment 34 not support plaintiff's argument that representing both the ZBA and the City would be a conflict, it concerns parent-subsidiary relationships or other relationships involving a separate corporate existence, which is inapplicable here.

¶ 49 In sum, Rule 1.7, on its face, clearly acts to protect an attorney's clients from any conflicts of interest that could affect the representation received. Here, the question is not whether Holland Knight's representation adversely affected plaintiff, who was not a client. Rather, the question is whether Holland & Knight's representation of the City before the trial court conflicted with its representation of the ZBA. It did not, as the City's position before the trial court was, essentially, that the ZBA should first resolve plaintiff's claims. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion to disqualify.

¶ 50 B. Appeal No. 2-12-1064

¶ 51 In appeal No. 2-12-1064, plaintiff argues that the trial court erred in denying her motion to clarify and her section 2-1401 petition. Plaintiff notes that, pursuant to Supreme Court Rule 303(a)(1) (Ill. Sup. Ct. R. 303(a)(1) (eff. June 4, 2008)), and this court's order staying appeal No. 2-12-0408, defendants' motion for sanctions prevented the trial court from losing jurisdiction after it entered its March 7, 2012, order. Accordingly, plaintiff argues that, where she filed her motion to clarify *before* the court ruled on the motion for sanctions and, therefore, while the court retained jurisdiction, the court erred in concluding it lacked jurisdiction to rule on her pending motion.

Further, plaintiff notes that, in an exercise of caution, she filed her section 2-1401 petition to ensure that the trial court had jurisdiction to clarify that its March 7, 2012, dismissal of her complaint was not on the merits. She argues that the court erred in concluding it lacked jurisdiction over the section 2-1401 petition and in its conclusion that section 2-1401 was not a proper avenue for presenting her arguments.

¶ 52 Even if the trial court erred in concluding that it lacked jurisdiction over the motion to clarify and the section 2-1401 petition, the error, for our purposes, is harmless because the court announced that it would, if it had jurisdiction, substantively deny both motions. Specifically, the court announced that it would not clarify the March 7, 2012, order because it needed no clarification, and that it would deny the section 2-1401 petition (which sought clarification of the judgment) on the basis that section 2-1401 was not an avenue to create jurisdiction for previously filed motions. Thus, assuming that the court had jurisdiction over the motions, and even assuming section 2-1401 was a valid avenue for seeking clarification, the court did not err in concluding that no clarification of the March 7, 2012, order was necessary.

¶ 53 Plaintiff cites caselaw for the proposition that, even where more than 30 days have passed since entry of the judgment, the trial court has the "authority" to enter orders *nunc pro tunc* to correct an order such that it conforms to the judgment actually rendered. See *e.g.*, *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991). However, she cites no authority that a trial court is *required* to do so, particularly where the court sees no error or mistake that needs correcting. See *e.g.*, *Dauderman v. Dauderman*, 130 Ill. App. 2d 807, 809 ("[t]he function of a *nunc pro tunc* order is merely to *correct* the record of the judgment and not to alter the judgment actually rendered") (Emphasis added.)

¶ 54 Here, the court determined that the March 7, 2012, order needed no correction and that "the basis for the ruling is apparent from the record." Indeed, the City's motion to dismiss was premised on plaintiff's failure to exhaust administrative remedies and the pending action before the ZBA. The court's grant of the motion clearly did not rule not the substantive questions of whether the permit was properly issued. While dismissals with prejudice must typically be construed as adjudications on the merits, involuntary dismissals for jurisdictional reasons are *not* considered adjudications on the merits. Ill. Sup. Ct. R. 273 (eff. Jan. 1, 1967). Accordingly, even if it possessed jurisdiction over plaintiff's motion and petition, the trial court did not, where the March 7, 2012 dismissal was clearly not on the merits and where arguments in that vein were more appropriately raised in the pending administrative review action, err in denying the request to clarify.

¶ 55 III. CONCLUSION

¶ 56 For the aforementioned reasons, the judgments of the circuit court of Lake County are affirmed.

¶ 57 Affirmed.