

NOTICE

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FILED

March 20, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160370-U

NO. 4-16-0370

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

CITY OF MT. OLIVE,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macoupin County
WILLIAM H. VIEHWEG,)	No. 14MR70
Defendant-Appellant.)	
)	Honorable
)	Eric S. Pistorius,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting the city’s petition, filed under section 11-31-1 of the Illinois Municipal Code (65 ILCS 5/11-31-1(a) (West 2014)), ordering defendant to repair his detached two-car garage, as the mayor lacked authority to initiate court action without city-council approval.

¶ 2 In July 2014, the City of Mt. Olive filed a petition for demolition of a detached garage owned by defendant, William H. Viehweg, under section 11-31-1(a) of the Illinois Municipal Code (65 ILCS 5/11-31-1(a) (West 2014)). The trial court denied the request for demolition, but the court ordered defendant to repair the garage within 90 days and gave Mt. Olive the right to repair the garage at defendant’s expense if defendant failed to make the repairs.

¶ 3 Defendant, appearing *pro se*, appeals. Defendant argues the trial court erred in granting Mt. Olive’s petition because Mt. Olive’s mayor lacked authority to file suit under

section 11-31-1(a) without action by the city council. Defendant further argues the trial judge improperly failed to grant him a mistrial or recuse himself after the judge requested the opportunity to view the contested garage. We agree with the first argument and reverse.

¶ 4

I. BACKGROUND

¶ 5 In April 2014, defendant received a letter signed by John Skertich, mayor of Mt. Olive. In the letter, Mayor Skertich demanded defendant remedy the unsafe conditions of his detached garage or demolish it within 15 days. Mayor Skertich asserted the detached garage was unstable as the roof trusses failed and the side walls started to bow. According to the letter, if defendant failed to comply, defendant would be subject to court action related to the building.

¶ 6 In July 2014, Mt. Olive filed a petition pursuant to section 11-31-1(a) of the Municipal Code (65 ILCS 5/11-31-1(a) (West 2014)), seeking the demolition of the double-car garage at the address of 114 West 2nd South Street, Mt. Olive, Illinois. In its petition, Mt. Olive alleged the double-car garage owned by defendant was “a very dangerous and unsafe building” that was “in danger of collapsing onto public byways” and created “a hazard to the public.” Mt. Olive sought an order mandating defendant demolish or repair the building. In the alternative, Mt. Olive requested an order authorizing it to demolish the structure and granting judgment for costs of the demolition.

¶ 7 In September 2015, a trial was held on Mt. Olive’s petition. Mayor Skertich testified he hired an engineer to examine defendant’s garage. Mayor Skertich alone made the decision to declare the garage unsafe and to file legal action. Mayor Skertich decided “to go off the ordinance” to do so. He believed he had “the authority to go off any of” Mt. Olive’s ordinances at any time. Before filing legal action, Mayor Skertich did not consult with Mt.

Olive's aldermen, who met every two weeks as the city council.

¶ 8 Bradley Hummert, a structural engineer, testified he visited defendant's garage. Hummert examined the outside of the building. Based on the visual inspection, Hummert concluded the garage was unsafe and dangerous. Hummert provided the reasons for his conclusion: "The first reason is that the majority of the roof trusses—it appears they have been nailed, and it is further compromised, the exterior bearing walls holding those trusses up." Hummert concluded individuals inside the building would be in danger if the building collapsed, and individuals outside could "possibly" be in danger.

¶ 9 Ryan Dugger, Mt. Olive's chief of police, testified the garage appeared unsafe. Chief Dugger testified the garage may be a danger to kids walking to school by the property or citizens near the property. Chief Dugger agreed there was a danger the garage could fall onto the alley behind the garage. On cross-examination, Chief Dugger testified he knew the dispute over the garage had been ongoing for approximately two years. In that time, he had not sought to close the alley to protect citizens. Chief Dugger acknowledged barricades were put in front of two other buildings in Mt. Olive deemed unsafe after a tornado. Chief Dugger acknowledged no barricades had been placed around defendant's garage.

¶ 10 Melinda Zippay, Mt. Olive's city clerk, testified, to her knowledge, the city council had not voted to declare the garage unsafe.

¶ 11 Defendant testified on his own behalf. According to defendant, the garage had been damaged for two years. Because of the extent of the damage and a city ordinance by which he was bound, he could not repair the garage. Defendant believed the garage was safe and would not fall into the alley. Defendant testified the garage had substantial support on the inside. In

addition, the roof had already collapsed, removing much of the weight from the structure.

Defendant testified the only danger was to anyone inside the garage, and he was the only person allowed inside.

¶ 12 According to defendant, he kept his lawn mower in the garage, removing it to mow weekly. When asked why he wanted to preserve the garage in its current condition, defendant testified he was in the process of considering repairing of the garage when the city initiated the action against him. In addition, he believed a city ordinance prevented him from repairing his garage, which was over 50% damaged.

¶ 13 At the close of evidence, photographs of the garage were entered into evidence. The photographs show the garage is a one-story structure. The two garage doors face a one-lane paved road. The roof of the garage had collapsed into the building. Three of the walls, including the ones adjacent to the alley and street, stand perpendicular to the ground at the base. Near the top of two of the walls, the walls bow slightly inward toward the collapsed roof. The fourth wall leans into the yard.

¶ 14 On December 16, 2015, the trial court made a motion to view the building at issue. Defendant objected. Defendant also filed a motion for a mistrial, arguing, in part, the trial court's request showed the court was biased against him. Mt. Olive had no objection to the court's request. At the hearing on the two motions, the court denied its own motion to view the building and defendant's motion for a mistrial.

¶ 15 In February 2016, the trial court entered its order. The court noted it had the authority to order defendant to repair the damaged building but could order it demolished only if the building is beyond repair based on a comparison of the cost of repair to the value of the

building. The court found Mt. Olive failed to present evidence as to the cost of repair or the value of the building. The court concluded it could thus only order the building to be repaired. The court afforded defendant the opportunity to repair the garage and granted him 90 days to do so. If defendant failed to make those repairs, the court stated Mt. Olive would have the right to do so and pass the cost on to defendant.

¶ 16 Defendant filed a motion to reconsider, arguing Mayor Skertich lacked authority to bring the action. The trial court denied the motion.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues the trial court erred by granting Mt. Olive’s petition when its “corporate authorities” did not authorize the action. Defendant contends the plain language of section 11-31-1, the section under which Mt. Olive filed suit, does not permit the mayor to act without the council’s approval. In contrast, Mt. Olive contends the term “corporate authorities” includes the mayor, giving Mayor Skertich the authority to act alone. Mt. Olive further maintains the mayor had a duty to enforce demolition of unsafe and dangerous buildings. In support, Mt. Olive relies on two cases: *City of Alton v. Bergesch*, 3 Ill. App. 3d 726, 279 N.E.2d 139 (1972), and *Turpen v. City of St. Francisville*, 145 Ill. App. 3d 891, 495 N.E.2d 1351 (1986).

¶ 20 The purpose of section 11-31-1 of the Municipal Code is to allow municipalities to acquire court orders to abate public nuisances. *Willie Pearl Burrell Trust v. City of Kankakee*, 2016 IL App (3d) 150398, ¶ 14, 56 N.E.3d 1046. The section allows “corporate authorities” to apply to a circuit court to cause the repair or demolition of dangerous and unsafe buildings:

“The corporate authorities of each municipality may

demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings within the territory of the municipality ***.

The corporate authorities shall apply to the circuit court of the county in which the building is located (i) for an order authorizing action to be taken with respect to a building if the owner or owners of the building, including the lien holders of record, after at least 15 days' written notice by mail so to do, have failed to put the building in a safe condition or to demolish it or (ii) for an order requiring the owner or owners of record to demolish, repair, or enclose the building ***." 65 ILCS 5/11-31-1(a) (West 2014).

¶ 21 The parties' dispute centers on the statutory interpretation of section 11-31-1 and the meaning of the term "corporate authorities." When interpreting a statute, the main goal is to determine and give effect to the intent of the legislature. *International Ass'n. of Firefighters Local 49 v. City of Bloomington*, 2016 IL App (4th) 150573, ¶ 35, 67 N.E.3d 872. We read the statute as a whole, considering all relevant parts. *People v. Villa*, 2011 IL 110777, ¶ 35, 959 N.E.2d 634. We give the statutory language its plain and ordinary meaning. *Blum v. Koster*, 235 Ill. 2d 21, 29, 919 N.E.2d 333, 338 (2009).

¶ 22 The legislature, in the Municipal Code, defined the term "corporate authorities." 65 ILCS 5/1-1-2(2)(a) (West 2014). According to section 1-1-2(2)(a), "corporate authorities" is defined as follows: " 'Corporate authorities' means (a) the mayor and aldermen or similar body

when the reference is to cities, (b) the president and trustees or similar body when the reference is to villages or incorporated towns, and (c) the council when the reference is to municipalities under the commission form of municipal government.” *Id.*

¶ 23 A plain reading of this language indicates the legislature intended corporate authorities to include joint action by the mayor and the city council. This reading is consistent with Illinois decisions that interpreted the term “corporate authorities” in other contexts. For example, in *Village of Westmont v. Lenihan*, 301 Ill. App. 3d 1050, 1058, 704 N.E.2d 891, 897 (1998), the Second District Appellate Court concluded the term “corporate authorities” in section 8-1-7(b) of the Municipal Code (65 ILCS 5/8-1-7(b) (West 1996)) meant “the mayor and the board of trustees must act together in undertaking to contract for outside legal consulting services.” See also *Sampson v. Graves*, 304 Ill. App. 3d 961, 966, 711 N.E.2d 1118, 1122 (1999) (“Because by statute the corporate authorities—consisting of the council and the mayor—must approve the recommendation of the finance-committee chairman before the outside counsel is retained, the ordinance does not improperly delegate the council’s legislative power to this chairman.”).

¶ 24 We find the term “corporate authorities” in section 11-31-1 requires Mt. Olive’s mayor and city council to act together when seeking to abate a nuisance through court action. Because Mayor Skertich acted alone and not jointly with the city council, Mt. Olive lacked authority to bring suit seeking repair or demolition under section 11-31-1. The petition was improperly granted.

¶ 25 Mt. Olive’s case, *Bergesch*, does not support the opposite conclusion. In *Bergesch*, the court did not find, as Mt. Olive contends, the mayor could initiate legal action

