

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (4th) 170833-U

NO. 4-17-0833

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 22, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE COUNTY OF CHAMPAIGN,  
Plaintiff-Appellee,  
v.  
RALPH E. PETERSON,  
Defendant-Appellant.

) Appeal from the  
) Circuit Court of  
) Champaign County  
) No. 14OV739  
)  
) Honorable  
) Brian L. McPheters,  
) Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Steigmann and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant forfeited for appellate review his contention that plaintiff lacked standing to prosecute violations of its land use ordinances.

¶ 2 In August 2014, plaintiff, County of Champaign, filed a complaint against defendant, Ralph E. Peterson, alleging defendant violated (1) Champaign County Ordinance No. 209 (approved Jan. 17, 1984) (Flood Ordinance) (count I), (2) Champaign County Ordinance No. 135 (approved Nov. 18, 1980) (Nuisance Ordinance) (count II), and (3) Champaign County Resolution No. 971 (eff. Sept. 11, 1973) (Zoning Ordinance) (count III). Plaintiff further requested injunctive relief for each of the aforementioned ordinance violations (count IV).

¶ 3 In May 2015, the case proceeded to a bench trial. In March 2016, the trial court entered a written order finding defendant guilty of violating the Public Nuisance and Zoning Ordinances and not guilty of violating the Flood Ordinance.

¶ 4 In November 2016, a sentencing hearing was held. In October 2017, the trial court entered a written order imposing (1) \$10,000 in fines and (2) a permanent injunction against defendant.

¶ 5 On appeal, defendant argues plaintiff lacked standing to prosecute him for the alleged Champaign County ordinance violations and requests “the charges against [him] be dismissed.” We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 Defendant is the owner of a tract of land commonly known as 3307 East Airport Road, Urbana, Illinois, located on the north bank of the Saline Branch (a small tributary of the Vermilion River) in an unincorporated area of Champaign County. The tract is located in the “Conservation-Recreation” zoning district and consists of a residential building and various outbuildings.

¶ 8 On March 9, 2012, the Champaign County Department of Planning & Zoning (“Department”) mailed to defendant a “First Notice of Violation.” The notice alleged defendant violated (1) section 5 of the Flood Ordinance, (2) section 3.2A.1 of the Nuisance Ordinance, (3) section 3.2B.1 of the Nuisance Ordinance, (4) section 3.2B.2 of the Nuisance Ordinance, (5) section 4.2.1.C of the Zoning Ordinance, (6) section 5.2 of the Zoning Ordinance, Table of Authorized Principal Uses (outdoor storage of vehicles and equipment), and (7) section 5.2 of the Zoning Ordinance, Table of Authorized Principal Uses (process large amounts of firewood).

¶ 9 The Department alleged the following as the basis for defendant’s violations: (1) defendant stored “inoperable vehicles, vehicle parts, tires, various pieces of equipment, a large quantity of firewood, and miscellaneous other items” outside on the property in the Special Flood Hazard Area (SFHA); (2) a First Notice of Violation was sent to defendant on September

28, 2007, a Final Notice was sent to him on March 4, 2008, and the case should have been referred to the Champaign County State's Attorney's Office for enforcement but never was; (3) defendant placed earthen fill on his property causing drainage issues for neighbors; (4) defendant applied for and was denied a Floodplain Development Permit in August 2009, but he nevertheless completed the work described in his permit application; (5) a zoning officer performed five drive-by inspections between July 2011 and January 2012 and observed on defendant's property:

“miscellaneous debris at various locations, car tires, tractor tires, rims, at least 6 or more inoperable vehicles, vehicle frames, vehicle parts, car repair equipment, flat bed trailers, several motorcycles, 5 or more miscellaneous pieces of equipment both large and small that appear to be inoperable, snow plow attachments, tractors, ladders, tanks, miscellaneous pieces of metal and/or aluminum, wheelbarrows, tanks, a tower, racks, bicycles, tarps, lawnmowers, and a large quantity of stacked firewood all located in the \*\*\* Special Flood Hazard Area.”

The notice set forth the steps necessary for defendant to resolve the outstanding violations and required that he do so by March 26, 2012.

¶ 10 On May 11, 2012, the Department mailed to defendant a “Final Notice” stating that defendant failed to correct the alleged violations as set forth in the First Notice of Violation. The notice set forth the steps necessary to resolve the outstanding violations and notified defendant that the matter would be immediately referred to the Champaign County State's Attorney for further action if defendant did not fully correct the violations by May 18, 2012.

¶ 11 In August 2014, plaintiff filed a complaint against defendant, alleging defendant violated (1) Champaign County Ordinance No. 209 (approved Jan. 17, 1984) (count I), (2) Champaign County Ordinance No. 135 (approved Nov. 18, 1980) (count II), and (3) Champaign County Resolution No. 971 (eff. Sept. 11, 1973) (count III). Plaintiff further requested injunctive relief for each of the aforementioned ordinance violations (count IV). Defendant appeared *pro se* and did not file an answer.

¶ 12 A bench trial was held in May 2015. In March 2016, the trial court issued a written order finding defendant guilty of violating the Nuisance and Zoning Ordinances and not guilty of violating the Flood Ordinance. A sentencing hearing was held in November 2016, and in October 2017, the trial court entered a written order imposing (1) \$10,000 in fines and (2) a permanent injunction against defendant.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues plaintiff lacked standing to prosecute him for his alleged Champaign County ordinance violations. Plaintiff argues defendant has forfeited this argument by failing to raise it in the trial court and even if this court were to consider it, it would fail. We agree with plaintiff.

¶ 16 Proceedings against individuals for violations of a county ordinance are “quasi-criminal” in nature. *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1048, 710 N.E.2d 1242, 1248 (1999). Despite the “quasi-criminal” nature of the proceedings, Illinois Supreme Court Rule 571 (eff. Dec. 7, 2011) dictates that the Code of Civil Procedure applies in all nontraffic and nonconservation ordinance prosecutions. The county must prove the violation by a clear preponderance of the evidence. *Anthony*, 304 Ill. App. 3d at 1048; Ill. S. Ct. R. 578(d) (eff.

Dec. 7, 2011). The trial court’s factual determinations regarding the violation will not be reversed unless they are contrary to the manifest weight of the evidence. *Anthony*, 304 Ill. App. 3d at 1048. However, defendant in this case only raises the issue of standing, a question of law that we review *de novo*. *North Shore Community Bank and Trust Co. v. Sheffield Wellington, LLC*, 2014 IL App (1st) 123784, ¶ 63, 20 N.E.3d 104.

¶ 17 “The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit, and assures that issues are raised only by those parties with a real interest in the outcome of the controversy.” (Internal quotation marks omitted.) *Id.* ¶ 66. In order to have standing, a plaintiff must allege an injury in fact to a legally cognizable interest. *Id.* However, lack of standing is an affirmative defense that will be forfeited if not raised in a timely manner before the trial court. *People v. Kelly*, 397 Ill. App. 3d 232, 265, 921 N.E.2d 333, 362-63 (2009). The defendant bears the burden to plead and prove lack of standing as an affirmative defense. *Id.*

¶ 18 Here, defendant did not raise lack of standing as an affirmative defense in the trial court until the November 2016 sentencing hearing. We find defendant did not raise this affirmative defense in a timely manner and has therefore forfeited the issue on appeal. See *id.*

¶ 19 Furthermore, even if we were to consider defendant’s argument, we would find it meritless. Section 5-12008 of the Illinois Counties Code (55 ILCS 5/5-12008 (West 2016)) authorizes a county to enforce its ordinances and resolutions. Section 5-12017 of the Counties Code (55 ILCS 5/5-12017 (West 2016)) further authorizes a county to “institute any appropriate action or proceedings in the circuit court” to prevent or correct violations of its zoning ordinance, which includes actions for injunctive relief. *County of Kendall v. Rosenwinkel*, 353 Ill. App. 3d 529, 539, 818 N.E.2d 425, 434 (2004). Plaintiff was authorized to promulgate and enforce its

ordinances and resolutions and a claim of lack of standing on the part of the local governmental entity is inapposite in such enforcement proceedings. Accordingly, we affirm the trial court's judgment.

¶ 20

### III. CONCLUSION

¶ 21

For the reasons stated, we affirm the trial court's judgment.

¶ 22

Affirmed.