2012 IL App (4th) 110829-U

Filed 5/17/12

NO. 4-11-0829

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF DECATUR, ILLINOIS, a Municipal Corporation, Plaintiff-Appellee, v. DEBORAH BECKMEIER, Defendant-Appellant.	))))))))	Appeal from Circuit Court of Macon County No. 11OV314 Honorable Albert G. Webber, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, concluding that (1) the City of Decatur had the authority to prohibit residents from maintaining unlicensed and inoperable vehicles on their property; (2) the trial court properly applied the City's ordinance; (3) the court's findings were not against the manifest weight of the evidence; and (4) the defendant received adequate notice of the violation and time to correct it.

¶ 2 Following an August 2011 bench trial, the trial court found defendant, Deborah Beckmeier, in violation of the City Code of Decatur (City Code) (Decatur City Code, ch. 70, § 302.8 (eff. April 2, 2007)) and ordered defendant to pay court costs and a $150 fine.

¶ 3 Defendant appeals, arguing that (1) the City of Decatur (City) did not have the authority to enforce and regulate licensing of motor vehicles on private property; (2) the trial court failed to properly apply section 11-40-3 of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/11-40-3 (West 2010)), which enables municipalities to declare an inoperable vehicle

a nuisance; (3) Decatur's ordinance does not define "inoperable"and thus, the definition of "inoperable" found in section 11-40-3 of the Municipal Code (65 ILCS 5/11-40-3 (West 2010)) should control defendant's case; and (4) defendant did not receive adequate notice of her violation or time to correct it. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 On March 31, 2011, Ronald Otto, a neighborhood service officer for Decatur, Illinois, inspected defendant's property after receiving a complaint. During his inspection, Otto noticed an unlicensed vehicle in defendant's driveway with a deflated front tire. Based on his inspection, Otto sent an April 5, 2011, letter to defendant, informing her that (1) she was in violation of chapter 70, section 302.8, of the City Code (Decatur City Code, ch. 70, §2 (eff. Apr. 2, 2007) (adopting by reference the International Property Maintenance Code of 2006), § 302.8)) and (2) if the violation was not abated within four days, the City would take legal action. The letter contained the relevant language of the City Code, which states that "no inoperative or unlicensed motor vehicle shall be parked, kept, or stored on any premises." Decatur City Code, ch. 70, §2 (eff. Apr. 2, 2007) (adopting by reference the International Property Maintenance Code of 2006), § 302.8)).

¶ 6 On April 11, 2011, Otto returned to defendant's property to find that defendant had not remedied the perceived violations. Later that month, the City filed a complaint, alleging that defendant was in violation of chapter 70, section 302.8 of the City Code.

¶ 7 In August 2011, the trial court conducted a bench trial, at which Otto and defendant testified. The court admitted into evidence two photographs taken by Otto, both showing defendant's vehicle without license plates and with a flat front tire (plaintiff's exhibit

No. 2). Otto said he took one of the photographs on March 31, 2011, and the other on April 11, 2011. The court also admitted into evidence a photograph taken by Otto on August 2, 2011 (plaintiff's exhibit No. 3). That photograph also showed defendant's vehicle, this time with license plates but still with a flat tire.

¶ 8 Defendant did not contest the City's position that her tire was flat or that she was missing license plates on March 31 and April 11, 2011. Instead, she argued that the City did not have the authority to require that a vehicle on private property be licensed. Further, she asserted that she was not given adequate time to remedy her violation, nor was she told how she had violated the City Code.

¶ 9 After hearing the evidence, the trial court found defendant guilty of the charged violation. With respect to defendant's arguments about notice and the amount of time she had to remedy the violation, the court found that the City was not under an obligation to send defendant a letter and provide her with time to bring her vehicle back into compliance because citizens are presumed to know the City Code. The court further found that contrary to defendant's assertion, the City was not issuing licenses, but was enforcing a licensing requirement established by the Illinois Secretary of State. The court ordered defendant to pay a $150 fine and court costs within 30 days and to bring her vehicle into compliance with the City Code within 10 days.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues that (1) the City of Decatur did not have the authority to enforce and regulate licensing of motor vehicles on private property; (2) the trial court failed to properly apply section 11-40-3 of the Municipal Code (65 ILCS 5/11-40-3 (West 2010)), which

enables municipalities to declare an inoperable vehicle a nuisance; (3) the City's ordinance does not define "inoperable" and thus, the definition of "inoperable" found in section 11-40-3 of the Municipal Code (65 ILCS 5/11-40-3 (West 2010)) should control defendant's case; and (4) defendant did not receive adequate notice of her violation or time to correct it. We address defendant's arguments in turn.

¶ 13 A. The City Code and Municipal Code

¶ 14 As defendant's arguments concern the relationship between portions of the City Code and the Municipal Code, we outline the relevant portions below.

¶ 15 Chapter 70, section 2 of the City Code adopts, by reference, the International Property Maintenance Code of 2006, which states that "no inoperative or unlicensed motor vehicle shall be parked, kept, or stored on any premises." See §2 (eff. Apr. 2, 2007) (adopting by reference the International Property Maintenance Code § 302.8 of 2006)) Decatur City Code ch. 70, § 2 (eff. April 2, 2007); International Property Maintenance Code § 302.8 (2006). The International Property Maintenance Code defines an "inoperable motor vehicle" as a "vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power." International Property Maintenance Code of 2006, § 202.

¶ 16 The Municipal Code also addresses inoperable vehicles as follows:

> "[T]he corporate authorities of each municipality may by ordinance declare all inoperable motor vehicles, whether on public or private property and in view of the general public, to be a nuisance.["] 65 ILCS 5/11-40-3 (West 2010).

¶ 17 The Municipal Code defines an "inoperable motor vehicle" as "any motor vehicle from which, for a period of at least 7 days or any greater period fixed by ordinance, the engine, wheels or other parts have been removed, or on which the engine, wheels or other parts have been altered, damaged or otherwise so treated that the vehicle is incapable of being driven under its own motor power." 65 ILCS 5/11-40-3 (West 2010). The Municipal Code further states that "nothing in this Section shall apply *** to operable historic vehicles over 25 years of age.["] 65 ILCS 5/11-40-3 (West 2010).

¶ 18 Having outlined the pertinent statutory provisions, we now turn to defendant's arguments.

¶ 19 B. Power To Regulate

¶ 20 Defendant contends that the trial court erred by enforcing the City Code, which prohibits owners from keeping unlicensed or inoperable vehicles on private property, as it conflicts with sections 401 and 402 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/3-401, 3-402 (West 2010)), which only requires that vehicles being driven on public roadways be licensed. We disagree.

¶ 21 The Municipal Code grants municipalities the authority to define, prevent, and abate nuisances and to "pass and enforce all necessary police ordinances." 65 ILCS 5/11-60-2, 11-1-1 (West 2010). Further, municipalities possess the authority to pass acts "which may be necessary or expedient for the promotion of health or the suppression of diseases.["] 65 ILCS 5/11-20-5 (West 2010). "In construing the validity of a municipal ordinance, the same rules are applied as to those which govern the construction of statutes. [Citation.] Statutes are presumed constitutional, and the burden of rebutting that presumption is on the party challenging the

validity of the statute to clearly demonstrate a constitutional violation. [Citation.]" *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306, 891 N.E.2d 839, 846 (2008). If a statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity. *Napleton*, 229 Ill.2d at 307, 891 N.E.2d at 846.

¶ 22 Here, it appears that the City ordinance, in prohibiting both unlicensed and inoperable vehicles, was enacted to promote the health and welfare of its community by prohibiting residents from keeping vehicles on their property that are susceptible to attracting vermin. Thus, we conclude that the ordinance was properly enacted pursuant to the City power under the Municipal Code.

¶ 23 C. "Historic Vehicle" Exception

¶ 24 Defendant next contends that the trial court erred by failing to properly apply section 11-40-3 of the Municipal Code (65 ILCS 5/11-40-3 (West 2010)) to her case. Specifically, defendant argues that section 11-40-3 makes an exception for her vehicle, as her car is more than 25 years old and thus constitutes an "operable historic vehicle." We disagree.

¶ 25 We review a trial court's construction of a statute or ordinance *de novo*. *City of McHenry v. Suvada*, 2011 IL App (2d) 100534 ¶ 6, 954 N.E.2d 276, 278.

¶ 26 As previously detailed, section 11-40-3 of the Municipal Code (65 ILCS 5/11-40-3 (West 2010)) grants municipalities the power to declare, by ordinance, all inoperable motor vehicles to be a nuisance and require owners of the vehicles to remove them. Section 11-40-3 defines an "inoperable motor vehicle" as follows:

¶ 27 "[A]ny motor vehicle from which, for a period of at least 7 days or any greater period fixed by ordinance, the engine, wheels or other

parts have been removed *** altered, damaged, or otherwise so treated that the vehicle is incapable of being driven under its own motor power." 65 ILCS 5/11-40-3 (West 2010).

¶ 28 Section 11-40-3 further states as follows:

"[N]othing in *this Section* shall apply *** to operable historic vehicles over 25 years of age.["] (Emphasis added.) 65 ILCS 5/11-40-3 (West 2010)).

¶ 29 Defendant is correct in asserting that section 11-40-3 creates an exception for "operable historic vehicles over 25 years of age." However, "nothing in the statute indicates that by this enactment, the legislature intended to preempt this area and bar proper and authorized legislation by municipal bodies relating to nuisances in general." *Village of Gurnee v. Depke*, 114 Ill. App. 2d 162, 168, 251 N.E.2d 913, 916 (1969). Having previously concluded that the City's ordinance prohibiting inoperable and unlicensed vehicles was properly enacted pursuant to the City's authority, we further conclude that the court did not err in applying the City's ordinance, which does not contain an exception for operable 25-year-old vehicles, to defendant's case.

¶ 30 D. Definition of "Inoperative" Vehicle

¶ 31 Defendant next contends that the City Code fails to define an "inoperative" motor vehicle, and thus, the definition found in section 11-40-3 of the Municipal Code (65 ILCS 5/11-40-3 (West 2010)) should control her case. She further asserts that, based on the Municipal Code's definition, her vehicle was not inoperable. We disagree.

¶ 32 Chapter 70 of the City Code adopts, by reference, the International Property

Maintenance Code of 2006. While the International Property Maintenance Code does not define "inoperative vehicle," it does define an "inoperable motor vehicle" as a "vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power." International Property Maintenance Code § 202 (2006).

¶ 33 Here, the trial court found that defendant violated the City Code as charged. We will not disturb a trial court's finding of fact unless it is against the manifest weight of the evidence. *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806, 812, 847 N.E.2d 565, 570 (2006).

¶ 34 In this case, photographs of defendant's car taken by Otto on March 31, 2011, and April 11, 2011, both showed defendant's car was unlicensed and had a deflated tire. On this evidence, we conclude that it was not against the manifest weight of the evidence for the court to have found that defendant violated the City Code.

¶ 35 E. Notice and Time To Correct Defendant's Violation

¶ 36 Defendant also contends that the trial court erred by finding she received adequate notice of her violation and was given sufficient time to correct it. We disagree.

¶ 37 The City sent defendant a letter on April 5, 2011, informing her that she was in violation of chapter 70, section 302.8 of the City Code and, unless defendant corrected the violation within four days, her case would be sent to the City's legal department. The letter included the following language of the pertinent section of the City Code:

¶ 38 "[N]o inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a

state of major disassembly, disrepair, or in the process of being stripped or dismantled." Decatur City Code, ch. 70, § 2 (eff. Apr. 2, 2007) (adopting by reference the International Property Maintenance Code of 2006, § 302.8).

¶ 39 The letter further provided defendant with a phone number to call in the event she needed additional information.

¶ 40 We fail to see how this letter was insufficient to apprise defendant of her violation. Even if, as defendant argues, she was unable to ascertain the meaning of "inoperative," the language of the statute also explicitly prohibited "unlicensed" motor vehicles. Defendant was aware that her car was unlicensed at the time she received the letter.

¶ 41 Sufficient notice notwithstanding, the City was under no obligation to warn defendant of the violation prior to filing its complaint. Citizens are presumed to know and comply with city codes, and we have long held a city is under no obligation to provide defendant with time to remedy his or her violation before bringing suit. See *City of Rockford v. Suski*, 90 Ill. App. 3d 681, 686, 413 N.E.2d 527, 531 (1980) ("The defendant is given no right to violate provisions of the code until notified.").

¶ 42 III. CONCLUSION

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

¶ 44 Affirmed.