

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).

2020 IL App (4th) 190897-U
NO. 4-19-0897
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
September 15, 2020
Carla Bender
4th District Appellate
Court, IL

ARLIN CUNNINGHAM, Brighton Township Highway Commissioner, and BRIGHTON TOWNSHIP ROAD DISTRICT, Plaintiffs-Appellants,)	Appeal from the
v.)	Circuit Court of
BRIGHTON TOWNSHIP, MONICA BARNETT, Brighton Township Supervisor, MATTHEW ACCORD, ROBERT CLARK, JANET JONES, and DARIN McAFEE, Brighton Township Board Members,)	Macoupin County
Defendants-Appellees.)	No. 18MR148
)	Honorable
)	April Troemper,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, finding our court has jurisdiction to hear this appeal, and pursuant to appellant counsel’s concession during oral argument, the trial court did not err in granting summary judgment for Brighton Township.
- ¶ 2 In November 2018, plaintiffs, Arlin Cunningham, the Brighton Township Highway Commissioner, and the Brighton Township Road District (Cunningham), filed a two count complaint against Brighton Township; Monica Barnett, Brighton Township Supervisor; and the Brighton Township board members, Matthew Accord, Robert Clark, Janet Jones, and Darin McAfee (Board). The first count requested declaratory relief and alleged the Board improperly modified Cunningham’s proposed road district budget for the 2018-2019 fiscal year by making unauthorized changes to individual line-item budget amounts before filing it with the

Macoupin County clerk. Cunningham requested the trial court declare the Board's revisions to the budget invalid. The second count requested a writ of *mandamus* (a remedy at law to command a public official to perform a nondiscretionary, ministerial duty; see *Doe v. Carlson*, 250 Ill. App. 3d 570, 573, 619 N.E.2d 906, 908 (1993)), directing the Board to approve Cunningham's proposed budget without the unauthorized modifications.

¶ 3 In December 2018, the Board filed an answer and counterclaims to Cunningham's complaint. In its counterclaims, the Board sought injunctive relief in count I, alleging the Board has the absolute power and authority to approve the highway commissioner's budget in whatever manner it chooses. Claiming Cunningham lacks the authority to challenge the Board's judgment by filing his lawsuit, the Board alleged Cunningham failed to perform his duties as required by law. Alleging irreparable harm, the Board requested the court to enter a preliminary and permanent injunction requiring Cunningham to perform his duties under the law. Count II requested the trial court to enter a writ of *mandamus*, directing Cunningham to perform his statutory duties with the proposed budget as approved by the Board. Count III acknowledged an actual controversy exists between the parties concerning the interpretation of the budgetary process in the Illinois Highway Code (605 ILCS 5/6-501(c) (West 2018)) and sought declaratory judgment that the Board acted within its statutory authority by approving the budget or any part thereof.

¶ 4 In February 2019, the parties filed a "Joint Motion to Enter a Stipulation of Facts in Lieu of Discovery" and attached the proposed stipulation of fact to the motion. The trial court granted the joint motion, closed discovery, and set deadlines for cross-motions for summary judgment, response and reply briefs, and set a hearing date in July 2019. After hearing arguments on the parties' respective motions for summary judgment, the court asked the parties to submit

proposed orders and took the matter under advisement. In October 2019, the trial court issued an order granting the Board's summary judgment motion, ruling the Board acted within its authority under the statute by approving only reduced portions of line-item amounts it deemed necessary, rejecting other amounts it deemed unnecessary, and adopting the budget as amended.

¶ 5 On appeal, Cunningham's brief contends the trial court erred in granting summary judgment to the Board because the disputed statute is unambiguous and its plain meaning does not provide the Board either explicit or implicit authority to modify a line-item in the highway commissioner's proposed budget. Hence, the trial court erred by granting the Board's motion for summary judgment and denying Cunningham's. Appellants' counsel did an about-face in oral argument and conceded the Board had authority to modify individual line-items within the budget. To be sure, we are not necessarily bound by a party's concessions (*Koulogeorge v. Campbell*, 2012 IL App (1st) 112812, ¶ 21, 983 N.E.2d 1066); however, here, the concession by appellants' counsel substantially undercut the position plaintiffs maintained throughout the trial court proceedings and in their briefs. It related directly to matters of record and the interpretation of a statute as a matter of first impression. If plaintiffs chose to abandon the interpretation they asserted throughout these and lower court proceedings, we see no reason to decline to accept their concession. See *Williams v. Manchester*, 228 Ill. 2d 404, 424-25, 888 N.E.2d 1, 13 (2008) (finding an express concession during oral argument concerning the record eliminates the issue on appeal) Further, Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018) provides that points not argued are waived.

¶ 6

I. BACKGROUND

¶ 7

The parties stipulated to the following facts:

¶ 8 Prior to the commencement of the 2018-19 fiscal year, Cunningham, pursuant to his statutory duties as highway commissioner, submitted a tentative budget for the Brighton Township Road District. The tentative budget was then submitted to the Board pursuant to section 6-501(c) of the Illinois Highway Code (605 ILCS 5/6-501(c) (West 2018)). The relevant parts of the statute state:

“The highway commissioner in each road district in each county having adopted township organization shall in accordance with the Illinois Municipal Budget Law [citation] at least 30 days prior to the public meeting required by this paragraph, each year prepare or cause to be prepared a tentative budget and appropriation ordinance and file the same with the clerk of the township or consolidated township road district, as the case may be, who shall make the tentative budget and appropriation ordinance conveniently available to the public inspection for at least 30 days prior to the final action. One public hearing shall be held. *** The township board of trustees or highway board of trustees, as the case may be, at the public hearing shall adopt the tentative budget and appropriation ordinance, or any part as the board of trustees deem necessary.” 605 ILCS 5/6-501(c) (West 2018).

¶ 9 In June 2018, upon receiving Cunningham’s proposed budget, the Board modified some of the proposed amounts contained within the tentative budget and submitted the modified budget to the Macoupin County clerk. All but one of the modifications implemented by the Board included significant decreases to the recommended budget. For example, the Board

reduced the general road fund from \$515,400.80 to \$264,500 by reducing administration costs from \$178,900 to \$22,000 and reducing maintenance costs from \$336,500 to \$242,500. The Board increased the equipment and building fund from \$11,500 to \$12,500. In total, the Board cut the amount of Cunningham's proposal by approximately \$250,000. After making these modifications to Cunningham's proposed budget, the Board filed it directly with the county clerk in advance of the statutory public hearing. Ultimately, the Board appropriated funds for the road district under the modified budget as submitted to the county clerk.

¶ 10 Arguments on the cross-motions for summary judgment were heard in July 2019. Cunningham argued the plain meaning of the statute does not authorize the Board to modify the individual line-item amounts proposed by the highway commissioner in his tentative budget. Pointing to the part of the statute which authorizes the Board to “adopt the tentative budget and appropriation ordinance, or any part as the board of trustees deem necessary” (605 ILCS 5/6-501(c) (West 2018)), Cunningham claimed the Board has only three options: “One, it can accept the budget. Two, it can reject the budget; or three, it can accept one part of the budget and reject another part of the budget.” Cunningham also initially argued, since Brighton Township is a non-home-rule unit of government, it possesses only the powers which are specifically conveyed to it by the constitution or statute. See *Englum v. City of Charleston*, 2017 IL App (4th) 160747, ¶ 59, 80 N.E.3d 61 (non-home-rule municipalities are governed by “Dillon’s Rule” and possess only those powers specifically conveyed by the constitution or a statute). Since the power to modify or change the budget’s line-item amounts was not expressed in the statute, Cunningham argued in his brief, the Board, being a non-home-rule entity, lacked the express power to do so. Alternatively, according to Cunningham, the Board failed to identify any implicit authority granting it the right to make the modifications. Finally, he argued statutes granting

power to municipal corporations are strictly construed, and by modifying the amounts in Cunningham’s proposed budget, the Board undertook a fourth option not authorized by the plain and ordinary reading of the statute.

¶ 11 At the outset of the Board’s argument, counsel acknowledged their belief the Board had the authority to accept or reject any portion of the tentative budget submitted by the highway commissioner. The Board also claimed the interpretation suggested by Cunningham could lead to a budget impasse not intended by the legislature when they passed the statute in question. The Board believed the restrictions on non-home-rule units provided by “Dillon’s Rule” was a nonissue because the statute conveys to the Board the authority to adopt any part of the budget as it deems necessary, thereby implying the Board has the power to modify the budget as well. Further, the Board claimed its ultimate authority over the budget included the power to modify the line items within the proposed budget.

¶ 12 In October 2019, the trial court granted the Board’s motion for summary judgment in a lengthy and detailed written order. While acknowledging the statute must be given its plain and ordinary meaning, the trial court stated Cunningham’s interpretation is “inconsistent with the plain language of the statute and would lead to absurd results.” The trial court concluded the statute gave final budget approval authority to the Board, including individual line-item proposals, and any other interpretation could lead to an irremediable budget impasse. The trial court looked to the legislative history of the statute to ascertain intent and concluded the legislature intended for the Board to have “final control” over the highway budget.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Before discussing the merits of the petition, we must first determine if our court has jurisdiction to hear this appeal, as the Board claims we do not. See *People v. Lewis*, 234 Ill. 2d 32, 37, 912 N.E.2d 1220, 1223 (2009) (A jurisdictional claim is a threshold issue and must be addressed before considering the merits of an appeal.).

¶ 16 A. Jurisdiction

¶ 17 Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017) states a notice of appeal from final judgments of the circuit court in civil cases “must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from.” However, Rule 303(d) provides a limited exception to the time requirement set forth in Rule 303(a) by allowing for an extension of time to file in certain circumstances. It states, “[o]n motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after the expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.” Ill. S. Ct. R. 303(d) (eff. July 1, 2017).

¶ 18 The record reflects the final, appealable order in this matter was issued on October 24, 2019. On December 17, 2019, Cunningham filed a motion requesting leave to file a late notice of appeal under Rule 303(d). In his motion, Cunningham claimed he did not receive notice of the trial court’s final order until December 13, 2019, when he received it via e-mail from opposing counsel. Cunningham attached affidavits including e-mail communication from opposing counsel sent on December 13, 2019, providing an electronic copy of the trial court’s order, and an e-mail from Cunningham’s counsel to the trial court and opposing counsel asking the trial court to reissue the order because he never received it. Cunningham’s counsel also

attached affidavits, both attesting they never received the court's order via mail. In Cunningham's motion, he argued any mistake was made in good faith, and he acted diligently once he became aware of it by filing a motion requesting leave to file a late notice of appeal four days later. Because fewer than 60 days elapsed before filing his motion requesting permission to file, he argued he was still within the time frame allowed under Rule 303(d) in asking the court to file his notice of appeal.

¶ 19 We granted Cunningham's motion for leave to file a late notice of appeal on December 23, 2019. On January 24, 2020, the Board filed a motion to reconsider, claiming 54 days elapsed after the entry of the order and we lacked jurisdiction to hear this claim because it was Cunningham's duty to properly monitor his case and he did not have a reasonable excuse for the delay. On February 3, 2020, we denied the Board's motion to reconsider. The Board reasserts the same lack of jurisdiction argument on appeal.

¶ 20 Cunningham properly followed the provisions of Rule 303(d) and we, in the exercise of our discretion, found good cause was shown. Having done so, it was the Board's burden to show why that was not a proper exercise of our discretion, and it has failed to do so. See *Stringer v. Packaging Corporation of America*, 351 Ill. App. 3d 1135, 1140, 815 N.E.2d 476, 481 (2004) (A court's decision to either grant or deny a motion to reconsider is within its discretion and this decision will not be disturbed absent an abuse of discretion.). Having found we have jurisdiction to address the matter before us, we now turn to the merits of the case.

¶ 21 B. The Illinois Highway Code and Township Act

¶ 22 Because the case was decided on cross-motions for summary judgment and both parties stipulated to the facts, there is no genuine issue of material fact disputed between the parties. Instead, this case concerns the interpretation of section 6-501(c) of the Illinois Highway

Code. When interpreting a statute, we are only allowed to look beyond the express language of a statute if the statute is ambiguous. *Barrall v. Board of Trustees of John A. Logan Community College*, 2019 IL App (5th) 180284, ¶ 10. “A statute is ambiguous ‘if its meaning cannot be interpreted from its plain language’ ” or if it is susceptible to two “ ‘reasonably well-informed’ ” meanings. *Board of Trustees of Teachers’ Retirement System of Illinois v. West*, 395 Ill. App. 3d 1028, 1032, 916 N.E.2d 648, 652 (2009). “Where the statutory language is clear and unambiguous, there is no need to resort to other aids of construction.” *In re C.W.*, 199 Ill. 2d 198, 211, 766 N.E.2d 1105, 1113 (2002). Consequently, the statute means what it clearly says, and “[w]e may not depart from [a statute’s plain language] by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent ***.” *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 38, 923 N.E.2d 718, 724 (2009) (citing *Rosewood Care Center, Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 567, 877 N.E.2d 1091, 1096 (2007)). “Common sense must play a role in the construction of statutes.” *People v. Burpo*, 164 Ill. 2d 261, 267, 647 N.E.2d 996, 999 (1995). “Statutory construction is a question of law, subject to *de novo* review.” *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 235, 848 N.E.2d 1, 33 (2005) (citing *Advincula v. United Blood Services*, 176 Ill. 2d 1, 12, 678 N.E.2d 1009, 1015 (1996)).

¶ 23 Brighton Township is located in Macoupin County, Illinois, and is organized under the Illinois Township Code (60 ILCS 1/1-1 *et seq.* (West 2018)). The Brighton Township Road District is organized under the Township Code and under article six of the Illinois Highway Code (605 ILCS 5/6-101 *et seq.* (West 2018)). Brighton Township Road District is headed by the highway commissioner, who is elected every four years and responsible for maintaining and managing the roads within Brighton Township. See 605 ILCS 5/6-201 (West 2018). The commissioner’s duties require that he propose a tentative budget to the Board for

approval and public inspection. 605 ILCS 5/6-501(c) (West 2018). Both parties agree this case turns upon the very last sentence in section 6-501(c), which states, “The township board of trustees or highway board of trustees, as the case may be, at the public hearing shall adopt the tentative budget and appropriation ordinance, *or any part* as the board of trustees deem necessary.” (Emphasis added.) 635 ILCS 5/6-501(c) (West 2018). Cunningham, in his brief, argues the plain meaning of this unambiguous statute authorizes the Board to accept the commissioner’s proposed budget, reject it, or accept parts of it while rejecting other parts. By contrast, the Board argues the statute requires interpretation and, in turn, the disputed language allows the Board to make modifications to the proposed budget by adjusting individual line items. Even though appellants’ counsel now concedes this issue and we must affirm based on that concession, we elect to briefly address the statute’s meaning.

¶ 24 The legislature’s intent can best be found in the language of the statute, read as a whole, which must be given plain and ordinary meaning. *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186 ¶ 24, 129 N.E.3d 1197. “Where the statutory language is clear and unambiguous, there is no need to resort to other aids of construction.” *C.W.*, 199 Ill. 2d at 211. “We may not depart from [a statute’s plain language] by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent ***.” *Acme Markets, Inc.* 236 Ill. 2d at 38 (citing *Rosewood Care Center, Inc.*, 226 Ill. 2d at 567). “Common sense must play a role in the construction of statutes.” *Burpo*, 164 Ill. 2d at 267. “In the absence of a statutory definition, courts presume that the words used in a statute have their ordinary and popularly understood meanings.” *People v. Austin*, 2019 IL 123910, ¶ 115. “When a term is not defined by a statute, it is appropriate to look to dictionary definitions to determine its ordinary and popularly understood meaning.” *In re Marriage of Zamudio*, 2019 IL 124676, ¶ 19.

¶ 25 The record reveals the proposed budget at issue is organized by category and further subdivided into individual line items. For example, the general road fund is divided into revenues and expenditures. Under each of these categories are line items specifying how much the proposed amount would fund in each category. Under the expenditures section, the Board changed Cunningham’s proposed expenditure for administration costs from \$178,900 to \$22,000, and it changed the proposed expenditure for maintenance costs from \$336,500 to \$242,500.

¶ 26 A part is defined as “one of the often indefinite or unequal subdivisions into which something is or is regarded as divided and which together constitute the whole.” Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/part> (last accessed July 14, 2020). Therefore, it follows that *any part* of the budget would necessarily contain a line-item or fund balance within the budget, as these would be subdivisions contained within the proposed budget. However, the Board did not accept a part (a line item or fund balance) of Cunningham’s proposed budget and reject other parts—it changed it. As Cunningham’s brief points out, a modification is defined as “a change to something; an alteration.” Black’s Law Dictionary (7th ed. 1999). This is precisely what the Board did; it drastically reduced Cunningham’s proposed expenditure amounts within the line items and then filed the modified budget with the county clerk. It is insignificant whether the modifications take the form of a reduction or an addition to the proposed amount within the budget. The statute in question provides three options, none of which entail the exercise of any involvement in the creation of the numbers. The Board can accept the budget, reject the budget, or accept a part of it, all essentially passive involvement. Instead, the Board chose to become actively involved in the creation of numbers by adding or subtracting amounts as they determined. By using common

