FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CITY OF OELWEIN, IOWA,	)	
Plaintiff-Appellee,	)	Filed August 29, 1985
vs.	)	
HILDMER E. BERENTSON, et al.,	)	5-272 84-905
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Fayette County - L. John Degnan, Judge.

Defendants appeal from a summary judgment for the plaintiff city in an action for injunctive relief pursuant to Iowa Code section 414.20. REVERSED; JUDGMENT VACATED.

Robert J. Hearity, Oelwein, Iowa, for defendants-appellants.

R. L. Van Veldhuizen, Oelwein, Iowa, for plaintiff-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

Defendants appeal from a summary judgment for the plaintiff city in an action for injunctive relief pursuant to Iowa Code section 414.20. They assert, inter alia, 1) that the district court lacked jurisdiction to issue an injunction since certiorari is the exclusive remedy, and 2) that defendants should have been permitted to withdraw certain admissions. We reverse and vacate the judgment.

In March 1983, the Oelwein Board of Adjustment granted the defendants a zoning variance permitting the operation of an auto body repair shop in a garage located on residential property. On May 17, 1983, the City filed a petition seeking to enjoin the operation of the repair shop, asserting that it was in violation of the city ordinance. By special appearance and motion to dismiss, defendants unsuccessfully asserted that certiorari provided the exclusive remedy for challenging a decision of the Board of Adjustment. The City filed a motion for summary judgment alleging that defendants had failed to show the unnecessary hardship necessary to justify a variance. The motion was supported by certain statements deemed admitted by defendants in failing to respond to Request for Admissions. See Iowa R. Civ. P. 127. The trial court refused to permit the withdrawal of the admissions and entered summary judgment for the City. Defendants have appealed.

Our scope of review in this equitable proceeding is de novo. Iowa R. App. P. 4.

The determinative question in this action is whether certiorari was the exclusive means for challenging the actions of the Board of Adjustment. It is the defendants' claim that the district court did not have the jurisdiction to issue an injunction and the action should have been dismissed. We agree.

The general authority for trial courts to issue injunctions is found in Iowa R. Civ. P. 320-330. The decision of whether to grant an injunction lies within

the sound discretion of the trial court. Braverman v. Elcher, 238 N.W.2d 331, 335 (Iowa 1976). Yet this discretion is not unlimited. Injunctive relief is an extraordinary remedy and should issue only when the party seeking relief has no adequate remedy at law. Green v. Advance Homes, Inc., 293 N.W.2d 204, 208 (Iowa 1980). More specifically, where a remedy has been provided by statute, the general rule is that no relief in equity can be afforded by injunction. 43 C.J.S. Injunctions § 31 (1978).

> Constitutional objections being eliminated, a court will not intervene merely to better such remedy which the legislature has deemed sufficient, and it has been said that the general rule is applicable although the provisions of the statute may conflict with the notions of natural justice entertained by a court of equitable jurisdiction.

Id.

In this case, the primary basis of the City's complaint was that the Board of Adjustment did not have the power to issue the variance to defendants. It is apparent to this court that the City had a statutory means to challenge the issuance of the variance. Section 414.15 of the Iowa Code specifically provides:

> **Petition for certiorari.** Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

Since there was an adequate remedy by certiorari, an injunction should not have been issued. See 43A C.J.S. Injunctions § 53 (1978).

The City claims that Iowa Code section 414.20 provides a statutory basis for the issuance of an injunction in this case. We disagree. This section provides authority for a municipality to institute any appropriate action to prevent or

abate violations of a zoning ordiance. Iowa Code § 414.20 (1985). We recognize that this provision has been used as a basis for injunctive relief. See, e.g., Incorporated City of Denison v. Clabaugh, 306 N.W.2d 748, 755 (Iowa 1981); City of Des Moines v. Harvey, 243 N.W.2d 606, 610 (Iowa 1976); Conley v. Warne, 236 N.W.2d 682, 687 (Iowa 1976). However, the fact situation before this court is distinguishable from each of those cases in one important respect—the defendants in this action have obtained a variance. Thus, it cannot be said that the use of the premises was in violation of the zoning ordinance. This determination would necessarily require a preliminary finding that the variance issued is invalid. Section 414.20 does not provide a court with the authority to make such a finding. As the defendants point out, the only statutory authority for challenging the validity of the variance is a petition for writ of certiorari pursuant to section 414.15.

The city also relies on Zimmerman v. O'Meara, 215 N.W. 1140, 245 N.W. 715 (1933), to support its position that an injunction should issue. Upon analyzing this case, we conclude that such reliance is misplaced. In Zimmerman, the plaintiffs sought to enjoin the defendant from changing a single dwelling house into a duplex contrary to a zoning ordinance. Id. at 1143, 245 N.W. at 716. The Board of Adjustment, by resolution, had attempted to make an exception to the ordinance. Id. The supreme court held that the action of the board was without legal authority and the property owners had the right to seek an injunction. Id. at 1150, 245 N.W. at 719. The court reasoned that it was unnecessary for the plaintiffs to resort to a writ of certiorari because they received no notice of the board's action and did not discover it until more than thirty days after the resolution had been adopted and the permit granted. Id. at 1149, 245 N.W. at 719.

It is apparent to this court that the plaintiffs in Zimmerman were allowed to seek an injunction due to exceptional circumstances which do not exist in the instant case. Unlike in Zimmerman, the City of Oelwein knew the Board had issued a variance and had the opportunity to petition for a writ of certiorari. The City cannot now claim that injunctive relief is necessary when they have bypassed an adequate legal remedy.

Under the circumstances of this case, we conclude that a petition for a writ of certiorari was the exclusive procedure to challenge the actions of the board of adjustment. Since the issuance of an injunction was inappropriate, we reverse and vacate the judgment of the trial court.

Because of our disposition on this issue, we need not address the remainder of the defendants' claims.

REVERSED; JUDGMENT VACATED.