

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

KEITH ALEXANDER, et al.,	:	CASE NO. CA2026-03-035
Appellants,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
MITCHELL CONWAY,	:	10/5/2026
Appellee.	:	
	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 25CV99369

Bricker Graydon Wyatt LLP, and Brodi J. Conover and Carly M. Sherman, for appellee.

Hoffer Law, LLC, and Tyler J. Hoffer, for appellants.

OPINION

M. POWELL, J.

{¶ 1} Keith Alexander and Keith Alexander Shoe Factory (referred to collectively in this opinion as "Alexander") appeal the judgment of the trial court affirming an order of

the Ohio Board of Building Appeals that upheld a fire-code citation and imposed penalties. Finding no error, we affirm.

I. Factual and Procedural Background

{¶ 2} Alexander acquired the property at 120 East South Street in Lebanon on December 12, 2012. The building, a four-story former shoe factory dating to the early 1900s, has stood vacant for years and is used by Alexander to store building materials and other personal property. By the time Alexander bought the property, the sprinkler system had been decommissioned with approval from the Lebanon fire and building departments to keep the lines from freezing. A September 22, 2014 letter from the fire chief stated the terms of that approval: the building was to remain empty and unoccupied; because its mercantile classification did not permit storage without an operable suppression system, any stored materials were to be removed within 30 days. Alexander never cleared the building, and the sprinkler system was never repaired or replaced. Over the next decade, the fire division made efforts to secure voluntary compliance, but those efforts came to nothing.

{¶ 3} Matters came to a head in 2025. Mitchell Conway, a certified fire-safety inspector employed by the Lebanon fire division, reinspected the property on January 22 and confirmed that the violations still existed. On February 3, 2025, the fire division notified Alexander of the outstanding violations and directed him to show proof of progress by March 14. His only response, submitted more than a month late, was an unsigned contractor's estimate placing the cost of a new sprinkler system near \$80,000.

{¶ 4} Conway issued a citation on April 22, 2025, and Alexander received it three days later. The citation charged two fire-code violations: a disabled sprinkler system under former Ohio Adm.Code 1301:7-7-03(K)(2)(b) and a sprinkler system requiring

repair under former Ohio Adm.Code 1301:7-7-09(A)(6).¹ The citation gave May 22, 2025, as the compliance deadline. Citing R.C. 3737.51, which prohibits fire-code violations and defines penalties, the citation assessed a one-time civil penalty of \$500 for each violation and stated that, unless Alexander presented a signed sprinkler contract with a start date within 30 days, a further penalty of \$500 per violation would accrue for each day the violations continued past the May 22 compliance deadline. The citation also warned that failure to post a copy of the issued citation would carry a separate penalty of up to \$1,000 per posting violation. The citation further advised Alexander of his right to appeal the citation and penalty to the Ohio Board of Building Appeals ("Board") within 30 days. Alexander neither abated the violations nor appealed, thus prompting the fire division to bring the citation to the Board.

{¶ 5} On June 2, 2025, Conway requested what the parties call a "Goldman hearing," the procedure by which an enforcing agency may bring an ignored fire-code citation before the Board for review and enforcement. *See Goldman v. State Med. Bd. of Ohio*, 110 Ohio App.3d 124 (10th Dist. 1996). The Board set the matter for June 26, 2025, and notice was delivered to Alexander by certified mail on June 7. The day before the hearing, Conway and inspector Dennis Waldbillig reinspected the property. Their report and the accompanying photographs, taken through the building's windows, showed the building still filled with combustible items.

{¶ 6} Alexander did not appear at the June 26 hearing. Conway and Waldbillig testified for the fire division, which also submitted the reinspection report and correspondence with Alexander reaching back to 2013. By the hearing date, the violations

1. The current versions of both rules (effective November 20, 2025) are structured as numbered modifications to the 2021 International Fire Code and contain no divisions "(K)(2)(b)" or "(A)(6)." Those designations come from the version in effect when the citation was issued.

had gone unabated for 35 days past the May 22 deadline. Finding that "the overwhelming evidence and testimony" supported the citation, the Board upheld the citation and imposed a one-time civil penalty of \$20,000. The Board further ordered that "[i]f any violations are not abated within thirty (30) days of the date of this order an additional \$1,000 per day for each violation remaining will be assessed." The order was journalized on July 2, 2025, and sent to Alexander.

{¶ 7} Alexander appealed to the trial court. A magistrate denied the appeal, and the trial court overruled Alexander's objections to the magistrate's decision on February 9, 2026. One of Alexander's objections challenged the Board's authority to impose the \$20,000 penalty. The court reasoned that the citation's penalties had accrued to \$36,000 by the Board hearing date, so the Board's \$20,000 figure was a reduction rather than a new penalty, and that a reduction was within the Board's authority.

{¶ 8} Alexander appealed.

II. Analysis

{¶ 9} The sole assignment of error states:

THE TRIAL COURT ERRED IN AFFIRMING THE FINAL ORDER OF THE BOARD OF BUILDING APPEALS BECAUSE THE BOARD LACKED STATUTORY AUTHORITY TO IMPOSE A ONE-TIME CIVIL PENALTY OF \$20,000 AND A PER DIEM PENALTY OF \$1,000 FOR EACH VIOLATION REMAINING UNABATED.

{¶ 10} Alexander makes three contentions. He contends that the Board doubled the \$500 per-violation daily penalty the inspector proposed to \$1,000, converted the inspector's per diem penalty into a one-time \$20,000 penalty, and assessed a prospective penalty of \$1,000 per day for each violation remaining unabated 30 days after its order. Two of Alexander's three contentions are really one. The Board's order contains no freestanding per-violation penalty of \$1,000. That figure appears only in the order's

prospective daily rate. Alexander's first and third contentions therefore attack the same provision, and we address them together.

A. Standard of Review

{¶ 11} Judicial review of a Board order upholding a fire-code citation is governed by R.C. 3781.031 and 119.12. *S.R. Products v. Gerrity*, 2004-Ohio-472, ¶ 20-21 (8th Dist.). The trial court may not affirm "unless the preponderance of the evidence before it supports the reasonableness and lawfulness of the order," and it is not confined to the agency's record, since any party may introduce additional evidence. R.C. 3781.031(D).

{¶ 12} Our review is narrower. We consider questions of law and do not weigh the evidence, and "[w]ithin the ambit of questions of law" is whether the trial court abused its discretion. *Union Twp.-Clermont Cty., C.I.C., Inc. v. Lamping*, 2015-Ohio-1092, ¶ 16 (12th Dist.), citing *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493. The scope of an agency's statutory authority is a question of statutory interpretation, which we decide de novo. *Riedel v. Consol. Rail Corp.*, 2010-Ohio-1926, ¶ 6.

B. The Statutory Framework

{¶ 13} R.C. Chapter 3737 supplies the enforcement mechanism for a violation. When a fire marshal, assistant fire marshal, or certified fire safety inspector believes the state fire code has been violated, that official "shall, with reasonable promptness, issue a citation to the responsible person," describing the violation with particularity and fixing "a reasonable time for the abatement of the violation." R.C. 3737.42(B). The issuing authority must then notify the responsible person of "the citation and penalty, if any, proposed to be assessed under section 3737.51 of the Revised Code," and of the right to appeal the citation and penalty to the Board within 30 days. R.C. 3737.43(A).

{¶ 14} R.C. 3737.51 supplies the violation penalties and their ceilings. A serious

violation "*shall* be assessed a civil penalty of not more than one thousand dollars for each such violation." (Emphasis added.) R.C. 3737.51(B). A violation determined not to be serious "*may* be assessed" a penalty within the same limit. (Emphasis added.) R.C. 3737.51(C). And a person who fails to correct a cited violation within the period allowed "*may* be assessed a civil penalty of not more than one thousand dollars for each day during which such failure or violation continues." R.C. 3737.51(D). Whenever a penalty is assessed, due consideration must be given "to the appropriateness of the penalty with respect to the gravity of the violation, the good faith of the person being charged, and the history of previous violations." R.C. 3737.51(F). Penalties "*may* be recovered in a civil action in the name of the state brought in the court of common pleas of the county where the violation is alleged to have occurred." R.C. 3737.51(H).

{¶ 15} R.C. Chapter 3781 supplies the adjudicator of an alleged violation. Where no certified municipal or county board of appeals exists, "the board of building appeals shall conduct the adjudication hearing." R.C. 3781.19. That statute then defines the adjudicator's power, providing that the Board "*may* reverse or modify the order of the enforcing agency" upon the findings the statute specifies. Once the Board acts, its order becomes the operative instrument, because the enforcing official's further remedies depend on noncompliance with the order "*as finally affirmed or modified by the state board of building appeals.*" R.C. 3737.45. The Board is a creature of statute and may exercise only the powers the General Assembly has conferred. *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency*, 88 Ohio St.3d 166, 171 (2000).

C. The One-Time \$20,000 Penalty

{¶ 16} The parties argue over the word "modify." Alexander says it authorizes reduction and nothing more. Conway says the General Assembly attached no directional limit. We need not choose. Alexander concedes that the Board could "affirm, reverse, or

reduce" the penalty the inspector proposed, which means that the \$20,000 penalty is within the Board's power. The trial court agreed, holding that the Board "plainly possesses, and here appropriately exercised, the authority to decrease a penalty imposed pursuant to law." The court expressly declined to "opine whether the [Board] may alter a civil penalty in any manner beyond reduction."

{¶ 17} A reduction presupposes a baseline, and the baseline is the penalty the citation itself imposed. The citation was issued on April 22, 2025, and fixed May 22 as the compliance deadline. The violations remained unabated through the Board's June 26 hearing, 35 days later, a finding Alexander does not contest. Measured against the citation's terms, his liability stood at \$36,000 as of the hearing, consisting of \$1,000 in one-time penalties and \$35,000 in daily penalties. The Board's \$20,000 penalty lowered that figure by \$16,000. Both numbers are below the ceilings established by R.C. 3737.51.

{¶ 18} That baseline assumes the citation charged two violations, not one. Alexander says only one was charged—a single condition described by reference to two rules. We reject that assertion. As a threshold matter, it is unpreserved. Alexander did not appear before the Board to advance it. He also did not present it to the magistrate, whose decision described the citation as issued for the property's "sprinkler system violations" and identified both rules. He further did not include it among his objections to the magistrate's decision. By his own account, he pressed it in a supplemental brief that he "sought leave to file," which leave we denied.

{¶ 19} Alexander's assertion is also unsupported. The citation named violations of two distinct requirements, one directing that fire alarm, sprinkler, and standpipe systems in temporarily unoccupied buildings be maintained in an operable condition at all times, Ohio Adm.Code 1301:7-7-03(K)(2)(b), and the other governing the inspection, testing, and maintenance of fire-protection systems generally, Ohio Adm.Code 1301:7-7-

09(A)(6). The citation assessed its penalties per violation, as Alexander's own brief describes them, a "\$500.00 civil penalty per violation" and a "\$500.00 per day penalty for each violation that continued after thirty days." The Board's order speaks the same way, conditioning the prospective penalty on whether "any violations" remain unabated and setting the rate for "each violation remaining." We cannot say the trial court abused its discretion in reading the citation the same as the inspector who wrote it, the Board that adjudicated it, and the magistrate who reviewed it.

{¶ 20} Alexander next objects that the citation contains no \$20,000 figure, so the Board could not have reduced anything. That confuses the form of a penalty with its size. In *Drop Bar, L.L.C. v. Cleveland*, 2013-Ohio-4797 (8th Dist.), the Eighth District considered a citation assessing daily penalties for ten fire-code violations and explained that whether "the citation and penalty are upheld or whether the penalty is waived or reduced is within the discretion of the Board." *Id.* at ¶ 24. The Board there upheld the citation but replaced the accruing daily penalties with a single fixed sum of \$4,000, roughly one day's worth, and the court found nothing arbitrary or unreasonable in that disposition. *Id.* at ¶ 26-27. The Board did the same thing here. Whether a reduction is expressed as a lower daily rate or as a lump sum, the question is what the responsible person now owes compared to what the citation had already imposed. Here, Alexander owes \$16,000 less.

{¶ 21} The \$20,000 penalty was also reasonable, as R.C. 3781.031(D) required the trial court to find. The gravity of the violations was substantial—a vacant four-story building stocked with combustible material and lacking any operable suppression system. The history was long—the same conditions were documented since 2014, with correspondence running back to 2013. As to good faith, the record shows a missed March 14 proof-of-progress deadline, an ignored May 22 compliance deadline, and nothing

produced but an unsigned contractor's estimate submitted more than a month late. See R.C. 3737.51(F).

{¶ 22} Alexander's last objection to the \$20,000 penalty comes from the hearing transcript, which he reads as showing the Board improvising, discussing what one member called an "incentive," and floating figures ranging from \$20,000 to \$30,000. But an agency's deliberations are not its order. We review what the Board entered: an order upholding the citation, resting on the Board's express finding that "the overwhelming evidence and testimony" supported it, and fixing a penalty below both the accrued total and the statutory maximum. The Board members' reasoning aloud is what deliberation looks like, and the transcript shows the members discussing the very figures Alexander says they ignored.

{¶ 23} Nor does the format of the Goldman hearing, which did not permit Alexander to present evidence, change the analysis. The citation advised Alexander of his right to appeal to the Board within 30 days, an appeal that would have brought a full adjudication of "the citation and penalty." R.C. 3737.43(A). He let that right lapse, and he did not appear when the fire division brought the matter to the Board, though he had notice of the hearing. In the trial court, Alexander was entitled to introduce additional evidence, R.C. 3781.031(D), and the court received and considered his affidavit. The trial court did not abuse its discretion in concluding that the \$20,000 penalty was reasonable and lawful.

D. The Prospective \$1,000 Per Diem Penalty

{¶ 24} Alexander's remaining contentions challenge the forward-looking portion of the Board's order, which provides that "[i]f any violations are not abated within thirty (30) days of the date of this order an additional \$1,000 per day for each violation remaining will be assessed." Alexander argues that the Board had no authority to order any prospective penalty and that the \$1,000 rate doubled the \$500 rate the inspector

proposed. Neither issue was preserved.

{¶ 25} Alexander's objections to the magistrate's decision challenged the issuance of the citation, an estoppel question, the reliability of the inspectors' testimony, and the Board's authority to impose the \$20,000 penalty. None mentioned the prospective per diem or its rate. Accordingly, the trial court decided neither, resting its penalty holding entirely on the conclusion that \$20,000 reduced Alexander's accrued liability. Under Civ.R. 53(D)(3)(b)(iv), "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion" to which the party has not objected as the rule requires. Our review is therefore limited to plain error. *Whitson v. Dixie Imports, Inc.*, 2020-Ohio-1549, ¶ 44 (12th Dist.). "When applying plain error in a civil case, . . . this court is required to be 'extremely deferential' to the trial court." *Brock v. Servpro*, 2022-Ohio-158, ¶ 33 (12th Dist.), quoting *Capano & Assocs., L.L.C. v. On Assignment, Inc.*, 2016-Ohio-998, ¶ 13 (12th Dist.).

{¶ 26} "The Rules of Civil Procedure do not provide for plain-error review." *Jones v. Cleveland Clinic Found.*, 2020-Ohio-3780, ¶ 24. "Because of this, '[t]he Ohio Supreme Court has set a "very high standard" for invoking the plain error doctrine in a civil case.'" *Brock* at ¶ 34, quoting *Bryan v. Chytil*, 2021-Ohio-4082, ¶ 200 (4th Dist.), quoting *Perez v. Falls Fin., Inc.*, 2000-Ohio-453, ¶ 16. The doctrine is reserved for "the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 1997-Ohio-401, syllabus. The appellant must establish a deviation from a legal rule, that the deviation was obvious, and that it had the above effect on the proceedings. *Whitson* at ¶ 44, citing *State v. Morgan*, 2017-Ohio-7565, ¶ 40.

{¶ 27} Alexander does not claim plain error, and we would be entitled to end the

inquiry there. We add only that no obvious error appears. The Board did not invent a daily penalty for continued noncompliance. It was in the citation from the start, and the magistrate found, without objection, that the citation "informed Appellant that civil penalties would accrue on each day the violations remained outstanding after his May 22, 2025 compliance deadline." The Board carried that structure forward and reset the clock, giving Alexander 30 penalty-free days from the date of the order in which to comply, an accommodation the citation did not offer.

{¶ 28} The rate presents a closer question, but not one that we need to answer. R.C. 3737.51(D) caps the penalty at "not more than one thousand dollars for each day during which such failure or violation continues," and whether that ceiling attaches to each uncorrected violation or to each day in the aggregate is a question neither party has raised. It makes no practical difference here, because Conway reads the Board's order as imposing \$1,000 per day in total, the same daily figure the citation carried at \$500 for each of two violations, and asks us to affirm the order so construed. On that construction, the rate was not increased at all. If the parties later disagree about what is owed, the statute will resolve the dispute. Civil penalties "may be recovered in a civil action in the name of the state brought in the court of common pleas," R.C. 3737.51(H), and the further remedies of repair, demolition, and sale require a separate action as well, R.C. 3737.45. An order that operates only against future noncompliance, that must be proved in court before recovery of penalties, and whose meaning the enforcing party construes in the responsible person's favor is not the exceptional case that civil-plain error exists to correct.

III. Conclusion

{¶ 29} The Board acted within its authority by reducing the penalty the enforcing agency proposed. The trial court did not abuse its discretion in finding the \$20,000 penalty

reasonable and lawful, and Alexander's unpreserved challenge to the prospective per diem penalty presents no plain error. The assignment of error is overruled, and the trial court's judgment is affirmed.

{¶ 30} Judgment affirmed.

PIPER, P.J., and SIEBERT, J., concur.

JUDGMENT ENTRY

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge