

RENDERED: DECEMBER 16, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000002-MR

LARRY PINSON; ANNA PINSON;
LESLIE A. PINSON; AND LISA PINSON

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
ACTION NO. 08-CI-01505

CITY OF PIKEVILLE FIRE DEPARTMENT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

DIXON, JUDGE: Larry Pinson and his daughters, Anna Pinson, Leslie A. Pinson, and Lisa Pinson (“Appellants”), appeal a judgment of the Pike Circuit Court enforcing an order to remedy fire hazard issued by the City of Pikeville Fire Department (“City”) against Appellants. We affirm.

Appellants own a vacant two-story house at 207 Main Street in Pikeville, Kentucky. On July 30, 2008, the Pikeville Fire Chief issued an order to remedy fire hazard against Appellants pursuant to KRS 227.380, after an inspection of the premises revealed several fire safety violations, structural dilapidation, and unsafe conditions. Pursuant to KRS 227.380(2), the order advised Appellants they had ten days to appeal the fire chief's order to the state fire marshal, and the orders were sent to each Appellant via certified mail. Leslie Pinson accepted service of the order on July 31, 2008. Thereafter, all four Appellants, through their attorney, submitted an appeal of the order to the Department of Housing, Buildings, and Construction on August 26, 2008. The Department dismissed the appeal as untimely, and Appellants did not seek judicial review of the dismissal.

On October 27, 2008, the City filed a complaint in Pike Circuit Court against Appellants, seeking judicial enforcement of the fire chief's July 30, 2008, order to remedy fire hazard. Pursuant to KRS 227.390, the City sought to demolish the property at Appellants' expense. The Appellants filed an answer and moved to dismiss the complaint for lack of subject matter jurisdiction. The trial court denied the motion to dismiss, and the parties engaged in discovery regarding the appropriate remedy for the fire hazards. The City tendered expert reports outlining specific hazards, and the court ultimately determined the Appellants failed to comply with the order to remedy. Pursuant to KRS 227.390, the court found the City was entitled to remove the structure at Appellants' expense, noting

it was undisputed the cost of repair exceeded the value of the property. This appeal followed.

Appellants argue the fire chief's order was void; consequently, the circuit court did not have subject matter jurisdiction to enforce the order.

Appellants cite KRS 227.225, which states:

(1) Except for the powers conferred by KRS 227.220(3)(a), the rights, powers and privileges granted under this chapter to the state fire marshal shall not apply to any single family dwelling in this Commonwealth.

(2) Any city, county or urban-county government of the Commonwealth may extend, by ordinance, the application of this chapter to those single family dwellings exempted under subsection (1) of this section.

Appellants opine that the City of Pikeville had not enacted an ordinance to include single family dwellings pursuant to KRS 227.225(2) at the time of the order to remedy fire hazard; accordingly, they contend the fire chief's order was void. We find the Appellants' reliance on KRS 227.225 misplaced.

The City's fire chief, Ronald Conn, acted within his authority pursuant to KRS 227.370(1), which states:

The chief of the fire department of a city, or any officer or member of his department designated by him for that purpose, is authorized to inspect all property for the purpose of ascertaining and causing to be corrected any conditions likely to cause fire loss, or determining the cause or origin of any fire loss, or discovering any violation of a law or ordinance relating to fire prevention and protection. This authority shall apply to the interior of occupied, private dwellings only when a fire loss has occurred therein or when the officer has reason to believe that unsafe conditions exist in the building.

In the case at bar, Chief Conn inspected the long-vacant house at 207 Main Street. Chief Conn observed that windows and doors were missing, the interior wiring had been removed, the wooden structure had significant decay, and a large amount of bird feces and dead birds were inside the house. Accordingly, Chief Conn issued an order to remedy fire hazard pursuant to KRS 227.380, which provides:

(1) Whenever the chief of the fire department or any officer or member of his department designated by him for that purpose finds any property which, for want of repairs, lack of sufficient fire escapes, age, dilapidated condition, or any other cause, is especially liable to fire loss, or whenever an officer finds in any property, combustible or explosive matter or inflammable materials likely to result in fire loss, he shall order it to be remedied. The order shall forthwith be conformed to by the owner of the property.

(2) The owner may appeal to the state fire marshal within ten (10) days following receipt of the order. The state fire marshal shall, upon appeal, conduct a hearing in accordance with KRS Chapter 13B.

Appellants failed to timely appeal Chief Conn's order to the state fire marshal, and they failed to comply with the order by correcting the hazardous conditions. KRS 227.390 grants the fire chief the authority to remedy a fire hazard at the owner's expense:

If any owner fails to comply with an order issued pursuant to KRS 227.380 or with an order as modified on appeal to the commissioner, the officer may cause the property to be repaired, or removed if repair is not feasible, and all fire hazard conditions remedied, at the expense of the owner. Such expense may be enforced

against any property of such owners and the officer and those employed to do the work or who furnish materials or equipment therefor shall have a lien for such expense on the real estate or property involved.

Appellants' reliance on KRS 227.225 is misplaced, as that statute limits the investigatory power of the state fire marshal. The facts of this case do not involve action by the state fire marshal; rather, this case concerns the local fire chief's investigation of an unoccupied dwelling suspected to be a fire hazard pursuant to KRS 227.370. The record indicates Chief Conn acted within the scope of his statutory authority; accordingly, we conclude the order to remedy fire hazard was valid pursuant to KRS 227.380.

Appellants alternatively argue they are entitled to remand for a hearing where they can present evidence. Although Appellants failed to timely perfect an administrative appeal pursuant to KRS 227.380(2), the record reflects the circuit court entertained Appellants' arguments attacking the validity of the order. Further, the Appellants had the opportunity to contest the evidence regarding the condition of the property, and the Appellants had additional time to comply with the order to remedy. We are not persuaded that Appellants are entitled to remand and a hearing.

Appellants raise a final argument regarding common law nuisance. This contention is without merit, as the trial court's judgment did not include a finding of common law nuisance.

For the reasons stated herein, we affirm the judgment of the Pike Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Lawrence R. Webster
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Russell H. Davis, Jr.
Pikeville, Kentucky