

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF WORTH,

Plaintiff-Appellee,

v

JOHN M. SWEENEY, JR., HELEN SWEENEY and
JOHN B. SWEENEY,

Defendants-Appellants.

UNPUBLISHED
February 14, 1997

No. 188504
Sanilac Circuit Court
LC No. 93-022754

Before: Saad, P.J., and Griffin and M.H. Cherry,* JJ.

PER CURIAM.

Defendants appeal from the trial court's entry of judgment for plaintiff. Defendants contend that the order to demolish their uncompleted home inequitably abates the nuisance caused by defendants' failure to complete the exterior of the home within one year, in violation of plaintiff's zoning ordinance. We reluctantly agree, and reverse and remand, with directions.

Nearly eight years after defendant John M. Sweeney commenced construction upon the property at issue, the project is still incomplete, despite plaintiff's ordinance requiring the exterior of a structure be completed within one year. We have carefully reviewed the record and we note that, prior to entry of the order appealed from, the county and the circuit court had *repeatedly* extended the construction deadlines imposed upon Mr. Sweeney, Sr. The record also suggests that Mr. Sweeney, Sr. may have taken advantage of the situation (i.e. by changing his construction plans to include the cottage). It is therefore with extreme reluctance that we reverse the circuit court's October 17, 1995, order to demolish structure.

Michigan law provides that the use of land in violation of local ordinances constitutes a nuisance per se. MCL 125.294; MSA 5.2963(24). However, it is our policy to tailor the remedy to the problem and, where possible, to abate the nuisance without completely destroying legitimate activity. *Norton Shores v Carr*, 81 Mich App 715, 724; 265 NW2d 802 (1978); *Eyde Bros Development*

* Circuit judge, sitting on the Court of Appeals by assignment.

Co v Roscommon Co Bd of Road Comm'rs, 161 Mich App 654, 670; 411 NW2d 814 (1987). Our de novo review of the trial court's equitable remedy, *Orion Charter Twp v Burnac Corp*, 171 Mich App 450, 459; 431 NW2d 225 (1988), convinces us that, although this is a close question, demolition here might inequitably destroy legitimate activity.

Upon remand, defendants will be permitted one last opportunity to complete this task themselves. When plaintiff's officials visited the site previously, they found relatively minor defects in exterior completion. Upon remand, the circuit court shall ascertain (either by itself or by appointment of an independent expert at defendants' expense): (1) what remains to be completed to bring the structure(s) into compliance with plaintiff's ordinances, and (2) an estimate of the cost of such completion. After making such determinations, the circuit court shall set a reasonable date for defendants to bring the property into compliance, and shall notify all interested parties of this date.

Once this date is set, the circuit court shall require defendants to either: (1) present proof of performance, or (2) deposit with the court, in any manner which the court determines to be satisfactory, the funds necessary to pay for such completion. If the property is not in compliance with all ordinances on or before the date set for completion by the circuit court, the court shall direct the county to bring the property into compliance with all ordinances, and shall direct that the funds deposited with the court by defendant be used to pay for the county's expenditures. Any reasonable expenses which the county incurs which exceed the amount paid into court by defendants shall represent a lien which shall be placed upon the property.

Reversed and remanded. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Richard Allen Griffin
/s/ Michael H. Cherry