STATE OF MICHIGAN

COURT OF APPEALS

CHESTERFIELD CHARTER TOWNSHIP,

Plaintiff-Appellee,

v

MORRIS KITAY,

Defendant-Appellant.

UNPUBLISHED
January 26, 1999

No. 202586
Macomb Circuit Court
LC No. 95-005370 CE

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Plaintiff brought an action to permanently enjoin defendant from using his property in Chesterfield Township for the unsheltered storage of rubbish, debris, and junk. The trial court granted the permanent injunction, which also ordered defendant to pay the costs associated with the township's prior removal of junk and debris from his property and granted the township the right to enter defendant's property to cut down weeds at defendant's expense. We affirm.

Defendant first complains that he was denied his right to a jury trial under the United States and Michigan Constitutions. US Const, Am VII; Const 1963, art 1, §14. However, as to matters traditionally equitable, no right exists as a matter of law to a determination by a jury. *In re Forfeiture of $1,159,420*, 194 Mich App 134, 154-155; 486 NW2d 326 (1992). An action seeking a permanent injunction to abate a nuisance invokes only the equitable jurisdiction of the court, *Fredal v Forster*, 9 Mich App 215, 218; 156 NW2d 606 (1967), and, therefore, defendant did not have a constitutional right to a jury trial.

Defendant next argues that because he has used his property for similar storage since 1980, an injunction based on his violation of an ordinance enacted in 1990 works an unconstitutional application of an ex post facto law against him. Because the township's property maintenance ordinance was not, under any interpretation of the facts, being applied in a manner to punish defendant for conduct that occurred before its enactment, defendant's argument is without merit. *Taylor v Secretary of State*, 216 Mich App 333, 339-342; 548 NW2d 710 (1996). Moreover, when a regulation concerns health and safety, there is no requirement to provide a "grandfather" clause to protect one's preexisting status. *Id.* at 341.

We additionally note, as did the trial court, that defendant's theory more closely resembles an argument that either laches applied, or that his was a legal nonconforming use that should be allowed to continue. Laches fails as defense because defendant cannot establish any prejudice from the township's delay in seeking to curtail his junk storage. *Troy v Papadelis (On Remand)*, 226 Mich App 90, 97; 572 NW2d 246 (1997). Although a previously lawful use of land will generally be allowed to continue in spite of new zoning restrictions provided it does not expand, *id.* at 95, there is no evidence that defendant's de facto junkyard in a residential neighborhood, amounting to a nuisance-in-fact, was ever lawful. Further, the ordinance in question is regulatory, as opposed to a zoning ordinance, and is not subject to the rights of those having nonconforming uses at the time the ordinance became effective. *Natural Aggregates Corp v Brighton*, 213 Mich App 287, 298-302; 539 NW2d 761 (1995).

Defendant also claims that he is entitled to relief because the trial judge was biased or prejudiced against him. Although defendant twice moved the trial judge to recuse himself for bias pursuant to MCR 2.003 and requested that his motion be referred to the chief judge for a ruling, defendant has not provided this Court with a transcript of the hearing before the chief judge or a copy of the chief judge's order. Therefore, review of the recusal determination itself is waived. *Meagher v Wayne State Univ*, 222 Mich App 700, 725; 565 NW2d 401 (1997). Hence, this Court's review is limited to the extent that defendant demonstrates a denial of due process in that the result of the trial was actually the product of judicial bias. *Cain v Dep't of Corrections*, 451 Mich 470, 497-498; 548 NW2d 210 (1996); *Meagher*, *supra* at 726.

Defendant cites only the trial judge's adverse rulings and one out-of-context comment for the proposition that bias controlled the judge's decision-making process. Bias or prejudice cannot be established solely by repeated rulings against a litigant. *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 155; 532 NW2d 899 (1995). Moreover, our review of the entire record reveals that the trial judge showed enormous patience with defendant whose lack of legal training, at times, led him to misinterpret what should have been viewed as favorable treatment. We find no evidence of actual prejudice or bias.

The balance of defendant's issues on appeal are without merit and defendant does not support them with legal authority. We therefore deem them abandoned and decline to address them. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Affirmed.

/s/ Michael J. Kelly
/s/ Roman S. Gribbs
/s/ E. Thomas Fitzgerald