STATE OF MICHIGAN

COURT OF APPEALS

NORTHFIELD TOWNSHIP,

Plaintiff-Appellee,

v

DAVID J. KIRCHER,

Defendant-Appellant.

UNPUBLISHED
August 11, 2000

No. 212260
Washtenaw Circuit Court
LC No. 94-002049 CE

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Defendant appeals as of right a trial court order permitting plaintiff to raze as a nuisance an apartment building owned by defendant. The order terminated a lengthy history of litigation between the parties regarding deficiencies existing in defendant's building. We affirm.

The complaint in this case stated voluminous examples of defendant's property's alleged failures to comply with applicable code and ordinance provisions, branded the dwelling a "public nuisance," and requested a permanent injunction "enjoining and abating the continuance of code violations and the nuisance at said property by requiring that the property be made to comply with all Township ordinances or be razed within a time certain to be determined by this court . . . ." According to the complaint, after repeated attempts to notify defendant of several code and ordinance violations, plaintiff in 1993 issued defendant misdemeanor tickets. Defendant appeared in district court where "he was advised to clear the defects and resolve the problem." Because defendant did not do so, the district court action was dismissed and plaintiff sought recourse in the circuit court. After a bench trial and a personal inspection of the premises, the trial court found that the structure constituted a public nuisance and authorized plaintiff to raze it if, within nine months, defendant did not complete repairs. Following several more hearings that occurred from 1995 through 1998 and a second personal inspection by the court, the court ultimately declared, "In the last three years, this Court has given defendant more than ample opportunity to abate the nuisance posed by this building. No further delays are appropriate, equitable or in the public interest." The court then authorized plaintiff to raze the structure. Demolition has been stayed pending this appeal.

Defendant first contends that because one portion of the complaint alleges that the structure constitutes a "dangerous building" pursuant to the Housing Law,[1] he was entitled to an administrative hearing before razing could be ordered, and that therefore the trial court lacked subject matter jurisdiction over this case. Count I of the complaint is denominated "Public Nuisance" and recites numerous ways, other than constituting a "dangerous building", in which defendant's building represents a public nuisance. Furthermore, the record reveals that plaintiff made it plain during trial that it was proceeding on a nuisance theory, and the trial court more than once declared defendant's building a public nuisance. Defendant clearly was informed that the trial court found the structure to constitute a public nuisance. We observe that MCL 600.2940(1); MSA 27A.2940(1) provides that "[a]ll claims based on or to abate nuisance may be brought in the circuit court," expressly conferring subject matter jurisdiction on the circuit court. Accordingly, we conclude that the circuit court properly entertained plaintiff's nuisance action.[2]

To the extent that defendant's argument may be interpreted as a contention that his due process rights were violated, we note that the trial court's failure to require plaintiff to follow the Housing Law's administrative procedures in no way deprived defendant of due process of law. The instant case is analogous to a holding by this Court in *Orion Charter Twp v Burnac Corp*, 171 Mich App 450, 462, 463-464; 431 NW2d 225 (1988), which states in relevant part as follows:

> [A]ppellants claim that the trial court committed error by not requiring the township to follow the provisions of the Housing Law, MCL 125.401 *et seq*.; MSA 5.2771 *et seq*. Specifically, appellants claim that the township was required to comply with MCL 125.538; MSA 5.2891(18) through MCL 125.542; MSA 5.2891(22). Appellants argue that they were entitled to an administrative hearing in accordance with

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[1] MCL 125.401 *et seq*.; MSA 5.2771 *et seq*. "Dangerous building" is defined within MCL 125.539; MSA 5.2891(19). The Housing Law provides for notice to the property owner, MCL 125.540; MSA 5.2891(20), an initial hearing and an appeal to the municipal board of appeals, and a further appeal to the circuit court before a dangerous building may be demolished. MCL 125.541-125.542; MSA 5.2891(21)-5.28921(22).

[2] Defendant suggests that because the BOCA codes' "unsafe structure" definition overlaps the Housing Law's "dangerous building" definition he is therefore entitled to appeal alleged BOCA violations to the municipal board of appeals, and that the circuit court lacked subject matter jurisdiction to consider the alleged BOCA violations. We reject defendant's contention pursuant to the above analysis because the complaint did not rely in its request for a public nuisance declaration on the structure's qualification as an "unsafe structure" defined within the BOCA codes. We further reject defendant's contention that the trial court lacked jurisdiction to consider code violations that plaintiffs did not plead within Count II ("Code Violations") of their complaint. As we have indicated, the trial court possessed jurisdiction to consider plaintiff's nuisance claim (Count I), MCL 600.2940(1); MSA 27A.2940(1), and on finding a public nuisance possessed the authority to require defendant to abate or remedy the nuisance by complying with all applicable codes. 58 Am Jur 2d, Nuisances, § 355, pp 946-947 ("Trial courts have broad discretion in fashioning appropriate remedies to abate public nuisances.").

> the Housing Law before demolition may be ordered. Appellants argue that the failure to afford them this hearing violated their due process rights.
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> In this case, it can hardly be argued that appellants were not afforded due process of law prior to the issuance of the demolition order. The appellants have taken this issue not only in state court, but in federal court as well. Appellants have been afforded numerous opportunities to present their case on why demolition should not be ordered. We find no due process violation.

As in *Orion Charter Twp*, the instant defendant received more than adequate opportunity to be heard, first in district court and then on numerous occasions over several years in circuit court. Consequently, we conclude that the trial court did not violate defendant's due process rights in finding his building a public nuisance and ordering it razed.

Defendant next claims that complaint Count II's alleged BOCA violations are invalid because the cited BOCA code provisions lack definable standards and therefore are unconstitutional. Defendant failed to properly preserve this issue for our review because he did not raise this issue in the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Because we need not address this issue first raised on appeal and because we perceive no manifest injustice from our refusal to address this unpreserved issue, we decline to consider it further. *Booth Newspapers, Inc v University of Michigan Board of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993); *Herald Co, Inc v City of Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998).

Defendant also maintains that the structure's violations are not serious enough to justify its razing, and that plaintiff presented insufficient evidence to warrant demolition of the premises. The trial court's findings of fact may not be set aside unless clearly erroneous. MCR 2.613(C). A finding is clearly erroneous when although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 99; 535 NW2d 529 (1995).

We perceive no clear error here. The trial court conducted a bench trial and several hearings and twice personally inspected the premises. The instant record, including video taped inspections of the premises, contains abundant evidence of the structure's poor and unsafe conditions. Viewing this substantial evidence in the light most favorable to plaintiff and giving plaintiff the benefit of every reasonable inference that can be drawn from the evidence, we find that the question whether defendant's building constituted a public nuisance and should therefore be razed represents a matter properly left to the trier of fact. *Boggerty v Wilson*, 160 Mich App 514, 522; 408 NW2d 809 (1987). We conclude that sufficient evidence amply supported the trial court's determinations that the structure's dangerous and dilapidated conditions warranted its razing. *Hofmann*, *supra*; *Boggerty*, *supra*. See also 58 Am Jur 2d, Nuisances, §§ 355, 358, pp 946-947, 949 ("[E]quity may deal with property used in maintaining a nuisance in any way reasonably necessary to suppress the nuisance.

Thus, a court of equity may direct that a structure which constitutes a nuisance be abated unless such changes as will obviate the objection are made within a specified time.").

In a related argument, defendant contends that the trial court erred in finding incredible defendant's assertion that he had made sufficient improvements to the structure. In light of the trial court's special opportunities to observe the parties and the substantial record evidence contradicting defendant's assertions, we will not second guess the court's credibility determination. MCR 2.613(C); *Hofmann*, *supra*.

Lastly, defendant argues that the trial court erred in denying his motion "for clarification" requesting the court to rule that the property maintenance code applies to defendant's structure. We detect no error in the trial court's denial of this motion. The trial court determined that defendant's property constituted a public nuisance and ordered it razed absent defendant's compliance with *all applicable codes*. Defendant received several opportunities to bring the building into compliance with all applicable codes. As we have already concluded, the trial court properly determined that defendant failed to comply and that therefore plaintiff may raze the structure.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ David H. Sawyer