

STATE OF MICHIGAN
COURT OF APPEALS

VICTOR J. SIERADZKI,

Plaintiff-Appellant,

v

CITY OF MUSKEGON,

Defendant-Appellee.

UNPUBLISHED

August 25, 2000

No. 220130

Muskegon Circuit Court

LC No. 99-039136-CH

Before: White, P.J., and Talbot, and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the circuit court granting defendant's motion for summary disposition and denying plaintiff's motion for an injunction and an order of superintending control. We affirm.

Plaintiff owns a building in the city of Muskegon. The housing board of appeals held a public meeting and found the building "unsafe, substandard, and a public nuisance." Plaintiff was mailed a copy of these findings and a copy was posted on plaintiff's building.

The historic district commission held a public meeting and discussed the demolition of the building. The historic district commission also concluded that the building should be demolished.

The city commission ordered the demolition of the building on January 12, 1999. Plaintiff did not attend this meeting, but was sent a certified letter, mailed the day after the meeting, explaining that he had twenty days to appeal the decision. Plaintiff did not retrieve the letter from the post office until February 11, 1999. Plaintiff filed a complaint in circuit court five days later requesting injunctive relief and an order of superintending control.

Defendant moved for summary disposition under MCR 2.116(C)(8), on the ground that plaintiff's appeal was untimely because it had been filed more than twenty days from the date of the city commission's decision. The circuit court granted defendant's motion.

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

Plaintiff contends that the circuit court erred when it concluded that plaintiff's appeal was untimely and granted summary disposition for defendant. We disagree.

This Court reviews the trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Initially, we note that defendant's motion for summary disposition was brought under MCR 2.116(C)(8) for failure to state a claim. However, the appropriate ground for summary disposition was MCR 2.116(C)(4) because the circuit court lacked subject matter jurisdiction since plaintiff's appeal was untimely. Nevertheless,

“[I]f summary judgment is granted under the wrong subsection, the Court may review the order of summary judgment as though it were granted under the proper subsection when the record permits meaningful review.” *Stewart v Isbell*, 155 Mich App 65, 74; 399 NW2d 440 (1986).

Plaintiff's appeal was untimely because it was not filed within the time permitted by the city code. Section 4-28 of Muskegon's city code, which governs appeal of a city commission decision, provides:

[A]n owner aggrieved by any final decision or order of the commission may appeal the decision or order to the circuit court for the County of Muskegon, by filing a petition for an order of superintending control within 20 days from the date of the decision, and the order of the city commission shall be suspended pending the outcome of the appeal.

Section 4-24 of Muskegon's city code, which governs the service of notices, provides that

all notices shall be in writing and served upon such persons as they are directed personally, or in lieu of personally served, by certified mail, return receipt requested, addressed to such owner or party at the address listed in the tax records.

Additionally, a circuit court will not have jurisdiction to hear an appeal if the appeal is not filed timely. *Krohn v Saginaw*, 175 Mich App 193, 196; 437 NW2d 260 (1988); *Schlega v Detroit Bd of Zoning Appeals*, 147 Mich App 79, 82; 382 NW2d 737 (1985).

First, plaintiff contends that his appeal should be considered timely because it was filed within five days of his receipt of the notice. We reject this argument. Plaintiff's appeal was not filed within twenty days of the city commission's decision. Defendant complied with the city code concerning notices when it sent the certified letter to plaintiff. We decline to hold that a property owner can extend the appeal period simply by failing to retrieve the letter from the post office. The appeal provision refers to the date of decision, not the date notice is received. We also observe that while plaintiff did not attend the June 12 meeting, plaintiff knew that the demolition of his building would be discussed on January 12, 1999 because of his attendance at a previous meeting.

Second, plaintiff argues that defendant would not be prejudiced by the late appeal. This Court has previously rejected this argument recognizing that the “failure to file a timely claim of appeal deprives

the circuit court of jurisdiction to hear the appeal.” *Schlega, supra*, 82. Therefore, the prejudice or lack of prejudice to defendant is irrelevant.

Finally, plaintiff argues that he was denied due process because the circuit court declined to hear his appeal. However, due process only requires that plaintiff be given “notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker.” *Traxler v Ford Motor Co*, 227 Mich App 276, 288; 576 NW2d 398 (1998). The demolition of plaintiff’s building was an issue pending before the city for at least two years. Plaintiff was afforded several opportunities to be heard during this process. Yet, plaintiff failed to take these opportunities seriously. Further, plaintiff was given sufficient notice where such notice was sent by certified mail to plaintiff’s post office box. Thus, we hold that plaintiff’s appeal was untimely and the circuit court did not err when it granted summary disposition for defendant.

The second issue plaintiff raises is whether the circuit court applied the correct legal standard when it reviewed the decision of the city commission. We find plaintiff’s untimely appeal deprived the circuit court of subject matter jurisdiction and the ability to rule on the merits of this case. Therefore, we decline to reach this issue.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Robert J. Danhof*