STATE OF MICHIGAN

COURT OF APPEALS

JON ICHESCO and CITY OF YPSILANTI,

Plaintiffs-Appellees,

v

DAVID KIRCHER,

Defendant-Appellant,

and

JOHN C. RANKIN and VIDA L. RANKIN,

Defendants.

UNPUBLISHED
March 13, 2008

No. 272905
Washtenaw Circuit Court
LC No. 2001-000889-CH

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying his motion to reinstate the case.[1] Because plaintiffs had standing to bring suit; defendant's constitutional rights were not violated when the trial court authorized a receivership; the trial court did not act unjustly by ratifying the receiver's charges; and, the lien on the subject property and its subsequent foreclosure was not an unconstitutional taking; we conclude that the trial court did not abuse its discretion in denying defendant's motion to reinstate the case, and we affirm.

Defendant was the owner of a property located at 304-306 Perrin Street in Ypsilanti. The case involved a long, protracted litigation stemming from alleged safety issues and other violations at the property. Eventually, the trial court dismissed the case for lack of progress on July 12, 2004. Defendant appealed the trial court's order to this Court, but this Court dismissed the appeal on August 18, 2004 for lack of jurisdiction for the reason that an order of dismissal for lack of progress without prejudice is not a final order. In July 2006, defendant brought a motion

[1] Defendant previously attempted to bring an appeal before this Court concerning the property at issue in this case, but this Court dismissed the appeal on November 15, 2002 for lack of jurisdiction because the order appealed was not a final order.

to reinstate the case before the trial court for a final adjudication of the matter so that he could appeal the decision. The trial court denied defendant's motion to reinstate the case for lack of good cause and this appeal followed.

We review a trial court's decision on a motion to reinstate a claim for an abuse of discretion. *Wickings v Arctic Enterprises*, 244 Mich App 125, 138; 624 NW2d 197 (2000). An abuse of discretion occurs when the trial court's decision results in an outcome falling outside the range of principled outcomes. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006); *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). If the trial court selects a principled outcome, there is no abuse of discretion, and the reviewing court must defer to the trial court's ruling. *Maldonado, supra*.

On appeal, defendant first argues that plaintiffs failed to establish standing under MCL 29.23, part of the Fire Prevention Code, MCL 29.1 *et seq*. Defendant specifically contends that plaintiffs failed to meet their burden of establishing subject matter jurisdiction because MCL 29.23 only authorizes the "state fire marshal" to bring suit, and plaintiff Jon Ichesco was the Ypsilanti fire marshal, not the "state fire marshal." As an initial matter, defendant confuses the concepts of subject matter jurisdiction and standing. Defendant's argument questions whether plaintiffs had standing to bring this suit under the statute, not whether the circuit court had jurisdiction to hear the case. Indeed, "[s]ubject matter jurisdiction is presumed unless expressly denied by constitution or statute[.]" *People v Goecke*, 457 Mich 442, 458; 579 NW2d 868 (1998), citing *Bowie v Arder*, 441 Mich 23, 38; 490 NW2d 568 (1992). Hence, our analysis only concerns plaintiffs standing to bring the case.

Defendant asserts that because Ichesco was not the state fire marshal, nor did the state fire marshal cause this action to be brought, plaintiffs lack standing to pursue this case against defendant. Plaintiffs respond asserting that Ichesco was indeed certified as a state fire inspector, and therefore, had standing to file this action. This Court has already addressed and decided this issue in *Fire Marshal v Kircher (On Recon)*, 273 Mich App 496, 525-526; 730 NW2d 481, lv den in part, appeal granted in part on other grounds, remanded in part on other grounds 480 Mich 910 (2007)[2] involving exactly the same parties. In *Fire Marshal*, this Court disagreed with defendant, holding that Ichesco's classification as a "State Certified Fire Inspector" indicated he was authorized to act under MCL 29.2b and MCL 29.23. *Id*. The Court stated specifically:

> [W]e cannot agree with Kircher's argument that no one but the state fire marshal himself or herself may ever commence an action under MCL 29.23. . . .
>
> ***

[2] The Supreme Court's order on reconsideration, *Fire Marshal, supra* at 480 Mich 910, denying leave in part, granting the defendant's appeal in part, and remanding the case in part dealt explicitly with fact issues and evidentiary issues relating to the case on remand to the circuit court and did not disturb this Court's legal conclusions in *Fire Marshal, supra*, 273 Mich App 496.

> Kircher's argument is belied by the plain text of the Fire Prevention Code itself. When the action was filed, the act clearly provided that the state fire marshal and the bureau of fire services "may delegate to 1 or more employees of the city . . . employed as full-time fire inspectors the authority to enforce 1 or more of the fire safety rules promulgated under this act." MCL 29.2b(1). [*Fire Marshal, supra* at 525-526.]

In *Fire Marshal*, this Court relied on an affidavit by Ichesco averring "that he contacted the state fire marshal's office before commencing this action in an effort to obtain authority to proceed against [defendant] under MCL 29.2b. . . . Ichesco [further] averred that the office did specifically authorize him to 'carry out . . . enforcement activities pursuant to MCL 29.2b,' and to perform 'all other inspections not done by the State Fire Marshal's office.'" *Fire Marshal, supra*, at 526. While the affidavit is not part of the record in this case, because this case involves the identical parties, we know from *Fire Marshal, supra*, that Ichesco was authorized by the state fire marshal to enforce fire safety rules promulgated under MCL 29.2b(1). Defendant has not presented evidence to show otherwise on this record, therefore, under *Fire Marshal, supra*, his argument fails. *Id.*

Next, defendant argues that appointment of a receiver constituted an unconstitutional taking because other, less drastic remedies were available and appropriate. In response, plaintiffs rely on MCL 600.2926 that provides in part, "[c]ircuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law." Defendant contends that receivership is an extraordinary remedy which should only be resorted to in extreme cases. But defendant does not cite evidence from the record showing that his was not an extreme case for which receivership was an appropriate remedy and does not explain which other remedies might have been appropriate.

In *Fire Marshal*, this Court observed that

> [a] court appointed receiver is a ministerial officer of the court, charged with the task of preserving property and assets during ongoing litigation. It is well settled that a receiver's possession of assets and property is tantamount to possession by the court itself. A receiver is not appointed as the agent of, or for the benefit of, one party or the other; rather he or she is appointed to protect and benefit both parties equally. [*Fire Marshal, supra* at 528 (internal citations omitted)].

Defendant has not cited any evidence from the record demonstrating that the successor receiver, Robert Barnes, did not act in accordance with the principles enunciated by this Court. And, defendant has not shown that his constitutional rights were violated in some other way. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, . . . nor may he give issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Because defendant has not provided support for his argument, we consider this issue abandoned on appeal.

Defendant also assigns error to the trial court's approval of the expense report submitted by the receiver after performance of the repairs. In *Fire Marshal*, defendant argued before this Court that the trial court abused its discretion by failing "to provide for proper judicial supervision and oversight of the receiver's activities and expenditures" in its receivership order. *Fire Marshal, supra* at 530. This Court in *Fire Marshal* agreed with defendant, citing a previous unpublished opinion in defendant's prior appeal, where this Court objected to the receivership order's provision granting the receiver authority to make the building at issue in that case "economically viable" and permitting the receiver to make unspecified upgrades to the property beyond the scope of the hazards of which the plaintiffs had originally complained. *Id*. at 531.

Here, contrary to *Fire Marshal, supra*, the trial court did not approve a plan to make the building on the property "economically viable" or give the receiver discretion to repair or otherwise upgrade for cosmetic purposes. Rather, the original consent order agreed to by defendant provided that defendant and the receiver were to formulate a list of the violations requiring repair, and then both defendant, and later the receiver, were tasked with executing the repairs. Defendant does not provide specific evidence of excessive expenditure made by the receiver or demonstrate that the completed repairs were somehow unnecessary or went beyond the scope of the original consent order. At the hearing on defendant's motion to reinstate, defense counsel did assert that the cost of the repairs totaled approximately $250,000. Defendant argued before the trial court that the receiver's court-approved compensation of 25 percent of the costs of the repairs resulted in a disincentive for the receiver to keep the costs of the repairs down. While defendant's argument may appeal to logic, he has failed to provide evidence supporting his claim. Without contradictory evidence from defendant demonstrating the amount spent was extraordinary or excessive, defendant's argument fails. See *Peterson Novelties, Inc, supra* at 14.

Next, defendant argues that foreclosure of the receiver's lien constituted an unconstitutional taking of defendant's property, because pertinent statutes did not authorize the lien. The trial court's order appointing a successor receiver provides that "[i]n the event Defendant . . . fails or refuses to pay the Receiver . . . in full within thirty (30) days of mailing the final invoice, then the Receiver . . . shall be entitled to legal or equitable relief including but not limited to foreclosure of the Receiver's lien." The trial court approved the lien during its July 12, 2002 proceeding on defendant's motion to dissolve the receivership and plaintiff's motion to settle order.

As we previously discussed, plaintiffs properly brought this case pursuant to MCL 29.23. Thus, the case is governed by the Fire Prevention Code, MCL 29.1 *et seq*. MCL 29.23 does not itself authorize a court to impose a construction lien on a property. However, MCL 29.14 and 29.16 provide remedies in situations where a defendant has not complied with an order of the court or has allowed an unreasonable amount of time to pass before making court-ordered repairs on the property. MCL 29.16 provides in relevant part:

> The refusal or failure of a defendant to comply with an order or direction of the court issued under section 13, within the time limited for compliance, is contempt of court for which the respondent may be ordered to appear and answer in the same manner as in other cases of contempt of court. Upon the refusal or failure, the court may order the state fire marshal to execute the order and directions and

> abate the fire hazard and, for the purpose of executing the order and directions, to enter upon the premises and employ or contract for labor, tools, implements, or other assistance as is necessary for the performance of the work. The amount of the cost and expense of executing the order is a lien upon the land and premises enforceable and collectible in the same manner as a construction lien under the construction lien act[.]

But defendant does not assert that he complied with the trial court's orders by making the required repairs in a timely fashion, or at all. Rather, defendant contends that the lien was invalid because the case was not properly governed by the Fire Prevention Code due to plaintiffs' lack of standing. Because plaintiffs had standing to bring suit, defendant's argument fails.

Finally, defendant states that plaintiffs are liable to him under the Fifth and Fourteenth Amendments of the United States Constitution, and under Amendment 10, § 2 of the Michigan constitution, for certain constitutional violations. Defendant's brief on appeal states only that "[a]ll plaintiffs are state actors and thus liable for violations of the 5th and 14th Amendments and of Article 10 Sec. 2 of the Michigan Constitution." In support of his argument, defendant provides only two brief references to federal case law. Because defendant neither explains his position nor makes an argument in enough detail for this Court to review it, we consider this issue abandoned on appeal. *Peterson Novelties, Inc, supra* at 14.

In conclusion, because we concluded that: plaintiffs had standing to bring suit; defendant's constitutional rights were not violated when the trial court authorized a receivership; the trial court did not act unjustly by ratifying the receiver's charges; the lien on the subject property and its subsequent foreclosure was not an unconstitutional taking; we hold that the trial court did not abuse its discretion in when it denied defendant's motion to reinstate the case for want of good cause. *Wickings, supra* at 138.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Pat M. Donofrio