

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN S. DOBKOWSKI, JR.,

Plaintiff-Appellant,

v

CITY OF DEARBORN,

Defendant-Appellee.

UNPUBLISHED

March 13, 2008

No. 276367

Wayne Circuit Court

LC No. 05-501154-AS

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order affirming the Dearborn City Council’s decision ordering the demolition of a fire-damaged, uninsured home at 5286 Horger. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The house was damaged by a fire that occurred on February 7, 2003. Following a hearing on December 1, 2004, the city council determined that the home qualified as a “dangerous building” pursuant to MCL 125.539 and ordered its demolition. Plaintiff subsequently filed this action in circuit court, which upheld the city council’s decision.

On appeal, plaintiff argues that the circuit court clearly erred in determining that the city council’s decision, on review of the entire record, was supported by competent, substantial, and material evidence. See *Cole’s Home & Land Co, LLC v City of Grand Rapids*, 271 Mich App 84, 88-89; 720 NW2d 324 (2006). Plaintiff argues that the house was not damaged as badly as the city’s building department official had said. He relies on the opinion of Donald Malinowski, a civil engineer who spoke on his behalf before the city council, and claims that most of the damage was to half of the first floor, that the ceiling and walls had not collapsed, and that the building was not in any imminent danger of collapsing. Plaintiff maintains that the circuit court improperly sided with defendant, contrary to the opinions of the hearing officer, Malinowski, a contractor, and an appraiser, who all suggested that the building was repairable.

Our task on appeal, however, is not to determine who was more persuasive in the proceedings below, but to determine whether the circuit court made a legal error or clearly erred in its review of the factual basis for the city’s decision. *Id.* The city’s department official asserted several grounds for determining that the house was a “dangerous building,” including its serious loss of “structural strength,” its unsafe condition as a residence, and its unfitness for human habitation. Although plaintiff presented evidence that the home could be repaired, he did

not refute the official's contention that the house, as it stood, qualified as a "dangerous building" under MCL 125.539.

Plaintiff's reliance on the building's reparability is misplaced. Although a repair cost that exceeds the property's state equalized value (SEV) provides a basis for a "rebuttable presumption that the building or structure requires immediate demolition," MCL 125.541(4), this language does not create a corresponding presumption that a "dangerous building" with repair costs that fall short of the property's SEV is beyond the reach of a city's statutory authority to destroy unsafe structures. MCL 125.541(1). The statute also contains special notice and timing provisions about speedily demolishing buildings that are damaged beyond their value, MCL 125.541(4), but those provisions simply do not create any corollary presumption that buildings worth repairing may not be demolished. Therefore, plaintiff's arguments do not provide a basis for overturning the circuit court's appropriate findings or its final decision.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher