

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert S. Duncan, :
Appellant :
v. : No. 1612 C.D. 2010
Board of License and Inspection Review : Argued: May 10, 2011

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: June 15, 2011

Robert S. Duncan appeals from the July 6, 2010, order of the Court of Common Pleas of Philadelphia County (trial court), affirming a decision of the Board of License and Inspection Review (Board) to uphold a violation issued by the Department of Licenses and Inspections (Department). We affirm.

On March 6, 2008, the Department inspected a vacant property located at 2316 North 17th Street in Philadelphia. (Board's Findings of Fact, No. 1.) The Department had received complaints that there was no water on the property, that human feces were being tossed from the windows and doors, and that a squatter was living inside. (Board's Findings of Fact, No. 4.) By written notice, the Department advised the registered owners, Tommie Knight and Fred Knight,¹ that the property was deemed unsafe under section 306 of the Philadelphia Property Maintenance Code

¹ Fred Knight died in May 2008.

(Code).² (Board’s Findings of Fact, No. 1.) The Knights were notified that they had one day to comply with the notice or face the cleaning and sealing of the property.³ The Knights neither responded to, nor complied with, the violation notice. (Board’s Findings of Fact, No. 1.)

On March 13, 2008, Kevin Daly, chief of the Department’s Nuisance Task Force, accompanied by police officers, entered the unlocked property to conduct an inspection, during which they found trash and combustible materials littered throughout, urine-filled bottles, and feces in buckets and containers. There was no running water, no electricity or gas, and no source of heat. (Board’s Findings of Fact, Nos. 3, 5.) Daly and the officers found Duncan inside the property. Daly asked Duncan to supply identification and proof that he was legally residing at the property, which he did not do. (Board’s Findings of Fact, No. 5.) Daly informed Duncan that the property would be cleaned and sealed that day and that he had fifteen minutes to vacate the premises. (Board’s Findings of Fact, No. 6.)

On April 3, 2008, Duncan appealed the March 6, 2008, violation to the Board. (Board’s Findings of Fact, No. 7.) On April 4, 2008, the Board notified Duncan that his appeal could not be accepted because he was not the legal owner of

² Section 306.1 of the Code provides that “[a]ll vacant premises shall be maintained in a clean, safe, secure and sanitary condition . . . so as not to become unsafe or otherwise adversely affect the public health or safety.” Section 306.3 of the Code requires that the Department give written notice of a Code violation to the “registered owner” of the property and post a copy of the notice on the premises.

³ Under section 306.6 of the Code, if the property owner fails to comply with the violation notice, the Department is authorized to remediate the unsafe conditions or demolish the structure with its own forces or by contract and to charge the owner with the costs.

the property. The Board advised Duncan that he needed either an authorization letter or a power of attorney from the registered owners giving him standing to appeal. Duncan failed to provide such documentation. (Board's Findings of Fact, No. 8.) Thus, on April 24, 2008, the Board again notified Duncan that his appeal could not be accepted. (Board's Findings of Fact, No. 9.) Duncan filed a timely appeal with the trial court.

In October 2008, Duncan filed a motion for extraordinary relief, seeking judgment, costs, and sanctions against the Department. (Board's Findings of Fact, No. 11.) Judge Gary F. DiVito heard oral argument on the motion on December 4, 2008. Based on Duncan's statements on the record that he had a rent-to-own agreement for the property and that he resided there, Judge DiVito granted him leave to intervene and remanded the case to the Board for a hearing on the merits. (N.T., 12/4/08, at 10.) In his remand order, Judge DiVito stated that Duncan "demonstrated that he has a property interest in this matter." (Trial Ct. Order, 12/4/08.)

The Board held an evidentiary hearing on January 27, 2009. Daly testified that, when he visited the property on March 13, 2008, the condition was deplorable and the property was uninhabitable. (N.T., 1/27/09, at 34-35.) Paul Williams, a representative from the Philadelphia Water Department, testified that the property's water bill was in the names of Fred Knight and Tommie Knight as the legal owners. (*Id.* at 23.) He also testified that the property's water service had been shut off since December 2007 and remained disconnected. (*Id.* at 23-24.) Bridget Elwork, a paralegal with the Water Department, testified that a water bill is put in a person's name if he or she demonstrates title to the property or demonstrates that the

owner has consented to his or her occupancy by lease or other documentation. (*Id.* at 27-28.)

The Department also presented the affidavit of Tommie Knight, to which Duncan objected on hearsay grounds. (*Id.* at 18-19.) In his affidavit, Knight stated that he had been present and prepared to testify at a previously scheduled hearing in this matter,⁴ but he was unavailable for the January 2009 hearing. (*Id.*, Ex. C-1, ¶¶ 9, 16.) Knight stated that he was the owner of the property, that he neither knew Duncan nor gave him permission to reside at the property, and that he had previously sealed the property to prevent trespassers from entering. (*Id.*, Ex. C-1, ¶¶ 1, 4, 8-10, 13-14.) Knight also attached to his affidavit the recorded deed showing that the property was transferred to him and his brother by will. (*Id.*, Ex. C-1, ¶¶ 1-2.)

Duncan, acting *pro se*, testified that he had a rent-to-own agreement with the property's owner, (*id.* at 18-20); however, he presented no documentary evidence of such an agreement.⁵ He also testified that he had a quiet title interest in the property. (*Id.* at 4, 16, 18.) Duncan then presented a February 6, 2008, bill from Hahnemann University Hospital, which was addressed to him at the property. (*Id.* at 66; *see id.*, Ex. A-4.)

⁴ The first hearing was scheduled for December 30, 2008, but was postponed for reasons not evident in the record.

⁵ In his brief, Duncan asserts that he had entered into a lease-purchase agreement with Fred Knight, the now-deceased co-owner of the property. (Duncan's Brief at 4, 16.) Before the Board, however, Duncan testified that he had an agreement with the property's "owner," but he could not identify such owner by name. (N.T., 1/27/09, at 19-20.)

The Board credited the testimony of the Department's witnesses and disbelieved Duncan's testimony. Thus, the Board concluded that Duncan lacked standing to appeal the violation because there was no evidence that he had any legal right to occupy or reside at the property. (Board's Conclusions of Law, Nos. 5, 9, 12.) It further concluded that, because the property was a vacant and unsafe structure under the Code, the Department properly issued the violation. (Board's Conclusions of Law, No. 13.)

Duncan timely appealed to the trial court. On July 6, 2010, Judge Idee C. Fox affirmed the Board's decision, concluding that Duncan lacked standing and had no possessory interest in the property. Judge Fox explained:

On the issue of ownership the only proof offered by [Duncan] is [a] bill addressed to him at the Property. Although he claims a lease purchase agreement, he offers no documents or even proof of payment. . . . [Duncan] offered nothing to the Board except his testimony that he was living there the day Mr. Daly arrived. . . . Mere presence in the Property is not enough to establish a possessory right.

(Trial Ct. Op., 7/6/10, at 5.) Duncan now appeals from that decision.⁶

Duncan argues that the Board erred in concluding that he lacked standing and in disregarding Judge DiVito's prior ruling that Duncan had an interest in the property. He claims that neither the Board nor Judge Fox had authority to rule

⁶ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether necessary factual findings were supported by substantial evidence, and whether the procedure before the local agency was contrary to statute. *Mulberry Market, Inc. v. City of Philadelphia, Board of License and Inspection Review*, 735 A.2d 761, 763 (Pa. Cmwlth. 1999).

on whether he had a property interest under the “law of the case” doctrine. We disagree.

It is evident from a review of the entire transcript that Judge DiVito’s ruling was limited to the issue of whether Duncan had been deprived of a property interest such that he was entitled to a hearing for due process purposes. Although Judge DiVito stated in his order that Duncan had demonstrated a “property interest,” he did not make a finding with respect to Duncan’s rights to the real property itself. Judge DiVito merely found that Duncan should have an opportunity to be heard because he was deprived of his personal belongings and the parties stipulated that he was residing at the property.

THE COURT: It’s a given Mr. Duncan doesn’t own the property. Mr. Duncan was residing in the property?

[COUNSEL] Yes. . . .

. . .

THE COURT: And I presume it was Mr. Duncan’s personal property that was removed from the premises; is that correct?

MR. DUNCAN: Yes, Your Honor.

THE COURT: It seems to me that Mr. Duncan certainly has an interest in the return of his property, and I don’t understand why simply because he didn’t own it that he wasn’t afforded the right to have a hearing as to why his property was removed from the premises.

I mean, this means that L & I could just bash in the door of anyplace [*sic*] they want and strip premises and if there’s a

tenant rather than owner and say, hah, well, too bad; you don't own it.

[COUNSEL]: That assumes that you have a tenancy that you can prove as well.

THE COURT: Well, he wasn't afforded the opportunity to prove that.

(N.T., 12/4/08, at 7-8.) At the conclusion of the hearing, Judge DiVito reiterated that he was granting Duncan leave to intervene in the matter before the Board “[b]ecause he’s lost personal property.” (*Id.* at 10.)

Furthermore, Judge DiVito specifically declined to make any rulings regarding Duncan’s standing to appeal the violation without a complete record:

THE COURT: I’m going to give you the opportunity to have a full hearing before the Board of L & I Review where you can present your testimony and how you happen to reside in the premises.

...

THE COURT: . . . I don’t have a record before me because there never was a hearing.

MR. DUNCAN: Exactly.

THE COURT: And this is not an opportunity to have a hearing de novo, unfortunately, so you have to have a full hearing before the board, present your testimony, tell them what happened, tell them what relief you want.

(*Id.* at 11-12.)

Accordingly, in light of the procedural posture of the case before Judge DiVito and the limits on his ruling as stated on the record, we conclude that the Board properly decided the standing issue on remand.

Duncan also asserts that he had standing to appeal the violation under section 752 of the Local Agency Law, which provides:

Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).

2 Pa. C.S. §752. Duncan claims that, because he lost his home and his personal belongings as a result of the Department's actions, he is an aggrieved person who has a direct interest in the adjudication. However, Duncan has misread this provision.

By its plain language, section 752 of the Local Agency Law applies only to appeals from the decision of an agency (in this case, the Board) “to **the court** vested with jurisdiction of such appeals,” *i.e.*, the court of common pleas. 2 Pa. C.S. §752 (emphasis added). The issue here is not whether Duncan had standing to appeal the Board's decision to the trial court, which no one disputes, but whether he had standing to appeal the violation **to the Board** in the first instance. Therefore, we reject this claim.

With respect to the merits, we agree with the Board and the trial court that Duncan lacked standing to appeal the violation because he failed to demonstrate any legal interest in the property. The Board specifically disbelieved Duncan's testimony that he had a lease-purchase agreement with one of the owners and that he

had filed a quiet title action. We must defer to the Board's determinations as to credibility and weight of the evidence. *See Choe v. Philadelphia Board of License and Inspection*, 847 A.2d 214, 216 n.5 (Pa. Cmwlth. 2004) (the Board, as the ultimate factfinder, is the sole judge of credibility and conflicts in testimony); *Mulberry Market, Inc. v. City of Philadelphia, Board of License and Inspection Review*, 735 A.2d 761, 767 (Pa. Cmwlth. 1999) (it is solely for the Board, as factfinder, to determine the weight to be given any evidence).

Because we conclude that Duncan lacks standing to challenge the violation issued by the Department, we need not reach his remaining issues. Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

