

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cass Township	:	
	:	
v.	:	No. 70 C.D. 2011
	:	SUBMITTED: May 13, 2011
Richard Black II,	:	
Appellant	:	

OPINION NOT REPORTED

**MEMORANDUM OPINION
PER CURIAM**

FILED: July 14, 2011

Richard Black II appeals *pro se* from the order of the Court of Common Pleas of Huntingdon County, which was entered by agreement and required him to remove a structure from his property that was erected without obtaining the requisite Township approval and permits. After review, we affirm.

The record reveals that, in 2009, Black acquired a parcel of land in Cass Township at an upset sale conducted pursuant to the Real Estate Tax Sale Law, Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§ 5860.101 – 5860.803. Thereafter, in October, 2010, the Township filed a complaint in equity and a petition for injunctive relief against Black with respect to his use of that property; in those papers, the Township averred, *inter alia*, that Black constructed a building on the property without complying with the “Pennsylvania Construction Code Act, the Pennsylvania Sewage Facilities Act, and/or the Cass Township Building Code Ordinances.” Petition for Injunctive Relief, ¶ 2. The Township further averred that Black was residing in the structure and was discharging sewage into an unapproved system, that his actions constituted a nuisance and that his structure

was unsafe and posed a clear and present danger to life and property. The Township requested various remedies, including an injunction to preclude further discharge of sewage on the property without a permit and to enjoin Black from residing on the property.

A hearing was scheduled to address the request for injunctive relief. At the hearing, Black admitted that he did not have any sewage treatment facilities on his property¹ and indicated that he would never seek permission from the government to occupy his property. While Black made vague references to his common law right to life and shelter, in response to the court's statement that he had a duty to comply with the laws of the Commonwealth, Black essentially offered to remove the structure from the property and agreed to do so within 60 days.² Accordingly, the court entered an order, providing: "AND NOW, this 26th day of October 2010, *by agreement*, it is the ORDER of this Court that within 60 days the defendant shall remove from his property . . . the structure currently in place." (Emphasis added). Black complied with the order and then filed the present appeal.³

On appeal, Black first contends that pursuant to Article I, Section 1 of the Pennsylvania Constitution,⁴ he has the right to acquire and possess property and

¹ In his appellate brief, Black further admits that he "was using [sic] a chamber pot for my waste and runing [sic] it in with the animals which was then used to fertilize my lands to build up my soil." Appellant's brief at 6.

² The notes of testimony actually ascribe this statement to the Township's attorney, David Smith, but it is clear that Black was testifying. *See* Notes of Testimony of October 26, 2010, at 23-24.

³ The appeal was originally filed with the Pennsylvania Superior Court, which transferred the matter here.

⁴ Article I provides that: "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and (Footnote continued on next page...)"

protect it from the encroachment of others,⁵ and to construct buildings and shelters on his property without government permission or interference. He also alleges that the Township failed to demonstrate the manner in which his building constituted a nuisance or danger to others. We agree with the Township and common pleas that these arguments are moot.

In general, the court will not decide moot issues. *Chruby v. Dep't of Corrections*, 4 A.3d 764 (Pa. Cmwlth. 2010).⁶ A case becomes moot when a determination is sought on a matter that cannot have any practical effect on an existing controversy. *Id.* As this court noted in *Keystone Redevelopment Partners, LLC v. Pennsylvania Gaming Control Board*, 5 A.3d 448 (Pa. Cmwlth. 2010):

The cases presenting mootness problems involve litigants who clearly had standing to sue at the outset of the litigation. The problems arise from events occurring after the lawsuit has gotten underway - changes in the facts or in the law – which allegedly deprive the litigant of the necessary stake in the outcome. The mootness doctrine requires that an actual case or controversy must be extant

(continued...)

liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

⁵ Here, Black makes reference to his right to acquire property through adverse possession and to “settle all previous claims . . . thru [sic] its use” and improvement. Appellant’s brief at 7. Black appears to suggest that removal of his structure has interfered or prevented him from protecting his property from “encroachment” and the claims of others. We need not address this issue because Black agreed to remove the building and, therefore, the issue is moot as more fully discussed above. However, Black’s concern with establishing title through adverse possession is puzzling as he holds title to the property through a deed issued by the Huntingdon County Tax Claim Bureau. We further note that there is no evidence that the Township has interfered with Black’s right to acquire or possess property.

⁶ In fact, the Township has moved to dismiss Black’s appeal pursuant to Rule of Appellate Procedure No. 1972(a)(4) on the basis that the appeal is moot now that Black has removed the structure from his property. However, since it is not clear whether all of the questions raised on appeal are moot, we will not dismiss the appeal on that basis.

at all stages of review, not merely at the time the complaint is filed.

Id. at 472 [quoting *Pub. Defender's Office of Venango Cnty. v. Venango Cnty. Court of Common Pleas*, 586 Pa. 317, 325, 893 A.2d 1275, 1279 (2006)]. In addition, the requirement that a case or controversy exists at all stages of review requires a “real rather than hypothetical controversy and one that affects an individual in a concrete manner.” *Id.*

Here, the Township’s complaint and petition sought relief for, *inter alia*, Black’s construction and occupancy of a building without complying with state and local law. Black’s agreement to remove the building eliminated any controversy regarding the propriety and safety of the structure as well as the issues now raised by Black; Black’s arguments raise issues that are now merely hypothetical and the court declines to address them. However, even if the issues were not moot, there would be no merit to Black’s contentions. It is well settled that while property owners have a constitutionally protected right to enjoy their property, that right is subject to reasonable limitation by the government in the exercise of its police power to protect and preserve the public health, safety, morality and welfare. *In re Appeal of Realen Valley Forge Greenes Assocs.*, 576 Pa. 115, 838 A.2d 718 (2003). *See also Cleaver v. Board of Adjustment*, 414 Pa. 367, 200 A.2d 408 (1964) (stating, the constitutionally ordained right of property is and must be subject to the supreme power of government, otherwise known as its police power, to regulate or prohibit an owner’s use of his property). Thus, Black is not entitled to use his property in violation of reasonable state and local regulations.

Black next appears to suggest that Article I, Section 27 of the Pennsylvania Constitution⁷ renders sewers, septic systems and privies unlawful because they create an unnatural means of disposing of human waste and deprive the people of the value of the natural environment. Black provides no legal authority for this argument. We reject it on two grounds. First, we presume the question is moot since Black is no longer residing on the property. Second, as we noted in *Bodnar v. Columbia County Sanitary Administrative Committee*, 414 A.2d 735 (Pa. Cmwlth. 1980), the mere violation of the Pennsylvania Sewage Facilities Act⁸ entitles the governing body to equitable relief; demonstration of actual damage is not required. It is beyond peradventure that, “the adequate disposal of sewage affects the health and welfare of the public and is therefore subject to regulation by the government pursuant to the police power.” *Id.* at 737. Thus, Black is not entitled to freely dispose of his sewage on his property; such activity is clearly subject to regulation in the interest of public health and must be accomplished with the use of an approved and permitted sewage disposal system.

Based upon the foregoing, the order is affirmed.⁹

⁷ That section provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

⁸ Act of January 24, 1966, P.L. (1965) 1535, *as amended*, 77 P.S. §§ 750.1-750.20a.

⁹ In light of the above opinion, it is unnecessary to address the Township’s motion to dismiss the appeal on the ground that it is moot. Accordingly, the motion is denied.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cass Township
v.
Richard Black II,
Appellant

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: No. 70 C.D. 2011
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:
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ORDER

PER CURIAM

AND NOW, this 14th day of July 2011, the order of the Court of Common Pleas of Huntingdon County in the above-captioned matter is hereby AFFIRMED. And further, Cass Township's motion to dismiss pursuant to Pa. R.A.P. 1972(a) is DENIED.