IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MOHAVE COUNTY, *Plaintiff/Appellee*,

v.

TROY NELSON, *Defendant/Appellant*.

No. 1 CA-CV 17-0412
FILED 7-31-2018

Appeal from the Superior Court in Mohave County
No. S8015CV201700282
The Honorable Charles W. Gurtler, Judge

AFFIRMED

COUNSEL

Mohave County Attorney's Office, Kingman
By Robert A. Taylor
Counsel for Plaintiff/Appellee

Troy Nelson, Lake Havasu City
Defendant/Appellant

MEMORANDUM DECISION

Presiding Judge Maria Elena Cruz delivered the decision of the Court, in which Judge Jennifer B. Campbell and Judge James P. Beene joined.

C R U Z, Presiding Judge:

¶1 Troy Nelson challenges the superior court's order finding an environmental health nuisance was maintained on his property, assessing statutory civil penalties, and granting injunctive relief. For the following reasons, we decline to review the court's order imposing civil penalties and awarding costs, but we affirm the court's order granting injunctive relief.

FACTUAL AND PROCEDURAL HISTORY

¶2 Nelson owns a plot of land in Mohave County (the "County"). Nelson's property is in a remote area outside Lake Havasu City, and he built an open-pit privy outhouse on his property for waste. In late February, early March 2017, County officials discovered Nelson had organized events at his house: Nelson had distributed hand cards advertising the events and served food and drinks to approximately twenty-five guests. On Saturday, March 4, 2017, county officials delivered a twenty-four-hour compliance order for Nelson to obtain an approved septic system and remove sewage from his open-hole outhouse.

¶3 On March 9, 2017, after Nelson had failed to comply with its twenty-four-hour notice, the County posted a compliance order dated March 13 on Nelson's property directing Nelson to install a septic system and remove exposed sewage from his property. The March 9 compliance order imposed a $750 civil penalty pursuant to Arizona Revised Statutes ("A.R.S.") section 36-183.04.

¶4 On April 6, the County entered its complaint for injunctive relief and request for order to show cause due to Nelson's failure to comply with its March 4 nuisance-abatement order. The County requested collection of its $750 civil penalty and requested additional civil penalties up to $10,000 pursuant to A.R.S. § 36-183.05.

¶5 On May 24, the court held an order to show cause hearing, heard testimony, and granted the parties ten days to submit additional briefing. After supplemental briefing, the court found sufficient cause and granted the County's requests for imposition of civil penalties and authorization to enter the property to abate the nuisance.

¶6 Nelson timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(5)(b).

DISCUSSION

¶7 Nelson appeals the court's order for immediate abatement of nuisance. The court's order addressed the finding of nuisance, imposition of civil penalties, costs, and authorized the County to enter Nelson's property to abate the nuisance, however, the court's order was not certified as a final judgment pursuant to Arizona Rule of Civil Procedure ("Rule") 54(c). *See Madrid v. Avalon Care Center-Chandler, L.L.C.*, 236 Ariz. 221, 223, ¶ 4 (App. 2014).

¶8 To the extent Nelson appeals the court's order granting injunctive relief, we exercise jurisdiction pursuant to A.R.S. § 12-2101(A)(5)(b). *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 429-30, ¶¶ 18-19 (App. 2016) (stating an order granting or denying an injunction does not require Rule 54(b) or (c) language). To the extent Nelson appeals the court's order imposing civil penalties and awarding costs as a final judgment on the matter, we lack jurisdiction to consider those issues. *See id.* at 425, ¶ 1 (stating appellate jurisdiction premised on A.R.S. § 12-2101(A)(1) must contain Rule 54 (b) or (c) language).

I. Injunctive Relief

¶9 Nelson claims he abated the nuisance and that injunctive relief is unwarranted. We review the court's grant of injunctive relief for an abuse of discretion. *See White Mountain Health Ctr., Inc. v. Maricopa County*, 241 Ariz. 230, 238, ¶ 29 (App. 2016).

¶10 Section 36-601(A)(15) requires that public meeting places provide adequate sanitary facilities, but allows the use of open surface privies if they are outside populous areas *and meet reasonable health requirements*. (Emphasis added.) If those requirements are not met, § 36-601(A)(15) provides that such conditions will constitute public nuisances dangerous to the public health, and § 36-602 permits the local health department to order the owner or occupant of the private property to remove it within twenty-four hours at their expense. If the order is not complied with, § 36-602 permits the imposition of civil penalties pursuant to § 36-183.04, and authorizes the local health department to remove the nuisance at the owner's expense. To ensure cost recoupment, the county may prescribe sanitary ordinances or regulations associated with removal of the nuisance. A.R.S. § 36-602(B).

¶11 Similarly, A.R.S. § 36-183.04 permits the director of the local health department to issue a notice of violation and demand compliance if it has reason to believe that a person has committed a violation of county

health ordinances. Section 36-183.05 permits the local health department to pursue compliance in superior court and provides the imposition of further civil penalties of $1,000 per day, up to a maximum of $10,000 for each violation.

¶12 It is undisputed that Nelson's property is outside a populous area, and thus only the second requirement of § 36-601(A)(15)—that the open-pit privy meet reasonable health requirements—is at issue. Arizona Administrative Code § R18-9-B301.H[1] and Mohave County Ordinance Chapter 10, Article IV, Division 4, provide county health regulation of open-pit privies on campgrounds. Mohave County Ordinance Chapter 10, Article IV, Division 4, section 10-189 defines campground to mean "any tract of land in the state, offered for public use on which persons may camp or picnic either free of charge or by payment of a fee."[2] The County's health requirements for toilets on campgrounds are contained within sections 10-198(a)-(d), and require fly-tight privies or water-flushed toilets connected to an approved sewer system or on-site wastewater system.[3]

¶13 Photos entered into evidence indicate Nelson built an open-hole outhouse on his property. Nelson claims the holes were perk tests to determine placement of a septic system and were approved by Mohave County Development Services, but this does not alter the fact he used the "perk test" holes as an effective outhouse for him and his guests. Nelson claims the outhouse was on his remotely located private property and thus he was entitled to use of an open-pit privy. The court addressed this argument, and found that his use of his land for hosting events with guests

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[1] A general permit "allows for any earth pit privy . . . if allowed by a county health or environmental department under A.R.S. Title 36[.]" Ariz. Admin. Code. § R18-9-B301.H.

[2] Mohave County Ordinance Chapter 10, Article IV, Division 4, section 10-190 states that campground regulations "apply to any . . . person . . . maintaining or offering for public use within the state any tract of land on which persons may camp or picnic either free of charge or by payment of a fee."

[3] Nelson claims he was unaware of the need for permits or that his property was not in compliance with county ordinances. However, his ignorance of the law does not excuse his failure to comply, particularly here where he claims he acquired a septic permit a year prior. *See In re Marriage of Williams*, 219 Ariz. 546, 549, ¶ 13 (App. 2008).

presented a hazard given the County's reasonable health requirements. *See* A.R.S. § 36-601(A)(15). Mohave County Ordinance § 10-198 requires an approved septic system when land is offered for people to picnic on, and while Nelson did not advertise his land as a "campground," his effective use of the land required that he provide his guests with toilets connected to an approved septic system. Nelson does not dispute that he passed card invitations to family and friends that named his property "Razzor Ridge," provided coordinates and challenged guests to "Find Us If You Can," and that the cards ended up in the hands of numerous other unacquainted individuals. The court's order found it undisputed that approximately twenty-five people attended Nelson's event(s) and obtained food and alcohol. Lastly, Nelson admits his intention to have his private property rezoned for commercial use, indicating the use of his property was commercial in nature.

¶14 Evidence supports the court's finding that Nelson used his property as a campground, that County Ordinance section 10-198 therefore applied to his use of his property, and that the open-hole outhouse was a nuisance in violation of a county health ordinance regulating reasonable health requirements and public nuisances. *See* A.R.S. § 36-601(A)(15). Although Nelson submitted evidence that he abated the nuisance on March 22, 2017, the court found injunctive relief necessary based on testimony that on a subsequent inspection the facility was boarded up and the County could not confirm that the nuisance had been abated.[4] Nelson concedes this point in his opening brief on appeal. We hold that the court acted within its discretion to grant injunctive relief when it authorized the County to enter Nelson's property to ensure the nuisance had been abated.

II. Due Process

¶15 Nelson claims the court precluded him from defending himself. Nelson asserts the court failed to accept evidence that he had obtained an approved permit and that the Mohave County Department of Public Health's Environmental Health Division did not supply the court

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[4] Nelson failed to designate the hearing transcript for the record on appeal though, and thus we assume it supports the court's order. *See State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16 (App. 2003) ("An appellant is responsible for making certain that the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal. When a party fails to do so, we assume the missing portions of the record would support the trial court's findings and conclusions.") (internal citations omitted); ARCAP 11(b)-(c).

with a copy of said permit. Nelson also claims the court deprived him due process because it precluded him from providing supporting evidence or testifying in his defense.

¶16 The hearing minute entry reveals the court allowed Nelson to testify and defend himself, and the court granted Nelson ten days to submit additional briefing, which he provided. Nothing in the court's order indicates it denied Nelson the chance to submit evidence or present his defense, and his claim the County failed to provide evidence of his approved permit does not change the fact he dug an open-pit privy instead of installing an approved septic system. The record on appeal instead indicates the court fully considered Nelson's claims, and thus we find no abuse of discretion in the court's order and hold no deprivation of his due process rights occurred.

CONCLUSION

¶17 For the foregoing reasons, we affirm the court's order only insofar as it granted Mohave County injunctive relief.

AMY M. WOOD • Clerk of the Court
FILED: AA