

IN THE COURT OF APPEALS OF IOWA

No. 3-141 / 12-1202
Filed April 10, 2013

CITY OF WINFIELD,
Petitioner-Appellee,

vs.

RICHARD L. DOUGLAS AND MARTHA J. DOUGLAS,
Respondents-Appellants.

Appeal from the Iowa District Court for Henry County, John G. Linn,
Judge.

The Douglases appeal the district court's order awarding title to their real
estate to the City. **AFFIRMED.**

Eric D. Puryear and Eric S. Mail of Puryear Law P.C., Davenport, for
appellant.

Diana L. Miller and Matthew Giles of Whitfield & Eddy, P.L.C., Mount
Pleasant, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Richard and Martha Douglas appeal the district court's order awarding title to a piece of real estate they own to the City of Winfield. The district court determined the property at 101 North Locust Street, Winfield, Iowa, was a "building designed to be used for residential purposes" and "abandoned" as defined under Iowa Code chapter 657A (2011). As we agree with the district court's findings, we affirm.

I. Background Facts and Proceedings

The Douglasses purchased a building in downtown Winfield in 2003 for \$3000. From the time of its original construction in 1897 until 2003, the second floor of the building had been used for residential purposes, divided into apartment units. The first floor was used for a variety of commercial purposes. Richard used the space as storage for his appliance repair business. Residents of Winfield complained that the building was a nuisance as it had fallen into disrepair. In 2009, the Douglasses were made aware of the complaints and asked to remedy the problems. The City offered to buy the building from the Douglasses for \$3000. They counter-offered for \$50,000. The City did not respond.

The City filed a petition pursuant to Iowa Code section 657A.10A requesting the court find the structure abandoned and award title to the City. After denied motions for summary judgment, the case proceeded to a bench trial in which several witnesses testified for each side. The district court found the building was in fact intended for residential purposes, rendering chapter 657A applicable, and found the building to be abandoned. It awarded the title of the

property to the City, free and clear of any claims, liens, or encumbrances. The Douglasses appeal.¹

II. Standard of Review

As the case was tried in equity, our review of this issue is de novo. Iowa Code § 657A.10A(1); Iowa R. App. P. 6.907.

III. “Building” under section 657A

For chapter 657A to be applicable, the structure must be a “building . . . which is used or intended to be used for residential purposes,” at least in part, as defined by Iowa Code section 657A.1(3). The Douglasses argue the district court erred in determining the structure was a “building” under this chapter because it wasn’t *currently* being used for residential purposes.

There was ample testimony the second floor had been used for apartments, and the apartments were occupied by tenants, from the time it was first constructed until at least 2002 or 2003 when the previous owner/tenant died. The district court held “the fact that the building then deteriorated and became unsuitable for residential occupancy does not change the fact that the building was designed for residential purposes.” We agree. Richard’s original plan was to rehabilitate the building for residential purposes. He took steps towards this plan, such as installing drop ceilings and bunk beds. Just because he failed to

¹ The Douglasses also argue the City’s action violated their Fifth Amendment constitutional right to be free from illegal takings. This issue was not decided by the district court, nor was an Iowa Rule of Civil Procedure 1.904 motion to expand or enlarge filed. The issue is therefore not preserved. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”). Constitutional issues are no exception. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997) (“Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal.”).

complete his plan does not alter the fact the design of the building was for residential purposes. The Douglases's argument that section 657A.1(3) contains a "temporal requirement"—that the current use of the building controls—is without merit because the statute is clear it is the "designed, or intended" use, not just current use. The district court correctly found the structure was such a building and a proceeding under chapter 657A was appropriate.

IV. "Abandoned" under section 657A.10A(3)

Next, the Douglases argue the district court erred in finding the building was abandoned as defined by section 657A.1(1): "[a] building has remained vacant and has been in violation of the housing code of the city in which the property is located . . . for a period of six consecutive months." The legislature has enumerated certain factors the court "shall consider" in determining whether a property has been abandoned. Those factors are:

- a. Whether any property taxes or special assessments on the property were delinquent at the time the petition was filed.
- b. Whether any utilities are currently being provided to the property.
- c. Whether the building is unoccupied by the owner or lessees or licensees of the owner.
- d. Whether the building meets the city's housing code for being fit for human habitation, occupancy, or use.
- e. Whether the building is exposed to the elements such that deterioration of the building is occurring.
- f. Whether the building is boarded up.
- g. Past efforts to rehabilitate the building and grounds.
- h. The presence of vermin, accumulation of debris, and uncut vegetation.
- i. The effort expended by the petitioning city to maintain the building and grounds.
- j. Past and current compliance with orders of the local housing official.
- k. Any other evidence the court deems relevant.

Id. § 657A.10A(3). As our supreme court has stated regarding section 657A.10A: “[T]he evil to be remedied is the existence of unsafe abandoned buildings.” *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 251 (Iowa 2008).

The City retained licensed engineer, Randy L. Van Winkle, to evaluate and inspect the building in October 2010. The summary of his report provides “there are a number of serious deficiencies that will make it difficult and/or costly to utilize this building.” A second evaluation was done by Van Winkle on November 11, 2011, and found the building, while “not in immediate danger of collapse . . . [t]he condition of this building now appears to be poor enough that repair/renovation is no longer an economically justifiable option.” He opined if extensive repair work “is not completed within nine months the structure should be razed to protect the public from a potential catastrophic collapse.”

The Douglases are correct that some of the statutory factors weigh against a finding of abandonment: they are current on their taxes, there is electricity (though no other utilities), and they have made attempts to clear the weeds and snow after notification by the City. However, the other factors weigh heavily towards finding abandonment. There is no heat to the property beyond space heaters, and the opinion of Van Winkle was the electrical system is in violation of city codes. Even Richard testified he does not intend to keep the property habitable. The building, though boarded up, is exposed to the elements through severe water leakage through the roof. Most of the broken out windows are covered with plastic or boarded up, but some remained uncovered. Though there is evidence of attempts to keep animals out, these have failed as there is a large amount of animal feces in the building. Regarding the “debris” factor, while

we acknowledge the nature of Richard's business, the amount of debris in the building is excessive.

We agree with the district court the City has established by a preponderance of the evidence the property at 101 North Locust Street is abandoned.²

V. Conclusion

Because we find the structure is intended for residential use and abandoned under chapter 657A, we affirm the district court's order awarding title to the City.

AFFIRMED.

² Because we affirm the district court's finding the building is abandoned, the Douglasses's argument they are entitled to attorney fees under Iowa Code section 657A.2(5) is without merit.