

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001437-MR

GARIS L. PRUITT

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE C. DAVID HAGERMAN, JUDGE  
CIVIL ACTION NO. 99-CI-01067

RON HAMPTON and  
CITY OF ASHLAND

APPELLEES

### OPINION

### REVERSING AND REMANDING

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BEFORE: BUCKINGHAM, GUIDUGLI and HUDDLESTON, Judges.

HUDDLESTON, Judge: Garis Pruitt appeals from a summary judgment that dismissed his 42 United States Code (U.S.C.) § 1983 action against Ron Hampton and the City of Ashland. At issue is whether an ordinance of the City of Ashland is unconstitutional and whether Hampton's entry pursuant to that ordinance into a rental dwelling owned by Pruitt violated Pruitt's rights under the Fourth Amendment to the Constitution of the United States.

Although the facts are not altogether clear at this point, it appears from the limited record before us that Hampton, an Ashland Code Enforcer, went to a rental house owned by Pruitt to

investigate a possible sewer leak. Once there, according to Hampton, he saw that the property was "unsecured," and he entered the house. Hampton testified in a deposition that his entry was for the limited purpose of ensuring that no vagrants were in the house and to secure the open door and windows before leaving. Pruitt challenges this characterization, pointing to Hampton's deposition in which he stated that the only time he had found vagrants in that neighborhood was when he investigated pursuant to a specific complaint. Pruitt also contends that the condemnation notice posted on the door of his property, citing electrical and plumbing violations to be corrected, evidenced Hampton's intent to inspect upon entry.

The ordinance in question is PM-105.3 of the BOCA National Property and Maintenance Code. The section upon which the circuit court relied reads as follows:

PM-105.3 Right of entry: The code official is authorized to enter the structure or *premises* at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law.<sup>1</sup>

Relying on that section, which incorporates by reference the entire body of case law under the Fourth Amendment and Section 10 of the Kentucky Constitution, the circuit court held that "the ordinance

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<sup>1</sup> Original emphasis.

is clearly constitutional since it merely states that all entries must comply with controlling authority."

Pruitt insists, and we agree, that the circuit court erred in analyzing and relying on the above language. In December 1996, the City of Ashland revised its Housing Code when it enacted Ordinance No. 132, 1996. Relevant to our inquiry is the following language extracted from that ordinance:

SECTION 3. That the following sections of The BOCA National Property Maintenance Code are hereby revised as follows:

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PM-105.3 Inspections: In order to safeguard the safety, health and welfare of the public, the code official is authorized to enter any structure or premises at any reasonable time for the purpose of making inspections and performing duties under this code. Inspections will be made to obtain and maintain compliance with the standards of this Code and the adopting ordinance based upon any one or more of the following:

1. A complaint received by the code official indicating that there may be a violation of the standards of this Code and the adopting ordinance.
2. An observation by the code official of a violation of the standards of this Code and the adopting ordinance.

3. A report or observation of a structure that is unoccupied and unsecured or a structure that is fire damaged.
4. The need to determine compliance with a notice or an order issued by the code official.
5. Designation by the Board of City Commissioners and/or the Urban Renewal and Community Development Agency of an area where all structures, accessory buildings or yards are to be inspected uniformly or intensively or for specific violations.
6. An emergency observed or reasonably believed to exist.
7. A request by an owner, or a party of interest, for an inspection.

When determining legislative intent,<sup>2</sup> a court must refer to the language of the statute (or ordinance) rather than speculating as to what may have been intended but was not expressed.<sup>3</sup> In other words, a court "may not interpret a statute at variance with its stated language."<sup>4</sup> Similarly, in analyzing the ordinance quoted above, we may not interpret it at variance with its stated language.

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<sup>2</sup> That is, the intent of the Ashland City Council.

<sup>3</sup> Commonwealth v. Allen, Ky., 980 S.W.2d 278, 280 (1998).

<sup>4</sup> Id. (citation omitted).

Hampton and the City argue that the 1996 ordinance merely "added on" to the prior ordinance, and that the language cited by the circuit court in its summary judgment remains in the ordinance, incorporated by reference in the 1996 amendments. However, a careful reading of the 1996 ordinance fails to uncover any incorporation language. In revising the ordinance in 1996, the Ashland City council clearly intended to replace the language relied upon by the circuit court with that reproduced above. Thus, the circuit court erred in relying on the older version of the ordinance, and, upon remand, must consider the revised ordinance.

The second issue the circuit court resolved was whether Hampton's actions in entering Pruitt's rental property amounted to a violation of Pruitt's rights under the Fourth Amendment to the U.S. Constitution and Section 10 of the Kentucky Constitution, both of which prohibit unreasonable searches. The circuit court determined that Hampton's entry into the house was not for the purpose of undertaking an "inspection," but rather for the limited purpose of securing the unlocked premises and verifying that there were no hobos, vagrants, or other unauthorized persons present.

Summary judgment is only proper "where the movant shows that the adverse party could not prevail under any circumstances."<sup>5</sup> However, "a party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of

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<sup>5</sup> Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991), reaffirming Paintsville Hosp. Co. v. Rose, Ky., 683 S.W.2d 255 (1985).

material fact requiring trial.”<sup>6</sup> The circuit court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.”<sup>7</sup> On appeal, the standard of review is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.”<sup>8</sup> Since factual findings are not at issue, deference to the trial court is not required.<sup>9</sup>

Pruitt has presented evidence, by way of Hampton’s deposition, which raises an issue as to Hampton’s intent in entering Pruitt’s property. Likewise, Pruitt challenges Hampton’s characterization of the property as “abandoned” or “unsecured.” Accordingly, we cannot say that no genuine issue of material fact exists. Rather, there are genuine factual issues regarding Hampton’s intent and the condition of Pruitt’s property, issues which can only be resolved upon the trial of this action.

Hampton and the City argue that Hampton’s conduct, and the ordinance which authorized it, do not amount to a violation under 42 U.S.C. § 1983 because neither implicates the protections of the Fourth Amendment. The companion decisions of the United States Supreme Court in Camara v. Municipal Court of the City and

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<sup>6</sup> Hubble v. Johnson, Ky., 841 S.W.2d 169, 171 (1992).

<sup>7</sup> Steelvest, supra, n. 5, at 480.

<sup>8</sup> Id.

<sup>9</sup> Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996) (citations omitted).

County of San Francisco<sup>10</sup> and See v. City of Seattle<sup>11</sup> make it clear that the actions of a code enforcement officer in entering a building, be it a residential or commercial structure, and the ordinance(s) authorizing such entry, fall squarely within the framework of the Fourth Amendment. Since it is undisputed that Hampton did not seek a warrant before entering the property, it must be decided upon remand whether his actions fit within one of the exceptions to the Fourth Amendment's warrant requirement.

Because the circuit court analyzed the wrong ordinance and improperly concluded that there are no genuine issues of material fact, the summary judgment is reversed and this case is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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<sup>10</sup> 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967).

<sup>11</sup> 387 U.S. 541, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967).