RENDERED: JANUARY 21, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000940-MR

JO ANN CROSBY AND FAY TAYLOR — APPELLANTS

v.

APPEAL FROM MASON FAMILY COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 07-CI-00282

MASON COUNTY FISCAL COURT;
JAMES L. GALLENSTEIN, JUDGE EXECUTIVE;
WILLIAM O. RICE; BOB BRADFORD; AND
KELLY BRADFORD — APPELLEES

OPINION AND ORDER
AFFIRMING
AND DISMISSING
KELLY BRADFORD

** ** ** ** **

BEFORE: MOORE AND THOMPSON, JUDGES; WHITE,[1] SENIOR JUDGE.

THOMPSON, JUDGE: Jo Ann Crosby and Fay Taylor, sisters, appeal from the summary judgment of the Mason Circuit Court finding that they did not exhaust

[1] Senior Judge Edwin White sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

their administrative remedies. For the reasons stated, we affirm and further dismiss Kelly Bradford as a party to this appeal.

On or about February 6, 2006, William O. Rice, a Mason County employee, mailed a notice of nuisance abatement to Crosby. A copy of a certified mailing receipt evidenced that Shauna Crosby, Crosby's daughter, signed for the envelope containing the notice. A second letter was then mailed to Crosby, and she received and signed for it in May 2006. Further, notice of nuisance abatement was physically posted on the subject property on two occasions. Despite these facts, Crosby maintained that she did not receive any of these written notices. On October 6, 2006, Taylor was sent notice to her last-known address.

Containing a citation to Ordinance Number 02-03, the notice of February 6, 2006, provided the following:

> [W]e have determined that a nuisance exists on your property due to the existence of one or a number of the following conditions:
>
> 1. Rubbish, garbage or construction debris located on the property.
>
> 2. **<u>An unfit and unsafe structure or mobile home(s).</u>**
>
> 3. Excessive growth of grass, trees, vines or underbrush.
>
> …
>
> This letter serves as notice to you to abate the nuisance within thirty (30) days of the date hereof. Should you fail to do so, the Mason Fiscal Court intends to abate the nuisance….

Taylor's notice contained an additional nuisance item, listed as "[i]noperable or unregistered vehicles," and old auto parts or unused equipment and appliances.

At some point after the October notice, Mason County and its agents demolished mobile homes and removed scrap from the property. Subsequently, Mason County filed a lien against the appellants' property for $4,108.51, the costs associated with the demolition and removal of items from appellants' property.

On August 10, 2007, appellants filed a complaint against the Mason Fiscal Court, Mason County Judge Executive James L. Gallenstein, William O. Rice, and Kelly and Bob Bradford, and several others who are not parties to this appeal. Appellants alleged that Mason County or its agents trespassed on their property, violated their due process rights, destroyed their personal property, committed gender discrimination, and violated KRS 381.770(5).

On August 31, 2007, the Mason Fiscal Court and Judge Executive Gallenstein filed an answer and counterclaim. The parties requested $4,108.51 in damages, resulting from the cleanup of appellants' property. Later, the Mason Fiscal Court filed a motion for summary judgment on behalf of itself and its employees. As grounds for the dismissal of appellants' case and for their claim for monetary damages, the Mason Fiscal Court argued that it was entitled to demolish the property pursuant to local ordinance, that appellants failed to exhaust their administrative remedies, and that it was entitled to governmental immunity.

On April 22, 2009, the trial court issued an order granting summary judgment in favor of the Mason Fiscal Court and its agents. The trial

court ruled that county officials properly followed the applicable ordinance and that the appellants had failed to exercise or exhaust their administrative remedies. The trial court then awarded the Mason Fiscal Court $4,108.51 in damages, plus interest at a rate of twelve percent from the date of the filing of the property lien.

As an initial procedural matter, we note that appellants did not name Kelly Bradford as an appellee in their notice of appeal filed on May 14, 2009. If a party is not specifically named as an appellant or appellee in a notice of appeal, the party is not considered a party to the appeal and must be dismissed. *Richardson v. Rees*, 283 S.W.3d 257, 261-62 (Ky.App. 2009). Consequently, we conclude that Kelly Bradford must be dismissed from this appeal because he was not specifically named in appellants' notice of appeal. *Id*. Having resolved this procedural issue, we now will address the arguments presented by appellants.

Appellants argue that the applicable ordinance does not comply with KRS 82.710(2) and (3). We disagree.

The standard of review applicable to an appeal of a summary judgment is well-established. An appellate court must decide whether the trial court correctly ruled that there was no genuine issue as to any material fact and that the moving party was entitled to a judgment as a matter of law. *Barnette v. Hospital of Louisa, Inc.*, 64 S.W.3d 828, 829 (Ky.App. 2002). "Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."' *Id*., quoting CR 56.03.

Summary judgment should only be granted when it appears that it would be impossible for the non-moving party to produce sufficient evidence to succeed at trial. *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985). Because there are no disputed facts involved with summary judgments, we review the decision of the trial court without deference. *Kreate v. Disabled American Veterans*, 33 S.W.3d 176, 178 (Ky.App. 2000).

Establishing the requirements for local nuisance codes, KRS 82.710(2) and (3) provide that local governments electing to enact a nuisance code and enforce violations of this code as a civil violation must enact ordinances that "establish reasonable standards and procedures for the enforcement of the nuisance code," and establish a hearing board and officers and the procedures to be followed by the hearing board and hearing officers.

After reviewing the record, we conclude that Mason County's nuisance code, Ordinance No. 02-03, complies with KRS 82.710(2) and (3). In Section I, the ordinance provides that a "public nuisance" is any "condition or use of premises which is detrimental to the property of others, the use and enjoyment thereof, or the value of other property in the immediate vicinity in which such premises are located." The ordinance then contains a listing of many possible nuisances, including rubbish, garbage, building debris, and construction waste. The listing further includes unfit or unsafe structures and property covered by

grass, trees, vines, underbrush or other forms of vegetation in such a manner and extent that the subject property may reasonably become inhabited by rodents, mosquitoes or other vermin or animals that may cause the transmission of disease.

In Section III of the ordinance, the nuisance abatement notice process is explained in detail. It provides that a notice shall be sent to the property owner of the offending property describing the nuisance and demanding that the nuisance be abated within thirty days of the date of the notice. The notice must contain a statement that the Fiscal Court may abate the nuisance if the property owner does not resolve the nuisance. The notice must also contain a statement that a lien will be placed on the property for the cost of the nuisance abatement.

In Section V of the ordinance, the nuisance abatement appeals process is established. The ordinance provides that any owner or aggrieved person may appeal the decision regarding "the prohibited act or abatement thereof," within thirty days of the mailing of the notice. Upon the filing of an appeal, all matters relating to the abatement are stayed pending a Fiscal Court hearing. The aggrieved party must be given at least ten-days' notice and the party has a right to testify, to cross-examine witnesses, call witnesses, and introduce evidence. If the decision of the Fiscal Court is unsatisfactory, the aggrieved party can appeal to the Mason Circuit Court within thirty days of the decision.

Having reviewed the record, we conclude that the ordinance complies with KRS 82.710(2) and (3). The ordinance contains reasonable standards and procedures and created a hearing board and hearing officers. There is a process in

which an aggrieved party can present evidence and challenge her party-opponent. Accordingly, we conclude that the ordinance is not statutorily invalid.

Appellants next argue that the applicable ordinance is vague and defective because the ordinance does not define "cleanup." Appellants further argue that the ordinance does not list many of the items found on their property and disposed of by county official or their agents. We disagree.

"As long as an ordinance or statute can be reasonably understood by those affected by the ordinance and they can reasonably understand what the statute requires of them, it is not unconstitutionally vague." *Lexington Fayette County Food and Beverage Association v. Lexington-Fayette Urban County Government*, 131 S.W.3d 745, 753 (Ky. 2004). If an ordinance provides "'fair warning'" to the public and has "'explicit standards'" for officials who apply the law, the ordinance is not vague and, thus, passes constitutional muster. *Id*. citing, *Hardin v. Commonwealth*, 573 S.W.2d 657 (Ky. 1978).

An ordinance does not have to specifically list every single improper nuisance by name at the risk of being void for vagueness. Rather, the standard is whether the ordinance fairly warns individuals of what the law is and provides an express standard for an arbiter to reasonably determine a violation. *Id*. Here, appellants were informed that their property contained an unfit and unsafe structure or mobile home and needed to be cleaned up. Clearly, individuals can reasonably understand that an unfit and unsafe mobile home needed to be made safe and fit. Accordingly, we conclude that the ordinance is not unconstitutionally vague.

Appellants argue that their notices did not inform them that the county would demolish and remove their property. They argue that they had the right to demolish their own property pursuant to KRS 381.775.[2] We disagree.

The notices provided that specific nuisances existed on appellants' property and that they were required to abate these occurrences. One of these nuisances was the existence of unsafe and unfit structures on their property. The notices provided that county officials would conduct a follow-up inspection after the nuisances were resolved. However, if the nuisances were not resolved, the notices provided that the county would resolve the matter at the property owner's expense. Thus, we conclude that demolition and removal of the unfit and unsafe structures were reasonably within the scope of the notices provided.

Moreover, KRS 381.775(2) provides that "[a] county may enter into a voluntary agreement with a property owner for the demolition or removal of a dilapidated building." While this is an option for counties and property owners, the plain language of the statute places this decision in the hands of the parties. The county and a property owner *may* enter into a voluntary agreement to demolish and remove a building. Because they had no right to require the county to enter into an agreement, appellants' argument regarding KRS 381.775(2) fails.

Appellants next argue that they received defective notice regarding the nuisance abatement because they were not fully informed of their rights. However, appellants failed to cite to the record where this issue was preserved as

[2] Here, appellants' argument is identical to their argument in Section E of their brief. Thus, our resolution of this argument will resolve appellants' argument contained in Section E as well.

required by CR 76.12(4)(c)(iv) and (v). Accordingly, this issue is unpreserved for appellate review. *Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897, 905 (Ky. 2008).

Appellants argue that the trial court should have granted them relief from the conduct of the Mason Fiscal Court and its agents for the vindictive and discriminatory action taken against them. They argue that they established negligence and, thus, were entitled to continue their case. We disagree.

In this case, the trial court determined that appellants failed to exhaust their administrative remedies before filing their court action. "Exhaustion of administrative remedies is a well-settled rule of judicial administration that has long been applied in this state." *Kentucky Retirement Systems v. Lewis*, 163 S.W.3d 1, 3 (Ky. 2005). If a party's administrative remedies are not exhausted as in this case, this failure is fatal to her ability to pursue a court action. *Id.* at 4.

Appellants argue that the Mason Fiscal Court exceeded its authority in such a way to deny them any viable administrative remedy. Thus, they contend that they should be relieved from having to exhaust their administrative remedies. We disagree.

In this case, appellants could have stayed the nuisance abatement proceedings had they filed an appeal to the Mason Fiscal Court. The parties received notices from February 2006 until October 2006. On multiple occasions, notices were posted at the property subject to the nuisance notice. Subsequently, appellants learned of the demolition on their property in January 2007. They then

filed an action against the county and its agents in August 2007. Considering these facts, we conclude that the trial court's ruling against them was not erroneous.

For the foregoing reasons, the Mason Circuit Court's granting of summary judgment in favor of the Mason Fiscal Court and its agents is affirmed.

Further, it is ORDERED that we DISMISS Kelly Bradford from being a party to this appeal.

ALL CONCUR.

ENTERED: January 21, 2011

/s/ Kelly Thompson
JUDGE, COURT OF APPEALS

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