NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0763

IBERVILLE PARISH COUNCIL

VERSUS

TOMMY FRANCISE

Judgment rendered December 23, 2014.

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Appealed from the
18th Judicial District Court
in and for the Parish of Iberville, Louisiana
Trial Court No. 73193
Honorable Alvin Batiste Jr., Judge

KUHN, J DISSENTS * * * * * ASSIGNS REASONS

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* * * * * *

BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

PETTIGREW, J.

The sole issue raised by the appellant, the Iberville Parish Council (the Parish), in this public nuisance abatement action is whether the trial court abused its discretion in failing to declare as "junked vehicles" five trucks parked on the immovable property of defendant, Tommy Francise, in a subdivision in Plaquemine, Louisiana, and in failing to order them abated. After a thorough review of the record, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 27, 2013, the Parish, through Parish President J. Mitchell Ourso, filed a "Petition for Rule to Show Cause Why Junked Motor Vehicles and Quail and Rabbit Farm should not be declared a public nuisance" and ordered abated.[1] Tommy Francise was the named defendant as owner of the immovable property, located in Green Acres Subdivision in Plaquemine, Louisiana, on which the alleged public nuisances were located. The petition alleged that there were five (5) junked motor vehicles (as defined by Article IV, Section 9-62 of the Parish Ordinances) and further alleged that the presence of the vehicles on said property was in violation of the covenants, restrictions, and conditions for Green Acres Subdivision. The conveyance record of those restrictions and photographs (taken on three different dates in September, October, and November 2013, depicting said vehicles on the defendant's property) were attached to the petition. These photographs also were later introduced into evidence, together with additional photographs that had been taken of plaintiff's property in February 2014, days prior to the hearing in this matter. The petition additionally asserted allegations concerning the unsanitary conditions of the defendant's quail and rabbit farm. The trial court found those allegations to have merit, and ordered that nuisance abated.[2] That portion of the trial court's judgment has not been appealed, and it is undisputed that it is now final.[3]

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[1] The petition asserted the Parish was vested with authority, pursuant to Article IV, Section 9-64 of the Iberville Parish Ordinances, to file suit to have offending junk items declared a public nuisance and ordered abated.

[2] The judgment ordered that waste from the quail and rabbit farm be abated and specifically noted that abatement of the offensive odor emanating from the barn was included in the court's order.

[3] It is undisputed that the Parish gave Mr. Francise proper written notice regarding the alleged public nuisances and that the procedure employed by the Parish in seeking compliance was proper.

A hearing was held on February 24, 2014, following which the trial court signed a judgment, dated February 26, 2014, finding "that the vehicles located on the Defendant's property are not declared 'Junked Vehicles'[,]" and refused to order them abated.

On appeal, the Parish asserts as its sole assignment of error that the trial court erred in not declaring the trucks cited in the Parish's petition "junked vehicles" and in failing to order them abated.

STANDARD OF REVIEW

The manifest error standard is the appropriate standard of review of a trial court's factual determination of whether an activity constitutes a public nuisance. Under this standard, in order to reverse a trial court's determination of fact, an appellate court must review the record in its entirety and find that a reasonable factual basis does not exist for the finding, and further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. Thus, if the trial court's findings are reasonable in light of the record reviewed in its entirety, this court may not reverse, even if convinced that had it been sitting as trier of fact, it would have weighed the evidence differently. **Parish of East Feliciana ex rel. East Feliciana Parish Police Jury v. Guidry**, 2004-1197 (La. App. 1 Cir. 8/10/05), 923 So.2d 45, 53, writ denied, 2005-2288 (La. 3/10/06), 925 So.2d 515.

DISCUSSION/ANALYSIS

At the outset, we note that although the record reflects that the applicable ordinance was shown and provided to the trial court, it was not entered into evidence and is not contained in the record before this court. However, the trial court referenced particular sections of the ordinance in making its ruling, and the parties do not dispute the contents of the ordinance as referenced by the trial court. Moreover, as an appellate court, we are obligated to presume that the judgment of the court is correct and supported by competent evidence. See **Ory v. RD & Fam, LLC**, 2013-2244, p. 2 (La. App. 1 Cir. 6/6/14)(unpublished).

The testimony and photographs introduced into evidence established that there were five large (18-wheeler Mack) trucks located on concrete pads on the lot behind

Mr. Francise's house and that the trucks had been there since 2012. Mr. Francise admitted at the hearing that none of the trucks have current inspection stickers or licenses on them, explaining that was because they were not currently in use and the Department of Motor Vehicles only provided one-year inspection stickers for agricultural 18-wheelers. The testimony and photographs also established that the tires and rims had been removed from some of the trucks and were resting on concrete blocks. Mr. Francise testified, however, that all of the trucks were mechanically sound and operable. He explained that he had removed some of the tires as that made it easier to get under the trucks to check them out and work on them, but that all of the trucks could be cranked up and, once the tires were replaced, driven. He also testified that the tires and rims that had been removed from the trucks were located in a shed on his property, and that he intended to replace the tires back on the trucks when he was ready to use them. Mr. Francise testified that previously he had used four of the trucks to haul sugar cane and one of the trucks as an ice truck. He testified he was in the process of remodeling the ice truck, and he had plans to attach flatbed trailers to the others and use them for hauling. He maintained that all of the trucks were operable and that he was working on them one at a time.

As noted earlier, the ordinance at issue is not included in the record before us; however, the transcript of the hearing reveals that the ordinance defined "junked vehicle" as a motor vehicle which does not have lawfully affixed unexpired license plates or valid motor safety inspection stickers and the condition of which is "wrecked, dismantled, or partially dismantled, inoperative, abandoned, or discarded." In its reasons for judgment, the trial court noted that the ordinance, in section 9-61, states as its purpose "to regulate or prohibit the storing or abandoning of junked automobiles on any vacant lot ... or any unused portion of any occupied lot, neutral ground, street, or sidewalk." The trial court further noted that there was no definition provided in the ordinance for "an unused portion of any occupied lot." The court noted that the trucks at issue were located on concrete slabs, approximately twenty (20) feet behind

Mr. Francise's house, that the whole property was being maintained, and that the grass and shrubbery were kept cut. Based on those observations, the photographic and testimonial evidence, and the fact that the ordinance did not define "unused portion" of an occupied lot, the trial court concluded that the trucks were not located in an unused portion of Mr. Francise's lot, and therefore, they did not fall within the ordinance's prohibitions concerning "junked vehicles."

CONCLUSION

Our review of the record reveals there is ample and reasonable factual support for the trial court's conclusions such that the judgment is not manifestly erroneous. Accordingly, the judgment is affirmed. Costs of this appeal in the amount of $857.81 are assessed to the Iberville Parish Council.

AFFIRMED.

IBERVILLE PARISH **FIRST CIRCUIT**

COUNCIL **COURT OF APPEAL**

VERSUS **STATE OF LOUISIANA**

TOMMY FRANCISE **NO. 2014 CA 0763**

KUHN, J., dissenting.

I disagree with the majority's conclusion -- adopting the rationale of the trial court -- that because the "unused portion" of an occupied lot was not defined, the trucks that Mr. Francise kept approximately 20 feet behind his house on concrete slabs did not fall within the ordinance's prohibition concerning junked vehicles. It is undisputed that Mr. Francise's property is located in a residential subdivision. Indeed, the subdivision restrictions expressly state, "No lot shall be used except for single family residential purposes."

Common sense and logic dictate that "use" must be determined in conjunction with the purpose of the subdivision. Mr. Francise's storage of Mack trucks on concrete blocks on the portion of the lot unused for single-family residential purposes is precisely the sort of public nuisance the ordinance was designed to prevent.

The issue in this case is whether defendant's actions violate an ordinance and, hence, requires interpretation of the law. Thus, the majority's reliance on ***Parish of East Feliciana ex rel. East Feliciana Parish Police Jury v. Guidry***, 2004-1197 (La. App. 1st Cir. 8/10/05), 923 So.3d 45, 53, writ denied, 2005-2288 (La. 3/10/06), 925 So.2d 515, to set forth the standard of review is inapposite. In a dispute between neighboring landowners in which one sought relief under La. C.C. art. 667, the manifest error standard of review was correctly applied. See ***Guidry***, 923 So.3d 45, 53. But in this case, we are asked to construe the provisions of an

ordinance, which is a legal inquiry subject to a *de novo* interpretation. As such, no deference is owed to the trial court.

I believe the trial court legally erred in failing: to define "unused portion" in conjunction with the purpose of the subdivision, i.e., single-family residential; to issue a declaration that Mr. Francise's storage of the five Mack trucks on concrete blocks constituted a public nuisance; and to order abatement. Accordingly, I would reverse the judgment. For these reasons, I dissent.