STATE OF MICHIGAN

COURT OF APPEALS

WATERTOWN TOWNSHIP, Plaintiff-Appellee,	UNPUBLISHED May 11, 2010
v	No. 290117 Tuscola Circuit Court
VIRGIL WILLIAM NORDLUND, SR. and KATHARINA LOUISE NORDLUND, Defendants-Appellants.	LC No. 08-024748-CK

Before: TALBOT, P.J., and FITZGERALD and M. J. KELLY, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting plaintiff's motion for summary disposition under MCR 2.116(C)(10). On appeal, defendants argue that the trial court erred when it determined that there was no factual dispute concerning whether the home at issue constituted a dangerous building under Waterford Township's ordinance and, for that reason, granted plaintiff's motion for summary disposition. Defendants also challenge the constitutionality of the ordinance at issue. Because we conclude that there were no errors warranting relief, we affirm.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the case. *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006). The moving party is entitled to a grant of summary disposition if it demonstrates that no genuine issue of material fact exists. *Barnard Mfg*, 285 Mich App at 369. "A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ." *Bennett*, 274 Mich App at 317.

Having reviewed the record, we agree with the trial court that no genuine issue of material fact existed regarding whether defendants' home was a dangerous building. Under Township Ordinance 40, § 1(e), a building that has been deemed unfit for human habitation is considered a dangerous building. It is undisputed that defendants' home had been deemed uninhabitable because it did not have running water.

Defendants also argue that a genuine issue of material fact existed whether plaintiff violated defendants' due process rights. Specifically, defendants argue that plaintiff violated her

due process rights by not strictly complying with the notice requirements of the ordinance and addressing and sending notice to defendant Katharina Nordlund. To satisfy due process, a state generally must provide notice and an opportunity to be heard before depriving a person of property. *Dusenbery v United States*, 534 US 161, 167; 122 S Ct 694; 151 L Ed 2d 597 (2002). Actual notice is not required. *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008). Rather, due process is satisfied if the notice provided was "'"reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."'" *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 9; 732 NW2d 458 (2007), quoting *Jones v Flowers*, 547 US 220, 226; 126 S Ct 1708; 164 L Ed 2d 415 (2006), quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950).

It is undisputed that both defendants received actual notice of the meeting at which the township board addressed the violation of the ordinance through notice that was addressed to defendant Virgil Nordlund and sent to defendants' home address. Further, it is clear that both defendants attended the special meeting. Defendants argue, however, that because the dangerous building ordinance is in essence a forfeiture statute, plaintiff was required to strictly comply with the provisions of the ordinance and its failure to do so rendered any actual notice defendant Katharina Nordlund might have received insufficient.

It is true that the buildings on the property were ordered destroyed without compensation being paid. However, this action did not amount to forfeiture because defendants retained title to the property. See *Rental Property Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 263-264; 566 NW2d 514 (1997) (concluding that padlocking of property under a nuisance abatement ordinance addressing illegal drug use or prostitution "is not forfeiture" because "it involves no loss of title"). Moreover, we find defendants' reliance on *Richard v Ryno*, 158 Mich App 513, 516-517; 405 NW2d 184 (1987), inapposite. The Court's conclusion in *Richard* that strict compliance was required was based on the language of that statute and the finding that sheriff's deputy in issue had not acted in good faith and with due diligence under the circumstances. *Id*. What the deputy had done was sign a tax sale notice return which "indicat[ed] that service was not effectuated." *Id.* at 516. However, there was no indication that the deputy did anything more than sign the return without any attempt to effectuate service, despite the fact that the "[p]laintiff was very familiar with one of the defendants." *Id.* at 517. The facts of the case at hand are quite different. Where the steps taken to give notice in *Richard* were substantively defective, here the flaw is a technical one—defendant Katharina Nordlund's name was left off the notice that was sent to her husband at their home address.

Even if the dangerous building ordinance is considered a forfeiture statute, defendants are not entitled to relief. In considering the notice provided to the owner of property seized under the clearly identified forfeiture provision of the controlled substances provisions of the Public Heath Code, MCL 333.1101 *et seq*., this Court has stated that "the requirements of . . . forfeiture provisions *may* be construed strictly to ensure that the due process rights of claimants are protected." *Hollins v Detroit Police Dep't*, 225 Mich App 341, 347; 571 NW2d 729 (1997) (emphasis added). The Court in *Hollins* concluded that, because the property owner had not received timely notice, the circuit court had jurisdiction to order the return of the property. *Id.* at 346-347. "To hold otherwise," the Court observed, "would be to deny plaintiffs a forum in which to seek relief." *Id.* at 347. Again, defendant Katharina Nordlund received actual notice of

the hearing and was afforded an opportunity to be heard. Thus, she was not denied a forum in which to seek relief or "an opportunity to present [her] objections," *Jones*, 547 US at 226, and the court had discretion to conclude that strict compliance with the terms of ordinance was not required.

Defendants also argue that the ordinance is unconstitutionally vague and the court erred in refusing to address this argument. Whether a statute is constitutional under the vagueness doctrine is a question of law that the Court reviews de novo. *In re Gosnell*, 234 Mich App 326, 333; 594 NW2d 90 (1999). Ordinances are presumed constitutional unless their unconstitutionality is clearly apparent. *Taylor Commons v Taylor*, 249 Mich App 619, 625; 644 NW2d 773 (2002).

The trial court declined to address defendants' constitutional challenge because they failed to follow the appeal process outlined in the ordinance. The court's decision was premised on the decision in *People v Stross*, 482 Mich 979, 979; 755 NW2d 187 (2008). In *Stross*, our Supreme Court concluded that because the statute "prescribed the relevant procedure for challenging the constitutionality of the conditions" of a zoning variance, defendant was precluded from raising a constitutional challenge where that procedure was not followed. *Id.* The statutory provision at issue there read in relevant part:

> The decision of the board of appeals is final. However, a person having an interest affected by the zoning ordinance may appeal to the circuit court. Upon appeal, the circuit court shall review the record and decision of the board of appeals to ensure that the decision meets all of the following requirements:
>
> (a) Complies with the constitution and laws of this state. [MCL 125.585(11)(a), repealed by 2006 PA 110.]

Section 7 of the dangerous building ordinance does not specify a similar procedure for challenging the constitutionality of an ordinance. However, even if the trial court erred to the extent that it should have addressed this issue, it was nevertheless harmless because the ordinance is not unconstitutional.

Section 7 of the dangerous building ordinance provides:

> A Township Board decision requiring the repair, demolition, or other work on a building or structure may be appealed by any person having an ownership or financial interest in the property. An appeal of the decision shall be made to the Circuit Court by filing an action within 21 days from the date of approval of the minutes of the meeting at which the decision was made by the Township Board. [Township Ordinance 40, § 7.]

The enactment of a legislative body is void for vagueness if: "'(1) it is overbroad and impinges on First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in determining whether the statute has been violated.'" *Dep't of State v Michigan Ed Ass'n-NEA*, 251 Mich App 110, 116; 650 NW2d 120 (2002), quoting *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 467; 639 NW2d 332 (2001). Because defendants' argument does not implicate the First

Amendment, "'"[t]he proper inquiry is not whether the [ordinance] may be susceptible to impermissible interpretations, but whether the [ordinance] is vague as applied to the conduct allegedly proscribed in this case."'" *Yankee Springs Twp v Fox*, 264 Mich App 604, 606-607; 692 NW2d 728 (2004), quoting *People v Knapp*, 244 Mich App 361, 374 n 4; 624 NW2d 277 (2001), quoting *People v Vronko*, 228 Mich App 649, 652; 579 NW2d 138 (1998).

Contrary to defendants' argument, the last sentence of the ordinance clearly states the circumstances and time frame during which an impacted person has a right to appeal a township board decision. The fact that the ordinance does specify that plaintiff was required to notify defendants when the minutes from the board meeting were approved does not render the time for appeal indefinite and therefore vague. The time period is clearly specified—it begins to run when the minutes are approved and ends 21 days later.

We do agree with defendants, however, that plaintiff's failure to provide notice of when the minutes were approved implicates due process. Arguably, the right to appeal is rendered meaningless when a party is not given notice of the issuance of an appealable decision. However, there is no indication that defendants took any action on their right to appeal prior to plaintiff's filing of its complaint in circuit court, over eight months after the board meeting. Under all the circumstances here, defendants were not denied access to the courts or an opportunity to state their objections to the board's decision. *Jones*, 547 US at 226.

Finally, defendants argue that the trial court erred when it granted plaintiff's motion for summary disposition because plaintiff was not a fair and impartial decision maker. A fundamental tenant of due process is the right to a fair and impartial decision maker. *Michigan Intra-State Tariff Bureau, Inc v Public Service Comm*, 200 Mich App 381, 391; 504 NW2d 677 (1993). In the absence of evidence to the contrary, decision makers are presumed to be fair and impartial. *Hughes v Almena Twp*, 284 Mich App 50, 72; 771 NW2d 453 (2009).

> Actual bias need not be shown [i]f the situation is one in which experience teaches us that the probability of actual bias on the part of the decision maker is too high to be constitutionally tolerable. For example, the following situations present that risk: (1) the decision maker has a pecuniary interest in the outcome; (2) the decision maker has been the target of personal abuse or criticism from the party before the decision maker; (3) the decision maker is enmeshed in other matters involving the petitioner, and (4) the decision maker might have prejudged the case because of prior participation as an accuser, investigator, fact-finder, or initial decision maker. [*Id.* at 70 (internal quotations and citations omitted).]

Defendants do not assert that plaintiff's conduct fits into one of the situations outlined above. Instead, they argue that plaintiff's decision to allow similarly situated property owners additional time to bring their properties up to code demonstrated an underlying prejudice against them. Although plaintiff had the choice whether to order defendants to bring their home up to code or order that it be demolished, Township Ordinance 40, § 4, there is no record evidence that plaintiff's decision was improperly motivated. Defendants concede that they had received numerous citations for violation of plaintiff's blight ordinance and that they had failed to remedy the blight. Given plaintiff's repeated and unsuccessful attempts to get defendants to remedy their violations of the blight ordinance, it was reasonable for plaintiff to presume that similar efforts would be futile in regard to the dangerous building ordinance, particularly where the board

minutes indicate that defendants did not have a proposal for the board on how to remedy the problems, but simply asked for more time to bring the buildings up to code. Additionally, the record shows that the underlying circumstances were not similar.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly