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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-321

Filed: 15 November 2016

Watauga County, No. 15CVS330

ROBERTA B. LEWIS-SOLAR and PHILLIP M. SOLAR, Petitioners,

v.

TOWN OF BEECH MOUNTAIN, North Carolina, Respondent.

Appeal by petitioners from order entered 7 December 2015 by Judge R. Gregory Horne in Watauga County Superior Court. Heard in the Court of Appeals 8 September 2016.

*Moffatt & Moffatt, PLLC, by Tyler R. Moffatt, for petitioners-appellants.*

*Eggers, Eggers, Eggers & Eggers, PLLC, by Stacy C. Eggers, IV, for respondent-appellee.*

DIETZ, Judge.

Petitioners Roberta Lewis-Solar and Phillip Solar appeal a trial court order affirming a decision of the Beech Mountain Board of Adjustment, which fined Petitioners for the unauthorized removal of trees under a town ordinance.

Petitioners first argue that they cannot be held responsible for the unlawful tree removal—even if they hired the person who cut down the trees—because the

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trees were on someone else's property. The applicable ordinance states that "with respect to private property, the property owner shall be deemed the responsible party and shall be liable for any penalties incurred under said provision." Beech Mountain Ord. § 154.365(C). Petitioners contend that, under this provision, when trees are unlawfully cut down on private property, only the property owner can be held responsible.

We reject this argument. The quoted portion of the town's ordinance, by its plain terms, merely identifies one party who can be held responsible for unlawful tree cutting; it does not prohibit the town from imposing penalties against *another* responsible party. And other provisions in the tree ordinance make it clear that any offender who unlawfully cuts down trees can be fined.

Moreover, Petitioners' proposed reading of the ordinance would force the town to fine innocent property owners when a known wrongdoer cuts down trees on their property, and simultaneously prevent the town from holding the wrongdoer accountable. We do not adopt constructions of statutes or ordinances that lead to this sort of absurd result.

Finally, Petitioners assert due process and evidentiary challenges to the Board's determination that they hired a tree cutter to cut down the trees at issue. As explained below, Petitioners were afforded sufficient process and the evidence in the

record readily supports the Board's determination that they hired the person who unlawfully cut down the trees. Accordingly, we affirm.

### **Facts and Procedural History**

Petitioners Roberta B. Lewis-Solar and Phillip M. Solar own a residence in Beech Mountain. On 21 September 2014, someone called the Beech Mountain police department to report that trees had been cut down on two properties adjacent to Petitioners' property. Following an investigation, Beech Mountain determined that Petitioners violated Section 154.358 of the town ordinances, which governs tree removal. The town fined Petitioners \$8,000.

Section 154.358 of the town's ordinances provides that "[n]o person shall, without a written permit from the town, perform or cause to be performed the following acts: mutilate, injure, remove or relocate any live tree within the town[.]" The ordinance also provides that "[f]or violations of § 154.358 with respect to private property, the property owner shall be deemed the responsible party and shall be liable for any penalties incurred under said provision." Beech Mountain Ord. § 154.365(C).

Petitioners challenged their fines before the Board of Adjustment, arguing that they did not hire anyone to cut down the trees and that, even if they did, the trees were on someone else's property and the tree ordinance does not permit the town to hold Petitioners responsible. Following a hearing, the Board of Adjustment rejected Petitioners' arguments.

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Petitioners timely appealed the Board's decision to Watauga County Superior Court. On appeal, Petitioners argued that the Board lacked authority to fine them under the ordinance, that the hearing procedures violated Petitioners' due process rights, and that the Board's decision was not supported by substantial competent evidence in the record. The superior court affirmed and Petitioners timely appealed to this Court.

**Analysis**

**I. Interpretation of the ordinance**

Petitioners first argue that they cannot be fined for the unauthorized cutting of the trees. As explained below, we disagree.

We review the trial court's legal interpretation of the town's ordinance *de novo*. See *Lamar Outdoor Advert., Inc. v. Hendersonville Zoning Bd.*, 155 N.C. App. 516, 518, 573 S.E.2d 637, 640 (2002).

The ordinance generally prohibits anyone from cutting down trees without a permit:

No person shall, without a written permit from the town, perform or cause to be performed the following acts: mutilate, injure, remove, or relocate any live tree within the town, or injure or misuse any structure or device placed to protect any such tree.

Beech Mountain Ord. § 154.358(A). The ordinance permits the town to impose a fine against the "offender" of this provision in the amount of \$1,000 per tree. *Id.* § 154.365(A). But another portion of the ordinance states that "[f]or violations of

§ 154.358 with respect to private property, the property owner shall be deemed the responsible party and shall be liable for any penalties incurred under said provision.” *Id.* § 154.365(C).

Petitioners argue that under the plain language of the ordinance they cannot be fined for the unlawful tree cutting because the trees were on private property not owned by them. They contend that, despite the board having found that they paid to have the trees cut down, under subsection 154.365(C) only the owners of the properties on which the trees were cut are “responsible parties” that can be fined by the town.

We disagree. Nothing in subsection 154.365(C) states that the property owner is the *only* responsible party or that the town is prohibited from holding other offenders responsible when tree cutting occurs on private property. The provision itself prohibits any “person” from cutting down trees and authorizes fines against the “offender.” Thus, we conclude that section 154.365 unambiguously permits Beech Mountain to impose fines against an offender who cut down trees without a permit, regardless of whether those trees were on their own property or someone else’s.

As the town points out, this interpretation is reinforced by the well-settled principle that courts should construe statutes and ordinances in a manner that avoids absurd results. *See State v. Jones*, 359 N.C. 832, 838, 616 S.E.2d 496, 499 (2005). If we interpreted the ordinance as Petitioners suggest, it would permit a wrongdoer to

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illegally chop down trees on someone else's property and then force the town to fine the innocent property owner and let the wrongdoer walk away without consequence. This sort of unjust law is better suited to the fictional works of Lewis Carroll or Franz Kafka, not the laws of our State. Accordingly, we reject Petitioners' argument and hold that the ordinance, by its plain terms, permits the town to fine an offender who cut down trees without a permit, even if those trees were on someone else's property.

**II. Alleged due process violations**

Petitioners next argue that their due process rights were violated when the Board of Adjustment relied on unworn statements, not subject to cross-examination, to reach its finding that Petitioners paid to have the trees cut down.

Whether a party has been afforded sufficient process to satisfy the Due Process Clause is a legal question that this Court reviews de novo. *In re N.C. Pesticide Bd. File Nos. IR94-128, IR94-151, IR94-155*, 349 N.C. 656, 670, 509 S.E.2d 165, 175 (1998).

The Due Process Clause (and corresponding State constitutional protections) require the Board of Adjustment to give "the party whose rights are being determined . . . the opportunity to cross-examine adverse witnesses and to offer evidence in support of his position and in rebuttal of his opponent's." *Burton v. New Hanover Cty. Zoning Bd. of Adjustment*, 49 N.C. App. 439, 442, 271 S.E.2d 550, 552 (1980).

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Petitioners challenge the Board's consideration of two pieces of unsworn testimony: (1) a police report indicating that Petitioners had authorized a tree cutter to remove trees near the location of the trees at issue; and (2) a letter from a tree cutter who had been approached by Petitioners to cut down the trees at issue in this case, but who had not been hired.

Petitioners contend that the Board's consideration of these unsworn statements, without affording Petitioners an opportunity to confront the witnesses at the hearing, violated their due process rights. We reject this argument because Petitioners had a statutory vehicle through which they could confront these witnesses. The General Statutes permit parties appearing before the Board of Adjustment to request subpoenas to compel witnesses to appear and testify. N.C. Gen. Stat. § 160A-388(g). Petitioners do not argue on appeal that they requested any subpoenas from the Board but were denied. Thus, Petitioners due process rights were not violated; they were afforded a process by which they could confront these witnesses but chose not to invoke it. *See Whiteco Outdoor Advert. v. Johnston Cty. Bd. of Adjustment*, 132 N.C. App. 465, 471, 513 S.E.2d 70, 75 (1999).

**III. Sufficiency of the evidence**

Finally, Petitioners argue that the Board's determination that they paid to have the trees cut down was not supported by sufficient competent evidence. We review this argument to ensure that the trial court properly applied the whole record

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test and concluded that the Board's determination was supported by the evidence. *Whiteco Outdoor Advert.*, 132 N.C. App. at 468, 513 S.E.2d at 73.

Petitioners argument is premised largely on the assumption that the police report and tree cutter's letter should not have been considered by the Board because admission of that evidence would violate Petitioners' due process rights. As explained above, we reject this argument.

In any event, there is ample evidence in the record, even without that challenged evidence, to support the Board's decision. Numerous witnesses testified that Petitioners had sought to remove the trees at issue and that the only purpose served by removal of the trees was to improve the view from Petitioners' property. One of the adjacent property owners testified that, while the police were on their way to the property to investigate the tree cutting, Petitioners came to her property and said that "if there was a problem they would take care of it" and that "the cutter had gotten out of control and that they had only hired [the] cutter to take out brush and did acknowledge that they were on someone else's property." This evidence readily supports the Board's decision that Petitioners were responsible for the unauthorized tree cutting, and thus the trial court properly found no error.

**Conclusion**

We affirm the trial court's order upholding the decision of the Board of Adjustment.



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AFFIRMED.

Judges HUNTER, JR. and McCULLOUGH concur.

Report per Rule 30(e).