

[Cite as *Vang v. Cleveland*, 2017-Ohio-4187.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104994

CAROL A. VANG, ET AL.

PLAINTIFFS-APPELLANTS

vs.

CITY OF CLEVELAND, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-861452

BEFORE: Keough, A.J., Stewart, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: June 8, 2017

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Appellants, Carol A. Vang, Andrew P. Philbin, and Luis S. Sandoval (collectively “appellants”), appeal the decision of the common pleas court that affirmed the decision of the city of Cleveland Board of Zoning Appeals (the “Board”) granting an area variance to defendant-appellee, Thomas Lenghan (“Lenghan”). For the reasons that follow, we reverse and remand.

I. Background and Procedural History

{¶2} Lenghan owns real property located at 1535 Vine Court in Cleveland, Ohio. In October 2015, he applied for a permit to construct four new townhomes on the property. The city of Cleveland Department of Building and Housing denied the application and issued a notice of nonconformance. The city predicated the denial on Cleveland Codified Ordinances (“C.C.O.”) 337.031(g), which requires a 20-foot rear yard abutting a residential district. Lenghan proposed only a five-foot rear yard for the townhouses.

{¶3} Lenghan appealed the denial to the Board. After issuing public notice, on February 29, 2016, the Board held a public hearing at which it heard testimony and accepted documentary evidence.

{¶4} At the conclusion of the hearing, the Board voted 3-1 to grant the area variance. It subsequently ratified its decision in a written decision stating:

[T]he Board finds that the owner has established that: there are practical difficulties due to the fact that the lot is substantially more shallow than others on the street, only one variance is requested, the neighboring

properties have similarly shallow rear yards, the townhouses will positively impact property values, the proposed development is consistent with the neighborhood, which is very densely developed, and the City, Councilman, Block Club and Ohio City, Inc. all support the project as being consistent with the zoning code and the City's plans for the neighborhood and therefore denial would deprive the appellant of substantial property rights and the variance is consistent with the purpose and intent of the zoning code.

{¶5} Appellants appealed the Board's decision to the common pleas court pursuant to R.C. 2506.04. The trial court affirmed the Board's decision, finding that the Board's decision "was supported by a preponderance of reliable, probative, and substantial evidence," and was not "unconstitutional, illegal, arbitrary, capricious, or unreasonable." This appeal followed.

II. Law and Analysis

{¶6} In their first assignment of error, appellants contend that the trial court abused its discretion in affirming the Board's decision because it was not supported by a preponderance of reliable, probative, and substantial evidence.

{¶7} The scope of the trial court's review in an appeal of a board of zoning appeals decision is set forth in R.C. 2506.04, which requires the trial court to examine the "evidence on the whole record" to determine if the agency's decision is "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of the substantial, reliable, and probative evidence" in the record. *Cleveland Clinic Found. v. Bd. of Zoning Appeals*, 141 Ohio St.3d 318, 2014-Ohio-4809, 23 N.E.3d 1161, ¶ 23.

{¶8} As recognized by the Ohio Supreme Court, R.C. 2506.04 "requires" the trial court to examine the evidence in the record, "which in turn necessitates both factual and

legal determinations.” *Dudokovich v. Hous. Auth.*, 58 Ohio St.2d 202, 207, 389 N.E.2d 1113 (1979). The trial court ““must give consideration to the entire record * * * and must appraise all such evidence as to the credibility of the witnesses, the probative character of the evidence and the weight to be given it.”” *Id.*, quoting *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 131 N.E.2d 390 (1955), paragraph one of the syllabus.

{¶9} The standard of review for the court of appeals in a R.C. 2506.04 appeal is more limited in scope. *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34, 465 N.E.2d 848 (1984). The statute grants a limited power to the court of appeals to review the judgment of the common pleas court only on questions of law, which does not include the same extensive power to weigh the evidence as is granted to the trial court. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 735 N.E.2d 433 (2000). Within the ambit of questions of law for appellate review is abuse of discretion by the trial court. *Id.*, citing *Kisil* at fn. 4. The court of appeals has a duty to affirm the common pleas court unless it finds, as a matter of law, that the decision of the common pleas court is not supported by a preponderance of reliable, probative, and substantial evidence. *Cleveland Clinic Found.* at ¶ 23; *Kisil* at 34.

{¶10} In its opinion and order affirming the Board’s decision, the trial court correctly identifies its standard of review of an administrative appeal as set forth in R.C. 2506.04. It also correctly identifies the city ordinance that gives the Board the authority to grant an area variance (C.C.O. 329.03), and what a property owner must establish under the ordinance when seeking an area variance: (1) a practical difficulty peculiar to

the property because of physical size, shape, or other characteristics of the property that create a difficulty caused by a strict application of the zoning code; (2) refusal of the variance will deprive the owner of substantial property rights; and (3) granting the variance will not be contrary to the purpose and intent of the zoning code. The trial court's opinion and order also correctly sets forth the factors identified by the Ohio Supreme Court in *Duncan v. Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (1986), that the Board should consider and weigh in determining whether a variance should be granted.

{¶11} The trial court's opinion, however, makes no analysis whatsoever of the evidence in the record. It does not discuss any relevant testimony, does not identify what evidence the trial court found important or credible in affirming the Board, and does not provide any analysis applying the relevant law to the evidence presented to the Board. It simply finds that the Board's decision "was supported by a preponderance of reliable, probative, and substantial evidence" and that it was not "unconstitutional, illegal, arbitrary, capricious, or unreasonable."

{¶12} Because the trial court's opinion does not identify or analyze any evidence that might have supported the Board's decision, we would be required to perform a de novo review of the record to determine whether the Board's decision was, in fact, supported by a preponderance of reliable, probative, and substantial evidence as the trial court determined. That is not our role, however, in our review of a trial court's decision on an administrative appeal. "It is incumbent on the trial court to examine the evidence.

Such is not the charge of the appellate court. The appellate court is to determine only if the trial court has abused its discretion.” *Henley*, 90 Ohio St.3d at 147, 735 N.E.2d 433, quoting *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261, 533 N.E.2d 264 (1988).

{¶13} A trial court is not required to issue a detailed opinion in an administrative appeal, nor is it required to issue findings of fact and conclusions of law pursuant to Civ.R. 52. *Warrensville Ctr., Inc. v. Warrensville Hts.*, 20 Ohio App.3d 220, 222, 485 N.E.2d 824 (8th Dist.1984). Nevertheless, “for an appellate court to conduct a meaningful review, sufficiently detailed reasoning should be specified in the trial court’s order.” *Cross v. A-Best Prods. Co.*, 8th Dist. Cuyahoga No. 90388, 2009-Ohio-2039, ¶ 22. Here, absent any explanation or analysis whatsoever by the trial court of the evidence in the record, we cannot determine whether the trial court fulfilled its obligation under the statute to review the evidence, nor can we perform our more limited appellate review.

{¶14} Accordingly, we sustain appellants’ first assignment of error, reverse the trial court’s judgment, and remand with instructions for the court to conduct the evidentiary analysis required by the statute and generate an entry capable of review by this court. *See Redilla v. Avon Lake*, 9th Dist. Lorain No. 12CA010204, 2013-Ohio-849, ¶ 8 (trial court’s judgment stating only that the zoning board’s decision was “supported by a preponderance of reliable, probative, and substantial evidence” reversed and matter remanded for trial court to conduct an “appropriate review” of the board’s decision and

enter a judgment containing the court’s “full analysis” so as to be capable of review by the appellate court). Appellants’ second assignment of error is rendered moot by our decision and therefore need not be considered. App.R. 12(A)(1)(c).

{¶15} Judgment reversed and remanded.

It is ordered that appellants recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR