[Cite as *New Richmond v. Byrne*, 2010-Ohio-4948.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

VILLAGE OF NEW RICHMOND, OHIO, An Ohio Municipal Corporation,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-01-004
- vs -	:	O P I N I O N 10/12/2010
TERRENCE K. BYRNE,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2008CVH2492

John C. Korfhagen, New Richmond Village Solicitor, 6346 South Devonshire, Loveland, Ohio 45140 and Schroeder, Maundrell, Barbiere & Powers, Lawrence E. Barbiere, 5300 Socialville-Foster Road, Suite 200, Mason, Ohio 45040, for plaintiff-appellee

Rex A. Wolfgang, 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Terrence K. Byrne, appeals from a summary judgment entered by the Clermont County Common Pleas Court in favor of plaintiff-appellee, village of New Richmond, on New Richmond's complaint for a permanent injunction against Byrne requiring him to demolish his trailer/mobile home. We affirm.

{¶2} Byrne owns a double-wide trailer or mobile home and the parcel of land on which it is situated at 100 Caroline Street, New Richmond, Ohio. On July 8, 2008, the

New Richmond Village Council adopted Resolution #2008-17, declaring the mobile home and grounds of Byrne's property to be a public nuisance under New Richmond Village Ordinance No. 1979-6 and authorizing the village's administrator to remove the "unlawful conditions" if Byrne failed to do so within 45 days of receiving notice of the resolution. The resolution declared the mobile home to be "a haven for insects and vermin," "a fire hazard" and "unsafe for occupancy," and further stated that "the mobile home is a non-conforming use, is clearly damaged beyond 50% of its value, [and] therefore cannot be repaired and must be removed."

{¶3} Byrne appealed to New Richmond's nuisance appeals board, arguing that his mobile home had not been damaged beyond 50 percent of its value. After holding a hearing on Byrne's appeal, the board upheld the resolution's finding that Byrne's mobile home constituted a public nuisance, but board member and village solicitor, John Korfhagen, informed Byrne that, under the village's nuisance ordinance, he had "the right to apply for a special building permit to make the repairs necessary to bring the property into compliance." Thereafter, Byrne applied for a special building permit to make repairs to his mobile home, but the village's zoning inspector, Howard Kuhnell, refused to grant him one for the reason that the mobile home had been damaged to an extent of more than 80 percent of the cost of reproducing it, and under New Richmond's zoning ordinance, a property owner is not permitted to reconstruct any such structure if, like Byrne's mobile home, it is a nonconforming use.

{¶4} Byrne appealed the zoning inspector's decision to New Richmond's Board of Zoning & Floodplain Appeals, arguing that repairs to his mobile home did not exceed 80 percent of its value and that the majority of the repairs already had been completed. A hearing was held on Byrne's appeal on October 7, 2008. The BZA treated Byrne's appeal as a request for a variance and denied it. Two days later, the village's

administrator sent Byrne a letter informing him of his right to appeal the BZA's decision to the "Clermont County Courts."[1] Byrne did not appeal the BZA's decision to the Clermont County Common Pleas Court.

{¶5} On December 11, 2008, New Richmond filed a complaint in the Clermont County Common Pleas Court, requesting a permanent injunction against Byrne requiring him to bring his property into compliance with the village's nuisance and zoning ordinances and prohibiting him from violating those ordinances in the future. Byrne filed an answer to New Richmond's complaint, arguing, among other things, that the village had "unevenly applied" its ordinances.[2]

{¶6} On November 9, 2009, the trial court granted New Richmond's motion for summary judgment on its complaint for a permanent injunction, finding that the "issue of whether Byrne's mobile home is in violation of any zoning ordinance or regulation is res judicata" since Byrne did not appeal the BZA's October 7, 2008 decision. Consequently, the trial court permanently enjoined Byrne from violating New Richmond's nuisance and zoning ordinances and ordered him to remove the mobile home from his property forthwith, since, as a result of his failure to appeal the BZA's decision, "it is established that said structure cannot be reconstructed or restored to bring it into compliance with [New Richmond's nuisance or zoning ordinances] as a matter of law."

{¶7} Byrne now appeals, assigning the following as error:

{¶8} Assignment of Error No. 1:

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1. The BZA's letter to Byrne should have specified that Byrne had a right to appeal the BZA's decision to the "Clermont County *Common Pleas* Court" rather than simply the "Clermont County Courts" to avoid any potential confusion, as Clermont County has a Clermont County *Municipal* Court in addition to a common pleas court. However, it does not appear that Byrne was prejudiced in any way by the letter's wording, nor has he raised this as an issue on appeal.

2. Byrne also filed a counterclaim, alleging that New Richmond had "harassed [him] unfairly about the being requested without requiring work from other parties including members of the New Richmond Council [sic]." The trial court granted summary judgment to New Richmond on Byrne's counterclaim and Byrne has not challenged this part of the trial court's judgment on appeal.

{¶9} "THE COURT ERRED IN HOLDING THAT APPELLANT DID NOT HAVE THE RIGHT TO MAKE THE REPAIRS."

{¶10} Byrne argues the trial court erred in granting summary judgment to New Richmond because a factual issue exists as to whether the items listed in the nuisance resolution were merely maintenance items for which a special building permit was not needed under the village's zoning ordinance. He also argues that even if New Richmond's zoning ordinance required him to obtain a permit before making such repairs, he was entitled to one under the village's nuisance ordinance, and any conflict between the two ordinances should be resolved in his favor, given his status as a property owner. We find Byrne's arguments unpersuasive since they ignore the actual basis of the trial court's ruling.

{¶11} On appeal, a trial court's decision granting summary judgment is reviewed de novo. *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 296. Summary judgment is proper when there is no genuine issue of material fact remaining for trial, the moving party is entitled to judgment as a matter of law, and reasonable minds can only come to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor. See Civ.R. 56(C); see, also, *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The movant bears the initial burden of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt,* 75 Ohio St.3d 280, 293, 1996-Ohio-107. Once this burden is met, the nonmovant has a reciprocal burden to set forth specific facts showing a genuine issue for trial. Id.

{¶12} Contrary to what Byrne alleges in his first assignment of error, the trial court did not hold that Byrne did not have the right to make repairs to his mobile home, but rather, that the factual issues raised by Byrne in opposition to New Richmond's

motion for summary judgment are res judicata as a result of his failure to appeal the BZA's October 7, 2008 decision. We agree with the trial court's decision.

{¶13} The doctrine of res judicata "consists of two related concepts — claim preclusion and issue preclusion." *Fort Frye Teachers Assn., OEA/NEA v. State Employment Relations Bd.,* 81 Ohio St.3d 392, 395, 1998-Ohio-435, citing *Grava v. Parkman Twp.,* 73 Ohio St.3d 379, 381, 1995-Ohio-331. The case before us involves the concept of issue preclusion.

{¶14} "The doctrine of issue preclusion, also known as collateral estoppel, holds that a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or different. [Citations omitted.] *** [T]he collateral estoppel aspect [of res judicata] precludes the relitigation, in a second action, of an issue that has been actually and necessarily litigated and determined in a prior action that was based on a different cause of action. *Whitehead v. Gen. Tel. Co.* (1969), 20 Ohio St.2d 108, 112. 'In short, under the rule of collateral estoppel, even where the cause of action is different in a subsequent suit, a judgment in a prior suit may nevertheless affect the outcome of the second suit.' Id. at 112." *Fort Frye Teachers Assn, OEA/NEA* at 395.

{¶15} In addition to applying to judicial decisions, "*res judicata*, whether claim preclusion or issue preclusion, applies to administrative proceedings that are 'of a judicial nature and where the parties have had an ample opportunity to litigate the issues involved in the proceeding.'" *Grava v. Parkman Twp. Bd. of Zoning Appeals,* 73 Ohio St.3d 379, 381, 1995-Ohio-331, quoting *Set Products, Inc. v. Bainbridge Twp. Bd. of Zoning Appeals* (1987), 31 Ohio St.3d 260, 263, quoting *Superior's Brand v. Lindley*

(1980), 62 Ohio St.2d 133, syllabus. Collateral estoppel is an important element of our legal system, as it provides a necessary degree of finality to decisions rendered by courts or administrative agencies. See, generally, *Doan v. S. Ohio Adm. Dist. Council, Internatl. Union of Bricklayers & Allied Craftworkers* (2001), 145 Ohio App.3d 482, 486, quoting *Superior's Brand* at 135.

{¶16} In this case, Byrne appealed the zoning inspector's decision denying his request for a special building permit to New Richmond's BZA, arguing that he did not need such a permit to make repairs to his mobile home since the damages were not as extensive as the zoning inspector had found and he had already completed most of the repairs anyway. He also argued that he did not need a variance from the village's zoning ordinance because he was not reconstructing his mobile home as the zoning inspector had determined, but instead, was only making "basic necessary repairs" to it.

{¶17} The BZA treated Byrne's appeal as a request for a variance from the village's zoning ordinance and denied it. It is apparent from its decision that the BZA rejected Byrne's contentions and affirmed the findings made by the village's zoning inspector (Kuhnell). Critically, Byrne did not appeal the BZA's decision to the common pleas court, as he had a right to do under R.C. 2506.01(A). At such an appeal, Byrne could have raised the same arguments he has raised throughout these summary judgment proceedings, including whether he was entitled to or even required to obtain a special building permit to repair the nuisance conditions at his mobile home. However, because Byrne failed to appeal the BZA's decision to the common pleas court, the BZA's decision that essentially affirmed the zoning inspector's determinations on these matters became final, and Byrne was precluded under the doctrine of collateral estoppel from relitigating these issues in the current proceeding. See *Fort Frye Teachers Assn. OEA/NEA,* 81 Ohio St.3d at 395 and *Grava,* 31 Ohio St.3d at 263.

{¶18} Byrne never directly addressed or confronted the res judicata issue in his appeal. However when the transcript of the BZA's hearing is read in its entirety, it is apparent that by denying Byrne a variance, the BZA was affirming the zoning inspector's decision and rejecting Byrne's objections to it. In light of the foregoing, the issues that Byrne has raised in this assignment of error did not preclude the trial court from granting summary judgment to New Richmond on its complaint.

{¶19} Consequently, Byrne's first assignment of error is overruled.

{¶20} Assignment of Error No. 2:

{¶21} "THE TRIAL COURT ERRED IN REQUIRING THE STRUCTURE BE DEMOLISHED."

{¶22} Byrne argues the trial court erred in ordering that his mobile home be demolished because New Richmond's complaint only sought an injunction requiring him to comply with the village's nuisance and zoning ordinances and he already had complied with them by repairing the items listed in the nuisance resolution. We disagree with this argument.

{¶23} In the second count of its complaint, New Richmond requested a permanent injunction against Byrne, "terminating the existing violation" of the village's zoning ordinance and "prohibiting future violations of said ordinance." New Richmond presented evidence showing that its zoning inspector had determined that Byrne's mobile home was a nonconforming use that could not be restored or reconstructed under the village's zoning ordinance because of the extent to which the structure had been damaged. The evidence also showed that the village's BZA denied Byrne a variance from its zoning ordinance, thereby affirming the zoning inspector's determinations on these issues, and it was undisputed that Byrne failed to appeal the BZA's decision to the common pleas court as he was permitted to do under R.C.

2506.01(A).

{¶24} As a result of Byrne's failure to appeal the BZA's decision, that decision became res judicata, and Byrne is collaterally estopped from relitigating these issues in the current action since he had a full and fair opportunity to litigate them by appealing the BZA's decision to the common pleas court. See *Fort Frye Teachers Assn. OEA/NEA,* 81 Ohio St.3d at 395 and *Grava*, 31 Ohio St.3d at 263. Therefore, Byrne was not permitted to relitigate the issue of whether his mobile home had been damaged to such an extent that it could not be reconstructed or restored under the village's zoning ordinance and thus has to be demolished to bring Byrne's property into compliance with the village's nuisance ordinance. Consequently, the trial court did not err by ordering Byrne to demolish his mobile home to bring his property into compliance with New Richmond's nuisance and zoning ordinances.

{¶25} Accordingly, Byrne's second assignment of error is overruled.

{¶26} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.