IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Condemnation by the Redevelopment Authority of the City of Lancaster of Real Estate in the City of Lancaster, Pennsylvania, being the property of Elaine Scattergood for property located at 424 Nevin Street	:	
	:	No. 1926 C.D. 2008
Appeal of: Elaine Scattergood	:	Submitted: May 8, 2009

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM FILED: June 19, 2009

Elaine E. Scattergood (Scattergood) appeals the order of the Court of Common Pleas of Lancaster County (trial court) which dismissed Scattergood's preliminary objections and forwarded the matter to the President Judge of the trial court for the appointment of a Board of View.

In 1976, William Boyd (Boyd) purchased real property located at 424 Nevin Street, Lancaster, Pennsylvania (the Property) for use as rental property. In the early to midnineties, Boyd deeded the property to Scattergood, his ex-wife. The Property was vacated in 2002, and was still empty in September 2005. On August 25, 2004, Donald Birk (Birk), a housing inspector for the Department of Housing and Neighborhood Development of the City of Lancaster (City) issued a notice of violations of the City's Property Maintenance Code and a Condemnation Notice. Birk condemned the Property as unfit for human habitation after a police officer fell through a step on the front porch. Birk determined that the Property was vacant, unmaintained for at least two years, a fire hazard, and lacked utilities.

The notice directed Scattergood to replace all deteriorated wood and supports at the porch and repair or replace all damaged or missing spouting. The Notice advised Scattergood that she had ten days to appeal to the Housing Code Board of Appeals. The Property was referred to the Vacant Property Reinvestment Board of the City of Lancaster (the Reinvestment Board). On October 14, 2004, the Reinvestment Board voted to investigate the Property and issue a letter of eligibility of blight to Scattergood. On October 19, 2004, the Reinvestment Board notified Scattergood that the Property was listed as one eligible to be brought before the Reinvestment Board for a declaration of blight as a result of being vacant and unfit for human habitation. The letter was sent by first class mail and certified mail to Scattergood's address in New Jersey. The certified mail was eventually returned by the U.S. Postal Service as "unclaimed." The first class mail was not returned.

William J. Burke (Burke), bureau chief of the City's Bureau of House and Structural Inspection, investigated the Property and determined that the Property met five criteria for blight: 1) the Property was regarded as a public nuisance, 2) the Property was an attractive nuisance for children, 3) the Property was designated as unfit for human habitation, 4) the Property was unfit for its intended use because the utilities, plumbing, heating, sewerage or other facilities had been disconnected, destroyed, removed, or rendered ineffective, and 5) the Property had been tax delinquent for two years. On November 11, 2004, the Reinvestment Board issued a resolution of blight for the Property. The resolution directed Scattergood to correct the violations or file an appeal with the Housing Code Board of Appeals within thirty days. She was informed that if she elected to

rehabilitate the property, she was required to obtain a building permit, provide a rehabilitation plan which would not exceed one year in duration, and post a cash deposit in the amount of $1,000.00 or ten percent of the cost of repairs whichever was less. Scattergood was also informed that failure to rehabilitate the Property in one year or less would result in the Reinvestment Board taking action to acquire the Property. On November 18, 2004, the Reinvestment Board sent a copy of the resolution to Scattergood addressed to the Property which was returned as "Attempted Not Known." The Reinvestment Board also sent a copy to her New Jersey address by certified and first class mail. The certified mail was returned unclaimed. The first class mail was not. On December 3, 2004, the Property was posted with a notice of blight and the resolution. On December 7, 2004, the City placed a legal advertisement in the legal section of the Lancaster New Era and the Intelligencer Journal which served notice of the Reinvestment Board's determination that the Property was vacant and blighted.

Scattergood appeared at the January 13, 2005, meeting of the Reinvestment Board with Boyd, then a practicing attorney. Boyd stated that the porch would be repaired immediately and that he would contact Burke and schedule an inspection of the Property so that Burke could point out other violations. Action on the Property was tabled until the April 14, 2005, meeting. Sometime after the meeting, Scattergood telephoned Burke and told him that the porch had been repaired. Burke investigated and found the repairs inadequate. At the April 14, 2005, meeting, Burke reported that no rehabilitation agreement had been submitted by Scattergood and that he had had no further contact with Scattergood and Boyd. The Reinvestment Board issued a second resolution which

certified the Property as blighted, authorized an appraisal and title search, and authorized notification to the Lancaster City Planning Commission (Planning Commission) for its own determination and certification.

Scattergood then contacted Burke and arranged for an inspection of the Property on May 5, 2005. Burke prepared a list of twelve steps needed to remediate the Property.[1]

Joseph Landis (Landis), a contractor, completed an agreement for rehabilitation for the Property. Scattergood was required to post cash in the amount of ten percent of the rehabilitation costs or $1,000.00 whichever was less. Landis obtained a building permit for the repairs and estimated that the cost of the repairs would be $6,000.00. Consequently, Scattergood was required to post $600.00. Scattergood informed Burke by telephone that she did not have the financial ability to post that amount. Burke suggested that she ask the Reinvestment Board about waiving the fee. No action was taken. Although repairs commenced in May 2005, Burke inspected the Property on July 12, 2005, and determined that the repairs to the roof, which were supposed to have been completed in June, had not been performed. Burke informed the Reinvestment

[1] The twelve steps were as follows: 1) remove all plywood from front porch deck, 2) replace rotted floor boards on front porch, 3) scrape loose and peeling paint from exterior woodwork and repaint, 4) scrape loose paint from exterior brick, 5) spot point at chimney, at first floor rear wall beside back door, and at offset at rear of dwelling, 6) replace rotted wood at northeast corner of front porch to properly support post, 7) replace rear flat roof covering and any rotted sheathing, 8) patch plaster or drywall walls and ceilings where crumbled or falling, 9) resolve mildew problem, 10) install balusters where missing at the second floor hallway, 11) install handrails at stairs from the second to the third floor, and 12) install hard-wired smoke detectors in designated places in the house.

Board of this problem at a July 14, 2005, meeting. At that meeting the Reinvestment Board voted not to accept the rehabilitation agreement because no deposit had been made, Scattergood provided no proof of sufficient funds to complete the work, the June 2005 work listed in the rehabilitation agreement was not completed satisfactorily, and Landis abandoned the project because he was not paid. The Reinvestment Board issued a second resolution which certified the Property as blighted, authorized an appraisal and title search, and authorized transmission to the Planning Commission for its own determination and certification.

On July 20, 2005, the Planning Commission passed a resolution which certified the Property as blighted and authorized the Redevelopment Authority of the City of Lancaster (Authority) to take action to acquire the Property. On August 16, 2005, the Authority passed a resolution which certified the Property as blighted and authorized the Authority to take the steps necessary to acquire the Property. Notification of this action was sent to Scattergood at the Property by first class mail which was returned "unknown" and to her New Jersey address by first class and certified mail. The certified mail was returned as "unclaimed." The first class mail was not returned.

On August 25, 2005, Scattergood contacted the City and asserted that she had one year to complete the remediation work, the Reinvestment Board had waived the deposit, and that taxes on the Property were current though 2003. On September 20, 2005, the Authority passed its second resolution which authorized the condemnation of the Property. On September 26, 2005, the Authority filed a

declaration of taking. Through the declaration of taking, the Authority acquired title to the Property. On November 9, 2005, the Authority filed a Certificate of Service which noted that a petition to distribute damages was sent by first class mail to Scattergood at her New Jersey address and to her daughter, Felicity S. Miller-Jones (Miller-Jones), c/o Boyd. Miller-Jones was named as a creditor. Miller-Jones answered and advised the Authority of an unrecorded deed of trust by which Scattergood's interest in the Property was transferred to Miller-Jones. In new matter, Miller-Jones asserted that Scattergood was not legally competent to handle her own affairs and needed a guardian. Miller-Jones requested leave to intervene.

On November 28, 2005, Scattergood filed a timely response to the Declaration of Taking in the form of an answer and objected to the Declaration of Taking and to the value placed on the Property. On December 5, 2005, the Authority sold the Property to Bogart Properties, LLC (Bogart) for $36,100.00. On May 6, 2006, Bogart sold the Property to a City employee, Suzanne Stallings (Stallings), for $93,080.00.

On January 6, 2006, Boyd notified the Authority, Bogart, and First American Title Insurance that Scattergood had filed a timely response to the Declaration of Taking and that the transfer of ownership was premature. On January 10, 2006, the Authority preliminarily objected to the answer and argued that the exclusive remedy for determining the adequacy of just compensation was through a petition for the appointment of viewers. The same day, the Authority preliminarily objected to Miller-Jones's answer and new matter on the basis that

Miller Jones was not a condemnee and not a party to the underlying action, Miller-Jones did not petition the trial court for leave to intervene before filing her answer and new matter, the allegations of legal incompetence on the part of Scattergood were scandalous, impertinent, and more properly raised in an Orphan's court proceeding, and that the exclusive remedy for determining the adequacy of just compensation was through a petition for the appointment of viewers. On May 16, 2007, the trial court dismissed the Authority's objection to Miller-Jones's standing, granted the motion to strike Miller-Jones's challenges to the just compensation[2], and dismissed the Authority's motion to strike scandalous and impertinent matter in Miller-Jones's answer and new matter. The trial court also dismissed the preliminary objections to Scattergood's answer. The trial court deemed the answer to be preliminary objections and directed the Authority to file a response to them in twenty days.

On November 29, 2007, the trial court heard the matter and took testimony from Birk, Burke, Carolyn Faggart, a city employee, Boyd, and Scattergood. Scattergood challenged the validity of the taking on four grounds: first, she alleged the declaration of blight was incorrect; second, she asserted there was no need for condemnation because she was in the process of repairing the property pursuant to an approved twelve month abatement plan; third, she maintained the Authority exceeded its statutory authority when it condemned the Property because the real reason for the condemnation was for the private gain of a

[2] Because Scattergood had by this time filed a petition for the appointment of viewers, the trial court ruled that Miller-Jones did not have to do so.

City employee; and fourth, she challenged the procedure by which her property was taken.

The trial court determined that the Reinvestment Board did not approve a remediation plan. The trial court also determined that the Authority established that the Property qualified as blighted under Section 12.1(c) of the Urban Redevelopment Law[3], 35 P.S. §1712.1(c). The trial court held that there was no evidence that the Authority declared the Property blighted in order to benefit the ultimate buyer, Stallings. The trial court further determined that Scattergood was aware that the Property was subject to condemnation proceedings and she was not prejudiced by any alleged procedural defects.

On appeal to this Court, Scattergood contends that the trial court abused its discretion because the trial court failed to find that the Authority committed fraud when it took the Property without due process, that the trial court abused its discretion because it did not find that the Authority had "unclean hands," that the trial court abused its discretion because it did not determine that Bogart and Stallings were not bona fide purchasers[4], because the purchase price was so inadequate and without notice that it amounted to fraud, because the trial court abused its discretion when it did not believe that Burke misled Scattergood into believing that the Authority would waive the requirement that she post a bond

[3] Act of May 24, 1945, P.L. 991, *as amended*. This Section was added by the Act of June 23, 1978, P.L. 556.

[4] The trial court did not need to address this issue because Scattergood did not raise it in her preliminary objections to the declaration of taking. She only raised it in a supplemental brief to the trial court.

and failed to inform her that the Authority refused to do so, and because the initial porch repair was good enough to pass inspection.[5]

Initially, this Court notes that the issues Scattergood raises with respect to the sale price and that the porch initially was in satisfactory condition to pass inspection in her Statement of Questions Involved were not addressed in the argument section of her brief. Consequently, these issues are waived. See Pa.R.A.P. 2119; Di Vito v. City of Philadelphia, 601 A.2d 397, 399 n.6 (Pa. Cmwlth. 1991), *petition for allowance of appeal denied*, 533 Pa. 613, 618 A.2d 403 (1992).

The remaining issues were ably disposed of by the Honorable David L. Ashworth in his comprehensive opinion. Therefore, we shall affirm on the basis of that opinion. In Re: Condemnation by the Redevelopment Authority of the City of Lancaster of Real Estate in the City of Lancaster, Pennsylvania, being the Property of Elaine Scattergood for Property Located at 424 Nevin Street (No. CI-05-08339, Filed September 5, 2008).

[5] This Court's review where a trial court has sustained or overruled preliminary objections to a declaration of taking is limited to a determination of whether the trial court abused its discretion or committed an error of law. In re Condemnation of Land for the South East Central Business District Redevelopment Area #1, 946 A.2d 1143 (Pa. Cmwlth. 2008).

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PER CURIAM **O R D E R**

AND NOW, this 19th day of June, 2009, the order of the Court of Common Pleas of Lancaster County in the above-captioned matter is affirmed.