

IN THE UTAH COURT OF APPEALS

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American Fork City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	Case No. 20081052-CA
)	
v.)	
)	F I L E D
Karl G. Peterson,)	(May 6, 2010)
)	
Defendant and Appellant.)	2010 UT App 118

Fourth District, American Fork Department, 081100531
The Honorable Howard H. Maetani

Attorneys: Karl G. Peterson, American Fork, Appellant Pro Se
James H. Hansen and Timothy G. Merrill, Pleasant
Grove, for Appellee

Before Judges Orme, Thorne, and Roth.

PER CURIAM:

Karl G. Peterson appeals his conviction for violating American Fork City's nuisance and beautification ordinance. See American Fork, Utah, Code of Ordinances § 8.08 (2008). We affirm.

Peterson first asserts that the district court erred in denying his motion to dismiss. Peterson contends that he intended to use material stored in his backyard to build an amateur radio tower. It was this material sitting in his yard that, in part, formed the basis for his conviction. Peterson claims that because he intended to use this material to build an amateur radio antenna, state and federal law preempt the ordinance. See Utah Code Ann. § 10-9a-515(1) (2007) ("A municipality may not enact or enforce an ordinance that does not comply with the ruling of the Federal Communications commission in 'Amateur Radio Preemption, 101 FCC 2nd 952 (1985)' or a regulation related to amateur radio service adopted under 47 C.F.R. Part 97."). Peterson's argument is without merit. First, contrary to Peterson's claims, the ordinance in no way regulated Peterson's ability to operate an amateur radio or build an amateur radio antenna. The ordinance regulated, among other

things, the way in which the material was stored and cared for on the property. As such, the state and federal law cited by Peterson was not implicated. Second, even if Peterson was correct in his argument, the information filed by American Fork identified other violations of the ordinance that were unrelated to the material supposedly intended for the radio tower. Specifically, the information also indicated that Peterson had allowed the accumulation of noxious weeds, garbage, and refuse on the property. Further, the information set forth that Peterson had

parked, stored or left, or permitted the parking, storing or leaving of any licensed or unlicensed motor vehicle of any kind, or parts thereof, which is in a wrecked, junked, partially dismantled, inoperative or abandoned condition, . . . upon the property, for a period of time in excess of seventy-two hours.

Therefore, because the motion to dismiss had no relation to these aspects of the information, the district court properly denied the motion to dismiss even if Peterson's argument concerning the amateur radio antenna was well taken.

Peterson next argues that his due process rights were violated because the district court refused to hear from Peterson concerning the setting of a pretrial hearing and because American Fork failed to provide Peterson with discovery. Our review of the record demonstrates that Peterson failed to preserve these arguments for appeal by way of objection or motion. See State v. Low, 2008 UT 58, ¶ 17, 192 P.3d 867. Accordingly, this court cannot review such issues absent plain error or exceptional circumstances. Id. ¶ 19. Peterson has not argued that the district court committed plain error or that exceptional circumstances exist, nor does the record support such a conclusion. Specifically, the record reflects that Peterson never filed a request for discovery nor any motion to enforce his request. Therefore, the district court was never made aware that a problem with discovery might exist. Similarly, the transcript of the October 7, 2008 hearing demonstrates that the district court cut Peterson off only after Peterson continued to argue the

merits of his motion after the court had ruled on that motion. The result was not as Peterson characterizes it--a one-sided exchange with counsel for American Fork.

Affirmed.

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

Stephen L. Roth, Judge