COURT OF APPEALS
DECISION
DATED AND FILED

September 12, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1411

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

LEOPOLDO BALDERAS, JR.,

PLAINTIFF-RESPONDENT,

V.

CITY OF MILWAUKEE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: STANLEY A. MILLER, Judge. *Reversed and cause remanded.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

¶1 PER CURIAM. The City of Milwaukee (City) appeals from a trial court order finding that the City's building inspector's raze order of a property owned by Leopoldo Balderas Jr. was unreasonable. We reverse.

I. BACKGROUND.

¶2 Balderas is the owner of an income property located at 2123 North 24th Street in the City of Milwaukee. On October 6, 1998, the building inspector issued an order directing Balderas to raze the property within thirty days. The order also advised Balderas that he could appeal the order to the Standards and Appeals Commission (SAC). Balderas appealed the order and on January 28, 1999, the SAC determined that the building inspector's order was reasonable. Specifically, the SAC stated:

> The Commission, in arriving at this decision, concluded that the order of the Commissioner of Building Inspection was reasonable because evidence was provided by the Assistant Building Inspection Supervisor that the actual cost to make the subject dwelling on the subject premises code compliant exceeds 50 percent of the assessed value of the improvements divided by the ratio of the assessed value to the recommended value as last published by the Wisconsin Department of Revenue for the City of Milwaukee.[1] The appellant did indicate that the cost of repairs based on insurance adjuster estimates also exceeded the 50 percent ratio. Therefore, such request for restoration is hereby presumed unreasonable and the dwelling on the subject premises in their [sic] present state constitute a public nuisance. In conclusion, the order of the Commissioner of Building Inspection is reasonable as written and as explained by the City of Milwaukee therefore, the order is affirmed in whole and the appeal is hereby dismissed effective the date of this decision.

(Footnote added.) Balderas then petitioned the circuit court pursuant to WIS. STAT. § 66.05(3), asking the trial court to permanently enjoin the enforcement of the building inspector's raze order.

[1] The "ratio of assessed value to recommended value as last published by the Wisconsin Department of Revenue for the City of Milwaukee" was .9914.

¶3 At the hearing, the City called two witnesses. Building Inspector Brian Kraus testified that he observed the property open and vandalized on August 19, 1998. Kraus testified that the assessed value of the property's improvements was $8,800, and, at the time of his inspection, he estimated that the cost of repairs for the first floor alone would be approximately $10,000. Kraus's supervisor, Tracy Williams, also testified. Williams advised the trial court that, using Kraus's list and the Means's cost estimating book, she compiled an itemized breakdown of the needed repairs on the Balderas property and she estimated that the necessary repairs totaled $15,545.[2] Williams calculated that this was equal to 177% of the property's assessed value. She also related to the trial court that nine complaints had been filed concerning the property. While disputing the repair costs, Balderas's attorney stipulated that Williams's calculations were correct.

¶4 Balderas also testified. He told the court that he was a licensed real estate broker by profession and that he bought the property on a land contract. He claimed that he could repair the property for $10,000, even though he admitted that his property insurer estimated that $18,000 worth of repairs needed to be done in order to bring the property up to code requirements. Balderas disputed the City's assessed value. He advised the trial court that he had an appraisal which valued the property at $22,000 and, on that basis, he believed that when repaired the property's value would be between $32,000 and $35,000. Balderas also showed the trial court a $11,000 check he received from his insurance company which he claimed he would use in repairing the property. On cross-examination,

[2] Balderas stipulated that the Means method of cost analysis was a proven acceptable method of estimating the cost of repairs.

he also confirmed that he owed nearly $2,000 in property taxes for the property and that he had several outstanding judgments resulting from other raze orders.

¶5 Following the testimony, the trial court took the matter under advisement and suggested to Balderas that if he deposited the $11,000 check he received from his property insurer with the Clerk of Courts, the trial court would consider that as an additional factor. Balderas deposited the money.

¶6 The trial court rendered a brief written decision entitled, "Notice of Hearing." The "decision," devoid of any findings, merely stated:

> PLEASE NOTE:
>
> PLAINTIFF HAS DEPOSITED WITH THE CLERK OF COURTS $11,000.00 IN REFERENCE TO THIS MATTER. THE MONIES SO DEPOSITED SHALL BE TURNED OVER TO THE CITY OF MILWAUKEE UPON ITS' [sic] PETITION AND HELD IN TRUST FOR THE PURPOSE OF REHABILITATING THE PROPERTY LOCATED AT 2123 NORTH 24TH STREET, MILWAUKEE. THE COURT FINDS THE RAZE ORDER UNREASONABLE AND INJOINS [sic] DEFENDANT FROM RAZING SAID PROPERTY. PLAINTIFF TO PREPARE AN ORDER UNDER THE 5 DAY RULE CONSISTENT WITH HIS ARGUMENTS AND THIS RULING.
>
> Milwaukee County Circuit Court
>
> Date: 04-13-99

II. ANALYSIS.

¶7 "Whether a building inspector's order is reasonable is a question of law." *See* ***Village of Williams Bay v. Schiessle***, 138 Wis. 2d 83, 88, 405 N.W.2d 695 (Ct. App. 1987). Ordinarily, given the nature of the dispute, we "will give more credence to this legal determination by the trial court than we do with other legal questions." ***Id.*** Here, however, the trial court made no factual findings and

gave no reason for its ruling. When the trial court fails to make factual findings, we can review the evidence submitted to determine whether the trial court's judgment is "clearly supported by the preponderance of the evidence." ***Walber v. Walber***, 40 Wis. 2d 313, 319, 161 N.W.2d 898 (1968). Having reviewed the record, we find no evidence to support the trial court's decision.

¶8 The authority for the City of Milwaukee to order a building to be razed can be found in WIS. STAT. § 66.05(10):

> **Razing buildings; excavations**.
>
> ….
>
> **(10)** (a) First class cities may adopt by ordinance alternate or additional provisions governing the placarding, closing, razing and removal of a building and the restoration of the site to a dust-free and erosion-free condition.
>
> (b) This subsection shall be liberally construed to provide 1st class cities with the largest possible power and leeway of action.

The City has adopted provisions dealing with the razing of unsafe buildings. Section 218-4 of the Milwaukee Code of Ordinances provides:

> **Razing of Structures. 1.** REPAIR OR RAZE. All such unsafe buildings, structures or parts thereof as defined in s. 200-11, are declared to be a public nuisance, endangering life, limb, health or property, and shall be repaired and made safe, or razed and removed in compliance with this chapter, as ordered by the commissioner, pursuant to the authority provided in s. 66.05(10), Wis. Stats.

¶9 The City's building inspector was first alerted to the property after a citizen complaint about the building was forwarded to his department by the Milwaukee Police Department. Kraus testified that he needed only to inspect the first floor to determine that the property was unfit for human habitation and that the repair costs would be unreasonable. He stated he observed serious deficiencies

in the first floor of the property, including a lack of porch railings, vandalized siding and trim, vandalized sink and cabinetry, an absence of radiators, and damaged plaster. As noted, Williams testified these repairs alone would cost $15,545. The Milwaukee Code of Ordinances § 218-4(2)(b) provides:

> If the commissioner determines that the cost of such repairs would exceed 50 percent of the assessed value of such building divided by the ratio of the assessed value to the recommended value as last published by the Wisconsin department of revenue for the city of Milwaukee, such repairs shall be presumed unreasonable and it shall be presumed for the purposes of this section that the building is a public nuisance.

Using the formula, the building inspector calculated a figure for repairs of Balderas's property that triggered the code's presumption of unreasonableness. Specifically, the building inspector calculated that, with an assessed value of the building of $8,800, repairs costing more than $4,400 would be considered unreasonable under the municipal code and consequently, the property would be presumed to be a public nuisance.

¶10 Balderas did not challenge the building inspector's observations regarding the condition of the building, nor did he question the validity of the building inspector's mathematics in determining that the cost of repairs exceeded the formula found in the code. Instead, Balderas explained that he wanted to repair the property, that he had sufficient funds to repair it, and since he planned on doing the work himself, the repairs would cost him only $10,000.

¶11 Although lower than the repair estimate testified to at the hearing by the City's witness, Balderas's cost estimate also fell within the code's presumption of unreasonableness. Moreover, he admitted that his property insurer estimated

the repairs at $18,000. Thus, all of the repair figures offered at the hearing fell within the code's presumption of unreasonableness.

¶12 An appeal brought pursuant to WIS. STAT. § 66.05 limits the trial court's role. In such an action, the trial court is to "determin[e] whether the order of the inspector of buildings is reasonable." WIS. STAT. § 66.05.

¶13 Balderas argues that his $23,000 appraisal was a significant factor for the trial court to consider in deciding the raze order was unreasonable. While Balderas may have had an appraisal valuing the property at $23,000, the code specifically refers to the assessed value of the improvements in calculating whether the repairs are unreasonable. Thus, the $23,000 appraisal was irrelevant in determining whether the code's presumption of unreasonableness was met.

¶14 Next, given the trial court's suggestion that Balderas deposit an $11,000 insurance check with the clerk of court, it is apparent that the trial court was swayed by the fact that Balderas wanted to repair the property and had $11,000 to spend on repairs in making its decision. However, whether Balderas wanted to repair the property or had ample funds to do so were not proper issues to be considered by the trial court. Balderas's argument that, under WIS. STAT. § 66.05(3) the trial court can give the owner the option of repairing the building in deciding that the raze order is unreasonable, is contrary to the holding in ***Appleton v. Brunschweiler***, 52 Wis. 2d 303, 190 N.W.2d 545 (1971). There, the supreme court stated:

> We find nothing in the legislative history of ch. 335, Laws of 1959, which created sub. (1)(b) of sec. 66.05, Stats., which shows an intent of the legislature to give the owner an option to repair a building to make it safe and sanitary if the cost of such repairs is unreasonable.
>
> ….

> We must conclude the trial court was correct in its construction of sec. 66.05, Stats.; that this section means that if the repairs to a building are unreasonable as defined in the statute the building must be razed even though it could be made safe by the expenditure of unreasonable cost of repairs.

Id. at 307-09.

¶15 As noted, the trial court's role in appeals from raze orders is limited. It is the City's building inspector's responsibility to order property razed that endangers public safety. The building inspector determined that the repairs exceeded the assessed value of the building. The estimated repairs fell within the municipal code's presumption that the repair cost was unreasonable. Here, no evidence was presented to support the trial court's finding that the raze order was unreasonable. Therefore, we reverse and remand this matter for entry of an order consistent with this decision.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.