IN THE COURT OF APPEALS OF TENNESSEE
AT MEMPHIS
MAY 21, 2003 Session

RONALD L. BOYD, ET AL. v. HARRISON FORBES, ET AL.

Direct Appeal from the Circuit Court for Madison County
No. C-00-35 Donald Allen, Judge

No. W2002-01946-COA-R3-CV - Filed October 30, 2003

This appeal involves an inverse condemnation action against the City of Jackson, Tennessee. The City appeals the decision of the Circuit Court of Madison County finding the City owed the Plaintiffs compensation for the demolition of the improvements on their property. For the following reasons, we affirm the decision of the Circuit Court.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Dale Conder, Jr., Jackson, TN, for Appellant

Steve Greer, Paris, TN, for Appellees

OPINION

Facts and Procedural History

Plaintiffs Ronald and Glenda Boyd (collectively the "Plaintiffs") and Defendants Harrison and Jill Forbes (collectively the "Forbes") purchased property located at 41 Holiday Drive, Jackson, Tennessee, as tenants in common, on September 20, 1996. On that parcel of land were six double wide mobile homes, having a total of thirty-five rental units. The property was purchased for one hundred and seventy-five thousand dollars ($175,000) which was financed by B & H Investments, who took a note from Plaintiffs and the Forbes.

Ronald Boyd, because he worked in the manufacturing housing retail business, agreed to supply parts and materials and provide the expertise required to refurbish the homes on the property, while Harrison Forbes agreed to collect rent and oversee all repairs. No profits were made by Plaintiffs and the Forbes but if any had been made, such profits were agreed to be split equally

among the owners. At no point did the Plaintiffs and the Forbes file a partnership tax return, and each paid their own part of the property taxes.

In the spring of 1998, the tenants on the property vacated the homes, as the Plaintiffs and the Forbes were not making any profits from the rental payments to pay off the note to B & H Investments. At the end of July or early August 1998, James Maholmes ("Maholmes"), the housing code enforcement officer for the City of Jackson, received a complaint about the property owned by Plaintiffs and the Forbes, and he proceeded to inspect the property personally. Upon inspection, Maholmes noted that some of the windows on the homes were broken and a number of the doors were hanging open on their hinges. Subsequent to this inspection, on August 4, 1998, Maholmes sent a complaint and notice of a hearing set for August 13, 1998. It was addressed to Ronald Boyd and Harrison Forbes at care of Airways Apartments, P.O. Box 2481, Jackson, Tennessee. In sending the notice, Maholmes obtained an address from the tax assessor's office, rather than the register of deeds office. Harrison Forbes received the complaint on August 7, 1998, but he did not mention the hearing to the Plaintiffs. Forbes also did not attend the hearing on August 13, 1998, because he did not dispute the allegations in the complaint. As a result, an order was sent, this time only addressed to Forbes, stating that the property would be condemned and that the owners had sixty days to correct the problems on the property.

Maholmes kept in contact with only Harrison Forbes and on November 23, 1998, stated that Forbes had until November 30, 1998, to secure a demolition team to raze the structures on the property. Forbes did not secure a bid and, subsequently, the City of Jackson awarded the demolition bid to King Bradley on February 22, 1999. The structures on the property were razed shortly after this award. During this period of time, the Plaintiffs knew nothing of the hearing, the order, or the demolition of the improvements on the property until the spring of 1999 when Mr. Boyd drove by the land and saw the structures on it were destroyed. Between the time the complaint and notice of a hearing were sent in August 1998 to the point at which the Plaintiffs discovered the razing of the improvements, the City of Jackson did not make a finding that the necessary repairs to the improvements would cost more than 75% of the tax appraisal value of the property, nor did the City take any action to secure the windows and doors on the premises.

The thirty-five units on the property, when tenants occupied the homes, rented at seventy-five dollars per week per unit. The tax appraisal value of the property before the improvements were razed was $140,600 and the improvements, based on an appraisal by James Murdaugh, were valued at $49,700 as stipulated by the parties. For the cost of demolition, the City filed a lien on the property in the amount of $6,933.85.

Plaintiffs filed an action against the Forbes for failing to notify the Plaintiffs of the proceedings and against the City of Jackson for inverse condemnation. On February 15, 2000, the City removed the action to the United States District Court for the Western District of Tennessee and filed an answer alleging that proper notice had been given and that Harrison and Jill Forbes were also at fault. On May 15, 2001, the district court entered an order dismissing Plaintiffs' complaint without prejudice for lack of ripeness because Plaintiffs had failed to utilize state inverse condemnation

remedies and made no claim that such procedures were inadequate. In response, Plaintiffs filed a motion to remand the case to Madison County Circuit Court, which was granted on June 11, 2001. A hearing on this matter was held before the Honorable Don Allen on May 1, 2002. On July 9, 2002, the trial court found in its order that the City had failed to give proper notice of the condemnation, failed to make reasonable efforts to ascertain all interested parties, failed to follow City Ordinance 12-708, and failed to act pursuant to its "police powers." The court below declared the City's lien in the amount of $6,933.85 to be void and awarded Plaintiffs damages in the amount of $24,850, half of the appraised value of the improvements that were razed. The City filed its appeal to this Court and presents the following issues for our review:

I. Whether the trial court erred in finding that Plaintiffs and the Forbes were not partners;
II. Whether the trial court erred in finding that the City of Jackson's notice of condemnation was insufficient; and
III. Whether the trial court erred in finding that the City did not act pursuant to its police powers, and, therefore, Plaintiffs were entitled to compensation.

Additionally, Plaintiffs raise the following issue in their brief:

IV. Whether the trial court correctly found that the City of Jackson had no authority to order the demolition of the buildings without a finding that the costs of repairs exceeded 75% of the property value.

For the following reasons, we affirm the decision of the trial court.

Standard of Review

Tennessee Rule of Appellate Procedure 13(d) provides that this Court's review of a trial court's findings of fact shall be *de novo* upon the record, accompanied by a presumption of correctness of the finding unless the evidence preponderates otherwise. Tenn. R. App. Pro. 13(d). In our review of the application of the law to the trial court's findings of fact, we apply only a *de novo* standard of review without a presumption of correctness. *First Utility District of Knox County, Tennessee v. Jarnigan-Bodden*, 40 S.W.3d 60, 62 (Tenn. Ct. App. 2000). Generally, "what will constitute a partnership is a matter of law, but whether a partnership exists under conflicting evidence is one of fact." *Wyatt v. Brown*, 281 S.W.2d 64, 68 (Tenn. Ct. App. 1955) (citations omitted).

Law and Analysis

Tenn. Code Ann. §§ 13-21-102 and -103 (1999) authorize the governing body of a municipality to adopt ordinances regulating structures within the municipality which are unfit for human occupation or use. Tenn. Code Ann. § 13-21-103 further provides various procedural requirements for any such municipal ordinance. In particular, it states:

> [W]henever it appears to the public officer (or on the public officer's motion) that any structure is unfit for occupation or use, the public officer shall, if the public officer's preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest of such structure, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or the public officer's designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the serving of the complaint, that:
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> > (A) The owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and
> >
> > (B) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer. . . .

Tenn. Code Ann. § 13-21-103(2)(A-B) (1999). In addition, Jackson City Ordinance 12-706 requires the public officer, upon a determination that a structure is unsafe, to serve a letter of complaint to the property owner. That letter "shall contain notice of a time and date for a hearing before the director (or his designated agent), said date being not more than thirty (30) days, nor less than ten (10) days from the date the letter of complaint is served. Service shall be complete upon mailing." Tenn. Code Ann. § 13-21-101 defines "owner" as "the holder of the title in fee simple and every mortgagee of record" and "parties in interest" as "all individuals, associations, corporations, and others who have interests of record in a structure and any who are in possession thereof[.]" Tenn. Code Ann. § 13-21-101(4-5) (1999). Jackson City Ordinance 12-702(4-5) contains identical definitions for these terms.

In this case, Plaintiffs received no notice of any of the proceedings and, in fact, knew nothing of the demolition until months after the hearing, when Ronald Boyd happened to drive by the property and see the improvements razed. Maholmes and the City did not search the register of deeds office, and, had they done so, they would have found record legal title belonged not only to Harrison Forbes but also to Ronnie and Glenda Boyd and Jill Forbes. Additionally, a title search would have revealed B & H Investment's interest as a mortgagee in the property. B & H would, accordingly, also be entitled to notice as a mortgagee of record. Instead, the City followed its "usual procedure" and obtained a property owner's address from the tax assessor's office. Nothing in the record disputes the City's lack of diligence in this respect. In addition, the notice that was sent by the City to Harrison Forbes at the Airways Apartments address was also defective because a hearing was set for only nine days after the complaint and notice were mailed. This finding is also undisputed by the City.

The City argues that its actions rise to the level of "substantial compliance" and, therefore, the defective notice should be overlooked. This Court has held that "substantial compliance" can be defined as "actual compliance in respect to the substance essential to every reasonable objective

of the statute." *Morrow v. Bobbitt*, 943 S.W.2d 384, 389 (Tenn. Ct. App. 1996) (quoting *Stasher v. Harger-Haldeman*, 372 P.2d 649, 652 (Cal. 1962)). In *Morrow*, this Court addressed the notice requirements for a tax sale pursuant to Tenn. Code Ann. § 67-5-2502 and whether or not an erroneous period of redemption printed in a newspaper invalidated a publication notice. *Id*. at 388. We held it did not since the period of redemption was not required to be in a notice. *Id*. at 390. Unlike *Morrow*, the City here has failed to meet not only the time requirements but also the requirement to send notice to all "parties in interest." Both requirements are mandatory under the Tennessee Code and under the City's own Ordinance 12-706(2)(a). Indeed, it should be apparent that the City has failed to comply with the substance essential to every reasonable objective of Tenn. Code Ann. § 13-21-103 and Ordinance 12-706(2)(a). The Plaintiffs did not know of the notice, hearing, or demolition of their property until after all these events had transpired over the course of approximately nine months. This is not a case of a typographical error in a notice which may call for the saving grace of "substantial compliance," and, therefore, this Court finds that notice was defective in this case. *See id.* at 389.

Next, City argues that, though notice may have been defective, Harrison Forbes and Ronald Boyd were partners, and, therefore, any deficiencies in the notice were waived by the actions of Forbes.[1] After our review of the record, we uphold the finding that no partnership existed between the Forbes and the Boyds. At the time the events in question took place, Tennessee utilized an older version of the Uniform Partnership Act. Specifically, the Code provided that "tenancy in common . . . does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property. . . ." Tenn. Code Ann. § 61-1-106(2) (1999). In addition, the Code stated that "sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived. . . ." Tenn. Code Ann. § 61-1-106(3) (1999). To determine if a partnership exists, "no one fact or circumstance may be pointed to as a conclusive test" and this Court should consider "all relevant facts, actions, and conduct of the parties." *Bass v. Bass*, 814 S.W.2d 38, 41 (Tenn. 1991) (citing *Roberts v. Lebanon Appliance Service Co.*, 779 S.W.2d 793, 795 (Tenn. 1989)). "[I]f [the parties] place their money, assets, labor, or skill in commerce with the understanding that profits will be shared between them–the result is a partnership whether or not the parties understood that it would be so." *Id*. (citing *Roberts v. Lebanon Appliance Service Co.*, 779 S.W.2d 793, 795 (Tenn. 1989)).

In this case, the Plaintiffs and the Forbes bought the property as tenants in common. Ronald Boyd testified that no profits from any of the rent collected was shared because all money collected was reinvested in the property. However, he did state that had there been profits, they would have been split among the owners. Next, Boyd testified that he agreed to provide parts, supplies, and expertise in refurbishing the mobile homes on the property while Forbes would oversee repairs and collect rent from tenants. Boyd also gave money to Forbes to pay the bills for the property. But

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[1] City also argues that any notice to Forbes would be imputed to Boyd because of a partnership. Since this Court finds that notice was defective for Forbes, any notice imputed to Boyd would likewise be defective. Therefore, it is unnecessary for this Court to address this argument.

Boyd stated that he paid his own share of the property taxes and that no partnership tax return was filed. Finally, two of the co-tenants, Jill Forbes and Glenda Boyd, contributed no money, assets, skill or labor to the property. The trial court found that no partnership existed under these circumstances and the evidence does not preponderate against this finding. Therefore, any action by Harrison Forbes did not constitute a waiver of an appeal or any other safeguard procedures on the part of the Plaintiffs.

In addition to failing the notice requirements of Tenn. Code Ann. 13-21-103(2) and Ordinance 12-706(2)(a), Plaintiffs, in their brief, point out that the City failed to comply with Ordinance 12-708(2) which states: "If the repair, alteration or improvement cost exceeds seventy-five (75) percent of the taxable value of the property, the director may order the structure to be removed or demolished." By his own testimony, James Maholmes, the housing code enforcement officer at the time notice was sent and the improvements were demolished, admitted that the City made no estimates of the repair costs. Ronald Boyd testified that the property held a total tax appraisal value of $140,600. Therefore, in order for Maholmes to order demolition pursuant to the City's Ordinance 12-708, the cost of repairing the improvements would need to exceed $105,450. Given that the parties stipulated the improvements themselves were only worth $49,700 and that the only problems with the property were broken windows and unhinged doors, we conclude that the record supports the finding that the City failed to prove it made a determination that the cost of repairs would exceed 75% of the property value.

Finally, the City argues that Plaintiffs should not be compensated for the destruction of the improvements because the City was exercising its "police power." We find no merit in this argument. The "police power" of a municipality has been defined as "the power of a governmental body to impose laws and regulations which are reasonably related to the protection or promotion of the public good, such as health, safety, or welfare" and "[u]nder its police power, a municipality may *enact ordinances* to protect the health, safety, and general welfare of the public." 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 384 (2003) (emphasis added). The City's enactment of the ordinance itself is an exercise of the City's "police power." If this Court adopted the City's argument, it would allow the City to adopt ordinances pursuant to its police power and then disregard those ordinances when convenient. This would render such regulations a nullity. Given that the City's police power to create ordinances regulating structures unfit for human use is granted to the City by the General Assembly in Tenn. Code Ann. § 13-21-102, and that § 13-21-103 requires such ordinances to contain certain procedural safeguards, the City may not simply disregard such procedures and declare such action to fall under its general "police power." Though actions taken by a city pursuant to its police power do not call for compensating the injured party, the City of Jackson did not act pursuant to its police power and, therefore, Plaintiffs are entitled to compensation.

Conclusion

For the foregoing reasons, we affirm the decision of the Circuit Court. Costs are judged against Appellant, the City of Jackson, and its surety, for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE