STATE OF MICHIGAN

COURT OF APPEALS

CITY OF ALLEN PARK,

Plaintiff-Appellee,

v

ESTATE OF CHESTER O. GERISCH, by JONATHAN P. GERISCH, Personal Representative,

Defendant-Appellant,

and

WAYNE COUNTY TREASURER,

Defendant.

UNPUBLISHED
December 19, 2017

No. 334969
Wayne Circuit Court
LC No. 16-001916-CZ

Before: TALBOT, C.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

In this nuisance abatement matter, defendant property owner appeals as of right an order to demolish a residential structure known as 15073 Philomene, Allen Park, Michigan. For the reasons set forth in this opinion, we vacate the trial court's order and remand for further proceedings consistent with this opinion.

Plaintiff, the city of Allen Park, filed a complaint to abate a public nuisance and requested an order to show cause why the nuisance should not be abated. Defendant answered the complaint denying the substantive allegation. Defendant also argued, as an affirmative defense, that plaintiff had failed to exhaust its administrative remedies under its own ordinances. The proceedings below consisted of three show cause hearings. No evidentiary hearing or bench trial was held. Neither party moved for summary disposition.

At the first hearing, plaintiff's counsel showed the court several photographs of the property. The court returned the photographs to counsel and they were never admitted into

evidence.[1] At the second hearing, the trial court instructed defendant to make all the repairs on plaintiff's "list" within 60 days and obtain a certificate of occupancy. If defendant failed to do so, the court stated it would grant plaintiff's relief and order the building demolished. At the third show cause hearing, the repairs had not been made. Plaintiff's building official, David Boomer, testified that the city had been "getting calls" about the property for four years. Plaintiff's counsel interjected that neighbors had called to complain about raccoons and squirrels on the premises. The trial court stated it would grant plaintiff's requested relief and issued a written order to that effect on June 30, 2016. Defendant timely moved for reconsideration, which the trial court denied. This appeal then followed.

Defendant first argues that there was insufficient evidence on the record to support the trial court's finding that a nuisance existed and was subject to abatement by demolition. "Nuisance-abatement proceedings brought in the circuit court are generally equitable in nature." *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 270; 761 NW2d 761 (2008). "We review de novo the circuit court's equitable decisions, but review for clear error the findings of fact supporting those decisions." *Id*. "A finding is clearly erroneous where, after reviewing the record, this Court is left with the definite and firm conviction that a mistake has been made." *Jackson-Rabon v State Employees Retirement Sys*, 266 Mich App 118, 119-120; 698 NW2d 157 (2005) (internal quotation marks omitted).

"Circuit courts have broad equitable authority to abate nuisances under MCL 600.2940." *Ypsilanti Charter Twp*, 281 Mich App at 275-276. "However, before proceeding to abate a nuisance under the terms of MCL 600.2940, a court must naturally first determine that a nuisance actually exists." *Id*. at 276. "The word 'nuisance' has been variously defined and is so comprehensive that its existence must be determined from the facts and circumstances of each case." *Id*. "However, at its core, public nuisance includes interference with the public health, the public safety, the public morals, the public peace, the public comfort, and the public convenience in travel." *Id*. (internal quotation marks omitted).

MCR 2.517(A) states, in part, as follows:

> (1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.
>
> (2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.
>
> (3) The court may state the findings and conclusions on the record or include them in a written opinion.

[1] The photographs were later filed with the lower court ostensibly to be made part of the record for this appeal.

"That rule applies equally to both criminal and civil cases." *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988). "The purpose of making factual findings is to reveal the law applied by the fact finder." *Id.* "The appropriate remedy for insufficient findings of fact is to remand the case for additional fact-finding." *Id*. The existence of a public nuisance is a question of fact. *Ypsilanti Charter Twp*, 281 Mich App at 276.

In the present case, the trial court did not hold an evidentiary hearing on the matter and as a consequence, there are no findings of fact or law from which this Court can glean the basis for the trial court's decision. For example, there is nothing in the record which indicates that the trial court made a finding as to whether a nuisance actually exists. Given the lack of any substantive record or decision by the trial court, we are forced to conclude that the trial court's rulings were clearly erroneous and that the trial court erred by ordering that the structure be demolished.

Turning to defendant's contention that plaintiff was required to exhaust its administrative remedies under its own ordinances before filing nuisance-abatement proceedings in circuit court, we note that a claim that a party has failed to exhaust administrative remedies is a challenge to the trial court's subject matter jurisdiction. *Bruley Trust v Birmingham*, 259 Mich App 619, 623; 675 NW2d 910 (2003). "Whether a court has subject matter jurisdiction is a question of law that we review de novo." *Id*. (citations omitted).

MCL 600.2940(1) states: "All claims based on or to abate nuisance may be brought in the circuit court. The circuit court may grant injunctions to stay and prevent nuisance." This clear legislative grant of subject matter jurisdiction disposes of defendant's claim that plaintiff was required to exhaust administrative remedies. The circuit court clearly had the authority to hear and decide plaintiff's lawsuit against defendant without regard to any municipal ordinance. See also *Ypsilanti Charter Twp*, 281 Mich App at 275-276 ("Circuit courts have broad equitable authority to abate nuisances under MCL 600. 2940.").

The trial court's order is vacated and the case remanded for further proceedings consistent with this opinion. Plaintiff, having prevailed in full, may tax costs. MCR 7,219(A). We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Stephen L. Borrello
/s/ Michael J. Riordan

Court of Appeals, State of Michigan

ORDER

City of Allen Park v Estate of Chester O. Gerisch

Docket No. 334969

LC No. 16-001916-CZ

Michael J. Talbot
Presiding Judge

Stephen L. Borrello

Michael J. Riordan
Judges

The Court orders that the December 19, 2017 opinion is hereby AMENDED to correct a clerical error. On page three, last paragraph, the second sentence is amended to read: Defendant, having prevailed in full, may tax costs.

In all other respects, the December 19, 2017 opinion remains unchanged.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 20 2017
Date

Jerome W. Zimmer Jr.
Chief Clerk