State of Michigan
Court of Appeals

Lansing Office

TO ATTORNEYS OF RECORD:

Enclosed with this letter is the decision and opinion in the entitled matter. Under MCR 7.215(E), this opinion is the judgment of the Court of Appeals. The official date of the filing of this opinion is the date that is printed on it, and all time periods for further action under the rules will run from that date. See MCR 7.215(F) and (I), and MCR 7.302(C)(2)(b).

If the words *For Publication* appear on the face of this opinion, it will be published in the Michigan Appeals Reports. If the word *Unpublished* appears on the face of this opinion, it was not slated for publication at the time it was released. See MCR 7.215(A).

Although an opinion that is to be published is official as of the date that is printed on it, actual publication will be delayed until editorial work is completed in the Reporter's Office. This editorial work may result in slight changes in style or in citations when the opinion is published in the Michigan Appeals Reports.

I hereby certify that the annexed is a true and correct copy of the opinion filed in the record of the Court of Appeals in the entitled matter and that the date printed thereon is the actual date of filing.

Very truly yours,

Sandra Schultz Mengel
Chief Clerk

SSM/las

Encl.

cc: Trial Judge or Agency

STATE OF MICHIGAN

COURT OF APPEALS

YPSILANTI FIRE MARSHALL, and CITY OF YPSILANTI,

Plaintiffs-Appellees,

v

DAVID KIRCHER,

Defendant-Appellant.

UNPUBLISHED
June 9, 2009

No. 281742
Washtenaw Circuit Court
LC No. 04-000825-FH

Before: Bandstra, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

In this action to abate a nuisance, defendant, David Kircher, appeals as of right the October 1, 2007, order of Washtenaw Circuit Judge Donald E. Shelton, allowing plaintiffs to raze the building located at 107 E. Cross Street in Ypsilanti. We affirm.

This case is another in the long series of disputes between defendant and the City of Ypsilanti and its Fire Marshal regarding properties owned by defendant in Ypsilanti. As noted above, at issue here is property owned by defendant at 107 E. Cross Street. This property was initially damaged in a fire in March 2004; it was further damaged by one or more subsequent fires while the building was awaiting repair. Plaintiff instituted this action on August 12, 2004, and filed an amended complaint in October 2005, asserting that the property was dangerous to the public and remained a fire hazard, and that it constituted a nuisance and should be repaired, consistent with city ordinances and state statutes, or razed. On October 1, 2007, after affording defendant ample time to restore the building to an acceptable condition, the trial court declared the building a nuisance and ordered that it be razed.

Defendant argues that the trial court did not have jurisdiction to decide the nuisance action because he had not exhausted his administrative remedies with respect to his attempts to obtain a building permit as provided for in the Still-DeRossett-Hale Single State Construction Code, MCL 125.1501 *et seq.* We disagree.

"Whether a court has subject-matter jurisdiction is a question that this Court reviews de novo." *Charter Twp of Shelby v Papesh*, 267 Mich App 92, 109; 704 NW2d 92 (2005). "The Legislature has conferred on the circuit courts broad equitable jurisdiction over nuisance-abatement proceedings, irrespective of the nature and extent of the particular alleged nuisance." *Ypsilanti Fire Marshall v Kircher (On Reconsideration)*, 273 Mich App 496, 527 n 12; 730

NW2d 481 (2007); *City of Detroit v Village of Highland Park*, 186 Mich 166, 182; 152 NW 1002 (1915) ("Of the transcendent power in an equity court, under its general jurisdiction, to restrain and abate a continuing public nuisance for which, by reason of its extent and nature, there is no plain and adequate legal remedy, there can be no question."). Additionally, "[a]ll 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." MCL 600.2940(1). Because statutory language clearly gives the trial court jurisdiction over nuisance actions, defendant's jurisdictional argument is without merit.

Further, defendant fails to cite any legal authority supporting his position that the circuit court's jurisdiction over this nuisance action was affected in any way by defendant's continuing and somewhat related administrative efforts to obtain a building permit for the premises. "An appellant may not merely announce a position and leave it to this Court to discern and rationalize a basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (internal citations omitted).

Moreover, we note that defendant argues that "[i]n no event did [the] Judge . . . have jurisdiction over Mr. Kircher's application for a permit to make repairs to the building . . . ." However, in the October 1, 2007, order at issue in this appeal, the trial court did not assume jurisdiction over defendant's building permit application. Rather, it held that the building was a nuisance, that defendant had sufficient time to abate the nuisance and that defendant did not do so. Defendant does not contest these findings. On the record, it was apparent that defendant did not have plans to abate the nuisance in a way satisfactory to the city, and plaintiffs were permitted to abate the nuisance. Regardless of the inapposite arguments offered by defendant on appeal, there can be no doubt that the trial court had jurisdiction to enter its order abating the nuisance.

Defendant next argues that the trial court's decision infringed upon his constitutional rights to private ownership of property. Again, we disagree. As this Court explained in *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 272; 761 NW2d 761(2008):

> The federal and state constitutions both proscribe the taking of private property for public use without just compensation. US Const, Am V; Const 1963, art 10 § 2; *Adams Outdoor Advertising v East Lansing (After Remand)*, 463 Mich 17, 23; 614 NW2d 634 (2000). However, the nuisance exception to the prohibition on unconstitutional takings provides that because no individual has the right to use his or her property so as to create a nuisance, "the [s]tate has not 'taken' anything when it asserts its power to enjoin [a] nuisance-like activity." *Keystone Bituminous Coal Ass'n v DeBenedictis*, 480 US 470, 491 n 20; 107 S Ct 1232; 94 L Ed 2d 472 (1987). Indeed, "[c]ourts have consistently held that a [s]tate need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance." *Id.* at 492 n 22.

On appeal, defendant does not dispute the trial court's ultimate conclusion that the building constituted a nuisance. Therefore, "[b]ecause plaintiff was exercising its legitimate police power

to abate a public nuisance on defendant's property, no unconstitutional taking occurred." *Id.*; *Kircher (On Reconsideration)*, *supra* at 555 n 22.

We affirm.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro