

RENDERED: March 28, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002174-MR

TOM WALKER AND
JOYCE WALKER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 96-CI-006862

REGIONAL AIRPORT AUTHORITY
OF LOUISVILLE AND JEFFERSON COUNTY
AND THE CITY OF LOUISVILLE

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: HUDDLESTON, PAISLEY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Tom Walker and Joyce Walker (collectively Walker) appeal from a summary judgment on their claim against the City of Louisville and the Regional Airport Authority (RAA) for the allegedly improper demolition of a house on property owned by them near Standiford Field in Louisville, Kentucky. The Jefferson Circuit Court granted summary judgment on all claims in favor of the defendants and for the defendant City of

Louisville on its counterclaim for back property taxes. We affirm.

The building in question had stood empty for more than eleven years, boarded up, near the airport in Louisville. A building inspector for the City of Louisville, George Knight, determined that the building was unsafe to the point of posing a threat to public safety. The City then contacted the RAA, which was conducting other demolitions in the area, requesting that RAA perform an emergency demolition. The RAA obtained a permit on March 30, 1993, and the structure was demolished that same day.

This action was filed in November 1996, claiming that the RAA had wrongfully demolished the house with no notice to the property owners. RAA filed a third party complaint against the City, seeking indemnification. The City then filed its answer and counterclaim for back taxes owed and reimbursement of demolition costs.

The City moved for summary judgment on Walker's claims in October of 2000, which the circuit court granted. The court also granted summary judgment in the City's favor on the City's claims against Walker for reimbursement of demolition expenses and back taxes owed. This appeal followed.

The circuit court correctly held that the city's action was an authorized exercise of its general police power.

Quoting Johnson v. City of Paducah, Ky., 512 S.W.2d 514 (1974), the court said, "In the exercise of the police power by the city, property which is a menace to public safety or health may be destroyed without compensation when this is necessary to protect the public." The court then held that the City's action was based on the findings of the building inspector, who discovered that the building was in a state of collapse and posed a hazard to persons and adjoining property. Specifically, Knight's findings were, "I found this structure is unsafe and very dangerous. The roof and exterior wall frame members have totally collapsed. The south wall has collapsed onto the adjacent property." Knight then recommended immediate demolition.

Walker argues that summary judgment was inappropriate, and asserts that the court erred by relying on the building inspector's testimony. However, Walker does not understand that the applicable standard is not just the "impossibility" standard of Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (1991), but also whether the City's demolition of the house was reasonably necessary to protect the public interest.

Polsgrove v. Moss, 154 Ky. 408, 157 S.W. 1133 (1913). This is, essentially, reviewed as a decision of an administrative body, and the standard applied by the circuit court was whether the decision was supported by substantial evidence. We agree that

it was. We also agree with the City that Walker's naked assertion that he could have renovated the property is unavailing, when he has conceded that he left the structure boarded up for eleven years and did not so much as peer within it to determine its condition in all that time. Walker advanced no affirmative evidence to defeat the claim that the structure was unsafe and that its demolition was required to protect the public safety. Walker presents nothing on appeal that would compel a contrary finding. As a result, we affirm the judgment of the circuit court.

With respect to the demolition costs and back taxes, it is clear that the City is entitled, by statute¹ and by city ordinance², to reimbursement for "reasonable value of labor and materials" used in remedying the situation. Walker's only argument against reimbursement is tied to the argument respecting the necessity of the demolition; if the City unnecessarily demolished their property, they argue they do not need to reimburse the City for that expense. Since we are affirming the circuit court with respect to the issue of the necessity of the demolition, we also uphold its judgment with respect to the reasonable reimbursement for the same.

¹ KRS 381.770.

² Ordinance 61-1991 §157.042 (H).

Finally, with respect to the property taxes, Walker argues for the first time on appeal that the city charged a higher tax rate on the property, classifying the property as abandoned, when in fact it was not abandoned. However, as Walker failed to raise this argument in the circuit court, we decline to address its merits and affirm the decision of the circuit court, noting that whatever the appropriate tax rate may be, Walker has not disputed that the property taxes were and are unpaid and that the City is entitled to receive them.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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