

RENDERED: February 4, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002095-MR

EDDIE J. THOMPSON, JR., ADMINISTRATOR;
AND ALBERTA B. THOMPSON

APPELLANTS

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA SUMME, JUDGE
ACTION NO. 00-CI-02615

CITY OF COVINGTON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE AND McANULTY, JUDGES; EMBERTON, SENIOR JUDGE.¹

McANULTY, JUDGE: Eddie J. Thompson, Jr. (Thompson), pro se,
appeals the City of Covington's right to condemn property in
which he has an interest as an heir of Eddie J. Thompson, Sr.
Because Thompson did not argue before the trial court that he
had no notice that the property at issue was certified as

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

blighted or deteriorated, thus not preserving this argument for our review, we affirm the judgment.

On August 28, 2003, the Kenton Circuit Court issued an interlocutory judgment under KRS 416.610. It adjudged that the City of Covington, Kentucky had the right under the Eminent Domain Act of Kentucky (KRS 416.540 to KRS 416.670) and other applicable law to exercise its right of eminent domain to condemn real property located at 1125 Russell Street, Covington, Kenton County, Kentucky (the Property). The commissioners appointed under KRS 416.580 had previously determined that the fair market value of the Property was \$5,000.00. In its judgment, the circuit court provided that upon payment of \$5,000.00, the City of Covington shall take possession of the Property under the conditions and limitations set forth in the petition for condemnation.

More than five years before entry of the judgment, the Vacant Properties Review Commission of the City of Covington certified under KRS 99.700 to KRS 99.730 that the Property was blighted or deteriorated and that the owner had failed to correct the deterioration. The record owner of the Property was Eddie J. Thompson, Sr., who died intestate in December of 1991. Thompson is one of the surviving children of Eddie J. Thompson, Sr. Thus, he is an heir and took an interest -- along with many other heirs -- in the Property through intestacy.

Thompson presents three arguments founded on principles of procedural due process for our review. First, the Code Enforcement Board for the City of Covington failed under KRS 99.720 to certify or notify the owners that the Property was blighted or deteriorated. Second, the Code Enforcement Board failed under KRS 99.720 to demand abatement within 90 Days of the conditions that rendered the property blighted and deteriorated. Third, the City of Covington took the Property without notice to the owner.

But the arguments presented in this appeal fail because Thompson never raised them in the proceedings below. Thus, they were not preserved for our review. "It is a matter of fundamental law that the trial court should be given an opportunity to consider an issue, so an appellate court will not review an issue not previously raised in the trial court." Marksberry v. Chandler, 126 S.W.3d 747, 753-54 (Ky.App. 2003).

Considering the answer that Thompson filed in the condemnation proceedings, it is clear that -- at that time -- he took issue with the commissioners' property valuation determination and the distribution of the \$5,000.00 award. He raised no question before the trial court as to whether he or the other heirs had notice that the property was blighted or deteriorated and the condition required abatement. So he has failed to properly preserve this issue for appellate review.

The City of Covington had the power of eminent domain under KRS 82.082 and chose to exercise that power in accordance with the Eminent Domain Act of Kentucky for the public purpose of eliminating a blighted and deteriorated property. Because Thompson never raised in the underlying proceedings any of the due process arguments that he presents to this Court, we affirm the interlocutory judgment of the trial court to condemn the property.

ALL CONCUR.

BRIEF FOR APPELLANT:

Eddie J. Thompson, Jr., pro se
Covington, Kentucky

BRIEF FOR APPELLEE:

Jeffrey J. Otis
Covington, Kentucky