STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1686

Aychoeun Tea,
Relator,

vs.

City of St. Paul,
Respondent.

Filed June 30, 2009
Affirmed
Connolly, Judge

City of St. Paul

Aychoeun Tea, 2386 Stonecrest Path Northwest, Prior Lake, MN 55372 (pro se relator)

John Choi, St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Considered and decided by Connolly, Presiding Judge; Willis, Judge*; and Muehlberg, Judge.**

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

** Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Relator argues that the city violated her right to procedural due process by not providing her notice of the pending condemnation proceedings, and that the city's decision was arbitrary and capricious. Because no due-process violation occurred, and because the city's decision is supported by the record, we affirm.

FACTS

Relator Aychoeun Tea purchased a property located at 261-263 Sherburne Avenue in St. Paul (the property) on May 1, 2008. Tea admits that the deed reflecting her ownership of the property was not recorded with the county until June 5, 2008. While the sale of the property was pending and following the closing of the sale, the property was the subject of a substantial-abatement proceeding before the St. Paul City Council.

On April 1, 2008, the St. Paul Department of Safety and Inspections served an order to abate nuisance building on the known interested or responsible parties for the property, in accordance with Chapter 45 of the St. Paul Legislative Code. A January 2008 search of county property records listed the interested or responsible parties for the property as the "Bank of New York Trustee/Co Countrywide Home Loans, Inc.," Jose Perez, and "Thomas-Dale/District 7 Planning Council". Tea was not mailed a copy of the order to abate nuisance building, as the deed reflecting her interest in the property was not yet recorded. The order informed the interested parties that the structure on the property must either be brought into compliance with code or demolished by May 1, 2008.

After the compliance date passed, on May 9, 2008, the city mailed a notice of public hearings to Bank of New York and Perez informing them of a June 24, 2008 legislative hearing and a July 16, 2008 hearing before the city council.[1] Tea was not mailed a copy of this notice, as the list of interested parties was still based on the January 2008 records search.[2] According to testimony before the legislative hearing officer and facts found by the city, however, a placard also was posted at the property declaring it to be a nuisance condition subject to demolition.

The legislative hearing was held as scheduled. Neither the listed interested parties nor Tea appeared at the hearing. The hearing officer recommended that the structure on the property be demolished. The city council considered the resolution ordering demolition of the structure on July 16, 2008. Again, no one appeared in opposition to the order. The city council found that (1) the property was in a nuisance condition, (2) multiple housing or building code violations existed at the property, (3) orders to abate the nuisance building were duly mailed and a placard indicating that the structure was a nuisance were duly posted, and (4) the notification requirements of chapter 45 of the St. Paul Legislative Code had been fulfilled. The city then ordered that the structure be demolished.

[1] It is unclear from the record if Thomas-Dale/District 7 Planning Council received this notice.

[2] It should be noted that, had a new records search been completed before the notice of public hearings was sent out, Tea still would not have been listed as her deed had not yet been recorded.

A demolition contract was awarded, and when workers from the contractor arrived at the property to begin demolition work, they discovered Tea living there. Tea claims she had no prior knowledge that the property was subject to demolition.

Tea commenced an action in district court seeking a temporary restraining order to preclude the city from enforcing the abatement ruling. The district court found that it lacked subject-matter jurisdiction to grant the injunction, but invoked its equitable powers to temporarily stay enforcement of the abatement ruling to allow Tea to file her appeal with this court.[3] This appeal by writ of certiorari follows.

D E C I S I O N

I. Tea was not denied procedural due process.

Tea challenges the city's resolution and order for the demolition of the house because she, as the current owner of the property, was never notified of the pending nuisance-abatement proceeding.

Procedural due process should "'be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard, to insure that they are given a meaningful opportunity to present their case.'" *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 320 (Minn. App. 2005) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 349, 96 S. Ct. 893, 909 (1976)), *review denied* (Minn. Nov. 15, 2005). "The due process protection provided under the Minnesota Constitution is identical to the due

[3] This court subsequently granted the city's petition for an order of prohibition preventing the district court from enforcing its stay.

process guaranteed under the Constitution of the United States." *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

To determine whether an individual's right to procedural due process has been violated, we first determine whether a protected liberty or property interest is implicated and then determine what process is due by applying a balancing test. *Mathews*, 424 U.S. at 332, 335, 96 S. Ct. at 901, 903; *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 566 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995).

> In applying the *Mathews* test, we must consider three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest, through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substantive procedural requirement would entail.

Sweet, 702 N.W.2d at 320 (quotation omitted).

Nuisance-abatement procedures are subject to two overriding principles that serve to protect the rights of property owners: (1) abatement and removal should be exercised with caution, and (2) notice and the opportunity to be heard should be granted without restraint. *Village of Zumbrota v. Johnson*, 280 Minn. 390, 395-96, 161 N.W.2d 626, 630 (1968). The relator must show she was prejudiced by the city's alleged due-process violations. *See Sweet*, 702 N.W.2d at 321 (concluding that due process did not entitle relator to an oral hearing because relator was able to submit his case in writing).

In this case, it is undisputed that the city had no notice that Tea had an interest in the property before the council's vote to abate the nuisance and demolish the property.

By Tea's own admission, her deed to the property was not recorded until June 5, 2008. In its resolution, the city listed "Bank of New York Trustee/Co Countrywide Home Loans, Inc.," "Jose Perez," and "Thomas-Dale/District 7 Planning Council" as "now known interested or responsible parties for the Subject Property." The record demonstrates that notice was consistently provided to Bank of New York and Jose Perez as registered interested parties.

Applying the *Mathews* test, we first consider "the private interest that will be affected by the official action." *Sweet*, 702 N.W.2d at 320 (quotation omitted). In this case, Tea's interest in her property will most certainly be affected, as the city intends to tear down the structure.

But Tea makes no argument that any additional safeguards would protect her from erroneous deprivation of her interest. *See id.* (stating that courts must consider whether additional or substitute procedural safeguards would reduce risk of an erroneous deprivation). Rather, Tea argues that she is put at risk of erroneous deprivation because the city's procedures for a substantial-abatement proceeding call for a notice to be placed on the building to be demolished, which Tea argues was not done. To support her argument, Tea relies on facts not in the record on appeal. Contrary to Tea's argument, the city council specifically found "[t]hat Department of Safety and Inspections has posted a placard on the Subject Property which declares it to be a nuisance condition subject to demolition." The record contains no evidence to suggest that this finding is erroneous. The minutes from the legislative hearing held in this case note testimony from

a city official who testified that the order to abate nuisance buildings was posted on April 1, 2008.

Tea makes no argument as to the administrative burdens that any additional or substantive procedural requirement would entail, but states instead that the government's interests lie in the increase in its tax base and the increase of affordable multiple family dwellings. This is not the proper consideration under the *Mathews* test. This court is to consider "the fiscal and administrative burdens that the additional or substantive procedural requirement would entail." *Id.* (quotation omitted).

The city provided notice to the registered owners and posted notice at the property that the property was a nuisance condition subject to abatement by demolition. Even had the city conducted a fresh title search prior to mailing notices of public hearings, Tea would not have been listed as an interested party since her conveyance was not recorded until nearly a month after the notices were mailed. Tea was not denied procedural due process.

II. The city's decision was not arbitrary or capricious.

Tea also argues that the city's decision to demolish the buildings on the property was arbitrary and capricious.

A city's decision to demolish a building through its nuisance-abatement process is quasi-judicial and subject to review by writ of certiorari to this court. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). Certiorari review is limited to questions of jurisdiction, the regularity of proceedings, and, consistent with rules of administrative deference, the merits of the decision. *Dietz v. Dodge County*, 487

N.W.2d 237, 239 (Minn. 1992). The decision on the merits will be sustained unless it is arbitrary, oppressive, unreasonable, fraudulent, rests on an erroneous theory of law, or lacks evidentiary support. *Id.* In our review, we do not retry facts or make independent credibility determinations and will uphold the decision if the government entity "furnished any legal and substantial basis for the action taken." *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (quotation omitted).

When a city makes a quasi-judicial decision, this court applies the substantial-evidence test. *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). If the city made a reasoned decision, this court will affirm; this court will not substitute its judgment for that of the city. *Cable Commc'ns Bd. v. Nor-west Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984).

Tea argues that the city's decision was arbitrary and capricious because it was based on misconstrued evidence and failed to consider important factors. Tea does not specify which evidence was misconstrued.

Tea argues that the city failed to consider the fact that notice of the substantial-abatement proceeding was not sent to her as the current owner on record. As previously discussed, this argument fails.

Tea also argues that the city failed to consider that notice of the possibility of demolition was never posted at the property. But as previously discussed, the city council specifically found that notice had been posted at the property, and nothing in the record demonstrates that this finding is erroneous.

Tea argues that the city did not comply with statutory requirements for filing the order for abatement of the nuisance, as no record of such an order was apparent during her search of records relating to the property with her realtor. *See* Minn. Stat. § 463.17, subd. 3 (2008) (setting forth requirements for filing an order for abatement before a motion for a default hearing for enforcement of the order). We note that any occurrences between Tea and her realtor are facts that are beyond the scope of the appellate record. *See* Minn. R. Civ. App. P. 110.01 (defining the record on appeal). But assuming that Tea's statement is true and that she discovered no record of the order for abatement during her search of the property record, this does not demonstrate a failure by the city to comply with statutory requirements.

Tea argues that the order for abatement should have been recorded by April 1, 2008, the date on which the order was mailed to Bank of New York and Jose Perez. It is unclear how Tea arrives at this conclusion. Under the statute, an order for abatement of a nuisance must be "filed with the court administrator of district court of the county in which the hazardous building or property is located not less than five days prior to the filing of a motion pursuant to section 463.19 to enforce the order."[4] Minn. Stat. § 463.17,

[4] Minn. Stat. § 463.19 (2008) sets forth the procedures to be followed if a motion is made to enforce an abatement order if no answer to the order has been filed.

subd. 3. Under the language of the statute, the city would not have been required to file a copy of the abatement order with the district-court administrator until five days before filing a motion for default enforcement of the order. The record does not demonstrate that any such motion was ever filed. Nor does Tea explain how any such filing of the order would have provided her with a record of the order during her search, or even when she conducted her search. Therefore, this argument also fails.

Tea has failed to demonstrate that the city's decision was arbitrary or capricious. The record demonstrates that substantial evidence supports the city's decision and that the city made a reasoned decision.

III. The other arguments raised by Tea are without merit.

Tea raises an issue as to the timeliness of her petition for certiorari. This court has already addressed the timeliness of her petition in an order dated November 4, 2008, in which it held that her petition was timely filed.

Tea also argues that this court should apply the *Dahlberg* factors in deciding to overturn the city's decision to demolish the property. *See Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965) (setting forth factors to be considered in determining whether the issuance of a temporary injunction can be sustained on appeal). This is not appropriate in this case. Tea originally sought an injunction in the district court. The district court determined that it lacked subject-matter jurisdiction, as Tea's proper recourse was through petition for writ of certiorari to this court. But the district court purportedly invoked its equitable powers to temporarily stay enforcement of the order while Tea filed her petition for certiorari. This court, in its

November 4, 2008 order, granted a petition for prohibition precluding the district court from enforcing its order for a stay. Accordingly, no temporary injunction is before this court for review. Moreover, Tea's argument on this issue relies entirely on facts outside the record. *See* Minn. R. Civ. App. P. 110.01 (defining the record on appeal).

While we can understand the position that Tea found herself in, she has no claim against the city, which followed the law to guarantee procedural due process to the property's known interested parties.

Affirmed.