STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0209
A09-0210

In the Matter of the Administrative Citation:
RFS 080654108, August 13, 2008, 1905 3rd Avenue South,
Issued to: Stephen Frenz (A09-209),

and

In the Matter of the Administrative Citation:
RFS 080654109, August 13, 2008, 1801 3rd Avenue South,
Issued to: Stephen Frenz (A09-210).

Filed February 23, 2010
Affirmed as modified
Lansing, Judge

Minneapolis Department of Regulatory Services
File Nos. RFS 080654108, RFS 080654109

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Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

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

LANSING, Judge

This is a consolidated certiorari appeal from two decisions by a Minneapolis Department of Regulatory Services administrative hearing officer affirming citations for failure to enclose dumpsters. Stephen Frenz argues that the hearing officer arbitrarily and in contravention of law held Frenz personally responsible for the citations, based the decision on insufficient findings, and violated constitutional protections by enforcing the ordinance. We modify the hearing officer's decisions to reflect that the duly notified corporate owners, rather than Frenz, are responsible for the citations but otherwise affirm the hearing officer's decisions.

F A C T S

The facts underlying this appeal are largely undisputed. On July 11, 2006, the City of Minneapolis inspected the properties at 1801 Third Avenue South and 1905 Third Avenue South and determined that both properties violated Minneapolis, Minn., Code of Ordinances § 535.80 (2010), a city ordinance requiring screening enclosures around dumpsters. The city sent notices of the violations to JAS Apartments, Inc., Attn: Stephen Frenz, 1 East 19th Street, Minneapolis, MN 55403; and 1801 Properties, Inc., Attn: Stephen Frenz, 1 East 19th Street, Minneapolis, MN 55403. In September 2006, when the city had not received a response and had confirmed that the properties were still in violation of the ordinance, the city sent a second violation notice to each corporation.

Stephen Frenz, an authorized agent for both corporations, spoke with city personnel to discuss compliance with the ordinance, but the ordinance violation was not

remedied at either property. On March 30, 2007, the city issued final warning letters. Frenz wrote to the city on April 11, 2007, on behalf of the two corporations, indicating that the properties would not be brought into compliance with the ordinance because the ordinance "was enacted after the existing condition was in place" and was therefore a grandfathered condition. In response, the city sent another final warning letter that required action by April 26, 2007. Frenz responded to the letter by contacting a city council member to explain why dumpster enclosures were not a good idea.

The city's zoning administrator sent a memorandum on July 9, 2007, to property owners in the Stevens Square neighborhood of Minneapolis, including the two properties cited in this proceeding. The memorandum notified the property owners that they would be permitted an alternative to the ordinance's requirement of a fully screened, four-sided enclosure because the four-sided enclosure had been used in high-crime areas for prostitution and drug transactions. The permitted alternative was a three-sided, four-to-six-feet high, chain-link or wrought-iron enclosure. A representative from the city contacted Frenz and advised him that enforcement efforts in the area would be suspended to allow property owners an opportunity to comply with the alternative measure. The city inspected the two properties on August 13, 2008, and determined that they did not comply with the ordinance or the alternative requirement. The city issued administrative citations for dumpster-enclosure violations at the two properties. Frenz, on behalf of the two corporations, filed requests for an administrative hearing to appeal the citations.

At the November 4, 2008 hearing addressing the two citations, Frenz conceded that the properties did not comply with the ordinance or the alternative requirement, but

asserted legal challenges to enforcement of the ordinance. The hearing officer rejected Frenz's arguments and ordered Frenz to pay the $200 citation on each property. Frenz appeals from both orders.

D E C I S I O N

In the absence of specific statutory provisions that provide for a different method of appeal, we review a governmental entity's quasi-judicial administrative decisions by writ of certiorari. *Tischer v. Hous. & Redevelopment Auth.*, 693 N.W.2d 426, 428-29 (Minn. 2005). Certiorari review of quasi-judicial administrative decisions is confined to questions of jurisdiction, the regularity of the proceedings, and, when addressing the merits, whether the decision was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992).

I

We first address Frenz's claim that the hearing officer erred, as a matter of law, in making him personally responsible for the citations. Frenz contends that he is not the owner of the properties and that the corporate owners should have been ordered to pay the citations. The record supports this claim.

The ordinance at issue requires that all "[r]efuse and recycling storage containers" be "effectively screened" from the street and adjacent uses. Minneapolis, Minn., Code of Ordinances § 535.80. Violations of the ordinance may be "enforced as administrative offenses" by serving an administrative citation "on the alleged violator." Minneapolis, Minn., Code of Ordinances §§ 2.40(13), 2.50, 525.580(b) (2010).

The citations were issued to JAS Apartments, Inc., Attn: Stephen Frenz,; and 1801 Properties, Inc., Attn: Stephen Frenz. Although Frenz corresponded with the city in his capacity as an agent and acted on behalf of the corporations, it is undisputed that Frenz is not the owner of either property. The evidence is, as Frenz asserts, "overwhelming that JAS Apartments, Inc. and 1801 Properties, Inc. are the respective owners of the propert[ies]."

The city contends that Frenz can, nonetheless, be held personally responsible for the citations because Frenz is a contact person or officer for the corporate owners. But the issue of Frenz's personal responsibility for the citations was not an issue at the administrative hearing, and the hearing officer did not find that Frenz, in his capacity as an agent, was personally responsible for the penalties. It is also undisputed that the documents on which the city relies in support of its argument for Frenz's personal liability were not submitted to the hearing officer and, therefore, are not part of the record in this appeal. *See Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 676 (Minn. 1990) (stating that record for judicial review must be "proceedings" and actions of agency or body); *see also Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 483 (Minn. App. 2002) (stating that record in certiorari appeal is composed of papers, exhibits, and transcripts of any testimony considered by decision-making body being reviewed).

Because the issue of Frenz's personal responsibility for the citations was not raised or addressed at the administrative hearing, and because the record demonstrates that the two corporations listed on the citations are the owners of the properties, the hearing officer arbitrarily and erroneously ordered Frenz to pay the citations. The record

confirms that Frenz acted on behalf of the corporations and that the corporations received proper notice of the proceedings. We, therefore, modify the hearing officer's orders to reflect that the corporate owners listed on the citations are responsible for their payment.

II

In the second challenge to the citations, Frenz raises a procedural and substantive contention that the administrative decision provided insufficient findings to support imposition of the citations. In general, an administrative decision-maker "must explain on what evidence it is relying and how that evidence connects rationally with [its] choice of action." *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (1984). An administrative decision not supported by proper findings is considered "prima facie arbitrary." *City of Duluth v. State*, 390 N.W.2d 757, 766 (Minn. 1986).

Because Frenz conceded at the hearing that the properties were in violation of the ordinance, the only material issue submitted to the hearing officer was whether the properties' noncompliance with the ordinance qualified for a "grandfathered-in" status. Frenz also presented arguments relating to the constitutionality of the ordinance.

The findings demonstrate that the hearing officer rejected Frenz's argument that the noncompliance with the ordinance was grandfathered in as a nonconforming use. The hearing officer found, as a matter of law, that the properties did not qualify because the provisions in the Minneapolis Code of Ordinances related to nonconforming uses do not apply to the screening of refuse containers. The record supports this determination. Because a dumpster is not a structure, and the use of a dumpster is not allowed as a principal use in the zoning district, an unscreened dumpster cannot be a legally

nonconforming use. *See* Minneapolis, Minn., Code of Ordinances §§ 531.30 (providing process for establishment of use or structure as legally nonconforming), 546.30 (listing principal uses for residential districts), 548.30 (listing principal uses for commercial districts) (2010).

With respect to Frenz's constitutional arguments, the hearing officer permitted Frenz to establish a record but properly indicated at the hearing that a hearing officer is not authorized to address the constitutionality of an ordinance. *Neeland v. Clearwater Mem'l Hosp.*, 257 N.W.2d 366, 369 (Minn. 1977) (stating that law does not permit administrative decision-maker to address constitutional issues because constitutional challenge is controversy that requires judicial interpretation). The hearing officer did not err by failing to make findings on the constitutional issue. Instead, the proper venue for deciding constitutional arguments is on appeal.

III

Finally, we address Frenz's reasserted constitutional challenges that the ordinance is invalid because it was discriminatorily enforced and ineffective to accomplish its purposes. Ordinances, like statutes, are presumed valid and may not be found unconstitutional unless clearly invalid or shown beyond a reasonable doubt to violate the constitution. *Essling v. Markman*, 335 N.W.2d 237, 239 (Minn. 1983); *see also In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). Evaluating an ordinance's constitutionality is a question of law. *See Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). We address, first, Frenz's claim of discriminatory enforcement and, second, his claim that the ordinance fails in its effective purpose.

The Equal Protection Clause requires that "[a] zoning ordinance must operate uniformly on those similarly situated." *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979). Frenz, however, has not put forth any evidence that the city has violated this requirement. Frenz relies exclusively on a city representative's testimony that there are dumpsters in the city that are not enclosed, but that the representative did not know about "each and every one of the dumpsters in the [c]ity." The city representative also testified that "the same standard applies" for "each and every" dumpster that he has been called out to inspect or seen as part of a general enforcement effort. Failure to enforce a law against unknown violations is not discriminatory enforcement. Because no other record evidence exists on the enforcement of the ordinance, we conclude that the record provides no basis for a determination that the dumpster-enclosure ordinance is being discriminatorily enforced. *See Kottschade v. City of Rochester*, 537 N.W.2d 301, 307 (Minn. App. 1995) (determining that equal-protection claim failed when relator "failed to show any similarly situated property owners [that] the city treated differently"), *review denied* (Minn. Nov. 15, 1995).

Frenz's argument that the ordinance is ineffective and unreasonable for his neighborhood also fails. Governmental action that does not implicate a fundamental right or a suspect class unconstitutionally impinges on an individual's equal-protection rights when it has no rational relationship to a legitimate governmental interest. *Essling*, 335 N.W.2d at 239. But Frenz has not demonstrated that no rational relationship exists.

The general zoning provisions, including the dumpster-enclosure ordinance, were "established to provide regulations of general applicability for property throughout the

city to promote the orderly development and use of land, to protect and conserve the natural environment, to minimize conflicts among land uses, and to protect the public health, safety and welfare." Minneapolis, Minn., Code of Ordinances § 535.10 (2010). At the hearing a city representative testified that he believed the dumpster-enclosure ordinance was intended to (1) screen dumpsters from adjacent residential uses for aesthetic purposes, (2) prevent illegal dumping, and (3) prevent movement of dumpsters into alleys or other traffic ways. Frenz disputes the ordinance's relationship to these interests in his specific case but does not provide any evidence of the ordinance's ineffectiveness in other parts of the city. Although the ordinance may be less effective at addressing the city's health, safety, aesthetic, and law-enforcement concerns for dumpsters in some areas of the city than in others, Frenz has not demonstrated that requiring city-wide enclosure of dumpsters is an unreasonable method of addressing these legitimate governmental interests. Accordingly, Frenz has not demonstrated beyond a reasonable doubt that the ordinance is unconstitutional.

Affirmed as modified.