2017 IL App (2d) 160137-U
No. 2-16-0137
Order filed March 23, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE VILLAGE OF FRANKLIN GROVE,	)	Appeal from the Circuit Court
	)	of Lee County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-OV-32
	)	
HAROLD SUSKI,	)	Honorable
	)	Charles T. Beckman,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Plaintiff's nuisance complaint was not untimely, as, per the ordinance at issue, each day that the violation continued was a separate offense; (2) the trial court's finding of a nuisance was not against the manifest weight of the evidence, as the evidence established that, per the ordinance at issue, defendant's house was unfit for human habitation; it was irrelevant that no one had actually lived there.

¶ 2 In December 2006, defendant, Harold Suski, bought a home in Franklin Grove that he was going to repair and sell to a married couple. After the couple divorced and advised defendant that they were not going to purchase the house, defendant completed minimal, if any, repairs on the home. In April 2010, plaintiff, the Village of Franklin Grove, brought a nuisance complaint against defendant. Following a hearing, the trial court found in favor of plaintiff and

fined defendant $36,500. In imposing the fine, the court hinted that the statute of limitations might have run. On appeal, defendant argues that (1) the statute of limitations barred plaintiff's cause of action and (2) the trial court erred in finding that the property constituted a nuisance. For the reasons that follow, we affirm.

¶ 3 At trial, Wendi Schafer testified that she lived next door to 321 North Walton Street in Franklin Grove, which is the home defendant bought. Schafer took pictures of defendant's house in August 2007. Those pictures showed debris piled in the yard and lying around the foundation of the home. Located in the side yard of the home was a trailer loaded with more debris. The debris consisted of, among other things, plywood, buckets of tar, furniture, and trash. The pictures also revealed that a portion of the fence surrounding the yard had fallen over. In one of the pictures, a ladder was leaning against the back roof of the house. A blue plastic tarp covered a portion of the back roof, where shingles were partially removed. Construction debris related to the removal of the shingles was lying on top of the roof and to the side of the blue tarp. Schafer testified that the only change she observed to the property from August 2007 to September 21, 2012, when the house burned down, was that the ladder was moved.[1] Schafer also stated that she observed cats entering the house through a hole in a window located at the back of the home. Further, Schafer asserted that she saw the rear door to the house left open approximately six times, and she noticed that this door, which had a hole in it, was eventually replaced.

¶ 4 Officer B.J. Harney, a police officer in Franklin Grove, testified that he drove by the house two to three times every day from 2007 to 2010 and that it was the source of many complaints. In 2009, Harney took pictures of the house. In these pictures, portions of the fence surrounding the yard had fallen into the yard, and a corner of the roof was extensively water-

[1] Defendant claimed that the house burned down because of arson.

damaged. The trailer at the side of the house was filled with debris, and debris was lying around the home's foundation and littering the yard. In many instances, the debris was the same debris seen in the pictures Schafer took. Moreover, the blue plastic tarp was still covering the same portion of the roof, and construction debris related to repairing the roof was still lying on top of the roof. The ladder seen in the pictures Schafer took was no longer there. The pictures also showed that a window or window screen was removed from the second story and propped up next to that window opening, and a board covering a window on the first floor had a hole in it. On September 21, 2010, Harney took more pictures of the home. These pictures revealed that nothing had substantially changed with the condition of the property. With regard to the debris in the trailer, Harney testified that, when he took pictures, the trailer contained the same debris on both occasions. The pictures confirm this.

¶ 5 Defendant admitted that, after the sale of the home fell through, he did not have much interest in the property. As a result, he or one of his agents went to the house only once every two weeks. Defendant also acknowledged that there was debris in the trailer on the property and lying around the yard. Defendant indicated that this debris came from the attic or the garage. Defendant testified that he would haul the debris to a dumpster or another property he owned. Defendant said he did this several times. Accordingly, defendant claimed that the pictures showed different debris in the trailer and around the house.

¶ 6 Defendant also testified that he did complete some repairs on the home. In addition to installing a new kitchen floor, hanging some light fixtures, and working on the garage, he stated that he pressure-checked the gas lines and water pipes, put correct breakers and a breaker box in, put new metal on the roof ridge, and installed a new back door. Defendant did not, however, fix the downstairs window. Rather, defendant stated that he put a piece of plywood, which had a

hole in it, over the window, and he screwed in the plywood so that the hole was exposed. Defendant said that "[he was] good with that."

¶ 7 The trial court found for plaintiff and imposed a fine against defendant. In doing so, the court observed that defendant, by his own admission, lost interest in the home once the sale fell through. The court then noted that the house was "unfit for human habitation[, as it was] unsafe and a fire hazard." Based on all the evidence, the court stated that "plaintiff has proven its complaint finding a nuisance as to the maintenance of these premises." The court also noted, in imposing the fine, that plaintiff filed the complaint in April 2010, even though plaintiff knew or should have known of the nuisance before then. Defendant moved the court to reconsider, taking issue with the court's finding and the fine. Defendant also argued for the first time that plaintiff's cause of action was barred, as the statute of limitations had run by the time the complaint was filed. The court denied the motion, and this timely appeal followed.

¶ 8 Defendant essentially raises two issues on appeal. Specifically, defendant argues that (1) the statute of limitations barred plaintiff's cause of action and (2) the trial court erred in finding that the property constituted a nuisance. We address each issue in turn.

¶ 9 The first issue we consider is whether the statute of limitations barred plaintiff's cause of action. Putting aside any problem created by the fact that defendant raised the statute of limitations for the first time in his motion to reconsider, a fact to which plaintiff has never objected, we cannot conclude that plaintiff's complaint was time-barred. The Village of Franklin Grove ordinance at issue provides, in relevant part, that "[e]ach day the violation occurs shall be considered a separate offense." Franklin Grove Municipal Code § 4-4-1(K)(3) (eff. Aug. 1, 2007). Courts have found that "ordinances providing for a continuing violation effectively remove[] the bar of the statute of limitations." *City of Chicago v. Provus*, 115 Ill. App. 2d 176,

188 (1969); see also *People v. Jones*, 329 Ill. App. 503, 506 (1946) (permitting a well to remain unplugged constituted a nuisance that was not time-barred 18 months after the first time the condition existed, as the nuisance was a continuing one and, thus, each day that the well remained unplugged constituted another offense). Accordingly, plaintiff's complaint was not time-barred.

¶ 10 Next, we address whether the trial court erred in finding that the condition of the property constituted a nuisance. Although a municipality's action to enforce of an ordinance is quasi-criminal, the case "is tried and reviewed as a civil proceeding." *Village of Plainfield v. American Cedar Designs, Inc.*, 316 Ill. App. 3d 130, 135 (2000). A municipal ordinance violation must be proven by a preponderance of the evidence. *City of Peoria v. Heim*, 229 Ill. App. 3d 1016, 1017 (1992); see also Ill. S. Ct. R. 578 (eff. Dec. 7, 2011) (providing that "[t]he prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not that the violation occurred").

¶ 11 On appeal, we consider whether the court's judgment is against the manifest weight of the evidence. *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1048 (1999) (a trial court's factual determinations regarding an ordinance violation will not be reversed on appeal unless they are contrary to the manifest weight of the evidence). "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002).

¶ 12 In deciding whether the trial court's judgment is against the manifest weight of the evidence, we first examine the part of the ordinance under which the court found a nuisance. That section provides:

> "The following conditions, acts or conduct when permitted to exist by anyone or are committed or performed by anyone on any public or private property within the limits of the village are declared to be nuisances:
>
> * * *
>
> E. To own, maintain or keep a dwelling unit unfit for human habitation or dangerous or detrimental to life, safety or health to persons residing in the premises or residing in the proximity thereof, because of a fire hazard, lack of repair, defects in plumbing, lighting or ventilation, the existence of disease or unsanitary condition, or any dwelling condemned by the county health department." Franklin Grove Municipal Code § 4-4-1(E) (eff. Aug. 1, 2007).

¶ 13 Pursuant to the clear and unambiguous language of the ordinance, to which we must defer (see *Victory Auto Wreckers, Inc. v. Village of Bensenville*, 358 Ill. App. 3d 505, 508 (2005)), a property is considered a nuisance for which the owner will be held liable if, among other things, the owner "maintain[s] or keep[s] a dwelling unit unfit for human habitation" (Franklin Grove Municipal Code § 4-4-1(E) (eff. Aug. 1, 2007)). The ordinance then defines what conditions will make the dwelling "unfit for human habitation." That is, a dwelling will be considered unfit for human habitation "because of a fire hazard, lack of repair, defects in plumbing, lighting or ventilation, [or] the existence of disease or unsanitary condition." *Id.*; see also *In re E.B.*, 231 Ill. 2d 459, 468 (2008) (the presence of a comma before a qualifying phrase suggests that the qualifying phrase modifies both those clauses immediately preceding it and more remote terms). Here, the evidence supported the conclusion that the property constituted a nuisance under the ordinance.

¶ 14 Specifically, the evidence revealed, among other things, that defendant owned a home he had no interest in once the sale he had negotiated fell through. Given that lack of interest, defendant rarely visited the home and failed to maintain or substantially fix it. Although defendant made a few minor repairs to the house, such as replacing the back door and installing a kitchen floor, many large and necessary repairs were left unattended to. According to the pictures Schafer and Harney took in 2007, 2009, and 2010, the roof was severely water-damaged and many of the shingles on the home had been removed. To prevent further damage, a blue plastic tarp was placed over only a portion of the roof. The roof remained in this condition or worse for at least three years. In addition, the evidence revealed that the fence surrounding the home's yard remained lying in the yard for several years, a window or window screen on the second floor was removed and laid next to the window opening, and a downstairs window was never properly fixed or secured. When asked about that window and his incomplete attempt to secure it, defendant admitted that he was "good" with the plywood covering only a portion of the window.

¶ 15 Moreover, the evidence showed that the dwelling was unfit for human habitation because it posed a fire hazard. Specifically, surrounding the home was a lot of debris. The debris was littered throughout the yard, piled along the foundation of the home, and thrown into a trailer sitting at the side of the house. The debris consisted of flammable material, such as wood and trash, and it was not cleaned up or removed for at least three years.

¶ 16 Defendant contends that the evidence failed to establish that the house constituted a nuisance under the Franklin Grove ordinance, because "not a scintilla of evidence [was presented] that anyone ever resided in the subject property during [his] ownership." Defendant claims that, without such proof, "there cannot be a finding that the property was unfit for

[human] habitation." We disagree. Not only does defendant not cite any authority for his contention that a nuisance claim of this nature is not ripe until someone is actually living in the house, but such a construction would thwart the very purpose of these types of nuisance ordinances. See *City of Collinsville v. Seiber*, 82 Ill. App. 3d 719, 724 (1980) (noting that purpose of nuisance ordinance at issue was to require that all property be maintained in a sanitary manner while ever mindful of the public's health and safety).

¶ 17 For the above-stated reasons, the judgment of the circuit court of Lee County is affirmed.

¶ 18 Affirmed.