2015 IL App (3d) 140493-U

Order filed September 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

CITY OF PEORIA, Plaintiff-Appellee, v. MICHAEL J. LEVAN, JUDGMENT HOLDERS OF $1,239.90 AMENDED CIVIL JUDGMENT AGAINST MICHAEL LEVAN IN U.S. DISTRICT COURT FOR CENTRAL DISTRICT OF ILLINOIS, PEORIA DIVISION, CASE NO. 06-1022, Defendants-Appellants.	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois Appeal No. 3-14-0493 Circuit No. 12-MR-476 Honorable Michael E. Brandt Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's grant of demolition order to plaintiff was against the manifest weight of the evidence where defendant did not have sufficient notice that his residence was in violation of the municipal code and plaintiff's evidence could not sustain its claim that the building was unsafe and dangerous. Plaintiff's witness was properly allowed to testify as an expert but did not establish how she determined the building to be unsafe and dangerous.

¶ 2 Plaintiff City of Peoria filed an action to demolish a building owned by defendant Michael Levan. Peoria alleged that the building was in substantial disrepair, unsafe and dangerous. Following a hearing, the trial court granted Peoria's request for a demolition order. We reverse and remand.

¶ 3 FACTS

¶ 4 On August 24, 2012, plaintiff City of Peoria posted a notice of dangerous and nuisance building on the residence owned by defendant Michael Levan, located at 1212 N.E. Monroe Street, informing him that he should repair or demolish the structure within 15 days. On August 28, 2012, Peoria mailed a notice of dangerous and nuisance building to Levan at the Monroe Street address. The notice informed Levan that the building was a dangerous building as defined under Code of the City of Peoria, Illinois (City Code). City Code § 5-402 (adopted April 20, 1993). The notice specified the following violations:

> "Left side of structure has missing and loose bricks. Loose bricks are likely to become dislodged. Wall has partially collapsed creating a hazard for anyone in the area." See City Code §§ 5-402(3) (adopted April 20, 1993);
>
> "The structure has become unsafe due to the collapsing brick wall and the unattached columns to the roof at the right side porch." See City Code §§ 5-402(6) (adopted April 20, 1993);
>
> "This brick structure has become dilapidated due to the lack of maintenance with a collapsing brick wall and an unattached side porch roof[;] hanging wiring at side porch[.] [I]t is likely to work injury to

the health and safety to home owner. See City Code §§ 5-402(9) (adopted April 20, 1993).

¶ 5 The notice informed that the residence would be demolished no later than 15 days following the date of service of the notice if repairs were not made. The notice also informed Levan that if he planned to make the necessary repairs, he was required to obtain a repair permit within 15 days of the receipt of the notice. The repairs were not made and Levan did not demolish the building.

¶ 6 On October 9, 2012, Peoria filed a demolition complaint against Levan, alleging various violations of the City Code and that the building had become a nuisance as a result of Levan's failure to remedy the code violations for more than 30 days. City Code § 5-408 (adopted April 20, 1993). The complaint also alleged the building was dangerous and unsafe because it was unfit for human habitation due to dilapidation and was "likely to work injury to the health, safety or general welfare of those living within." City Code § 5-402(9) (adopted April 20, 1993). Under the City Code, a building is unfit for human habitation:

> "when it is *** dilapidated [or] *** unsafe *** to such extent as to create a clear and present danger to health, life and safety of occupants and is not repaired or corrected in less than 72 hours after receipt of notice of violation of code." City Code § 5-296(a) (adopted April 20, 1993).

The complaint sought an order of demolition of the building.

¶ 7 Peoria tried to serve Levan with a summons on various dates and at different addresses, but it was unsuccessful. Service was provided by publication on October 17, 24, and 31, 2012. Levan became aware of the action when in court on an unrelated matter. Levan argued that he

was not properly served with notice of a dangerous building and that the demolition action was improper. He appeared at a June 19, 2013 court date and was granted a continuance in order to bring his residence into compliance with the City Code. On June 25, 2013, Levan was issued a building permit by Peoria. The permit approved residential brick work, which it valued at $1,000. The permit had an expiration date of June 25, 2014. In July 2013, Levan was granted a continuance by the trial court and ordered to bring his property up to code. In total, Levan received five continuances during the demolition action.

¶ 8 On August 28, 2013, the trial court denied Levan's request for a continuance and proceeded with a hearing on Peoria's complaint. Teresa McCartney, a code enforcement inspector for Peoria, testified. She had worked for Peoria as a code inspector for 15 years. She deemed Levan's building dangerous. She had inspected the property that day and the photographs she took of the building were admitted into evidence. McCartney described the condition of Levan's building:

> "The left side of the brick structure has fallen. The bricks have fallen down. The right side of the property, there's a side porch. The columns are not attached. These are the reasons that we're deeming it dangerous."

¶ 9 When asked if it was her opinion the building was dangerous, the defense objected on the grounds that McCartney was not qualified as an expert witness. The trial court agreed that further information on McCartney's training would be necessary for a proper foundation. Peoria's counsel then questioned McCartney regarding her qualifications. McCartney had graduated from high school. She attended two three-day seminars on code enforcement duties, including the topic of dangerous buildings. She had deemed 30 to 40 buildings as dangerous and

testified at approximately 15 trials. McCartney was not a structural engineer and her duties as code enforcement inspector included writing tickets for weeds, litter, as well as housing violations.

¶ 10 On redirect, McCartney clarified that it was possible that more bricks could fall from the building or the beam across the porch could collapse, causing injury or affecting the health or general welfare of the public. The beam, which had been in position for three years, had not deteriorated. Her bigger concern was the left side of the building where the bricks could fall. She was aware the bricks were ornamental and did not serve any structural purpose. The wall was supported by a wood framework located behind the brick façade. The metal fasteners holding the bricks to the wood had rusted away. McCartney did not know whether the wall would be structurally sound if the bricks were removed. She had not inspected the interior of the building.

¶ 11 The hearing recessed until November 11, 2013, when Levan testified. He had lived in the residence since 1997. No one attempted to serve notice on him. The plumbing and electric in the house worked and the living conditions inside of the building were not affected by the disrepair on the outside. He stipulated McCartney's photographs depicted the building. The bricks were veneer and not structural support for the residence. He has used Tyvec and foam to protect the wood stud wall behind where the bricks had fallen. There were no neighbors on the left side of his property as it abuts a park. There were no loose bricks on the right side of the house.

¶ 12 He obtained a building permit on June 25, 2013, and had been working on the building since then. He installed limestone caps for the columns on the porch and pulled out a non-electrified wire. The columns were now connected to the structure and supported the roof. He also worked on the area where the bricks collapsed on the left side of the building. He dug down

three feet to ensure the bricks underground were stable enough to hold the upper bricks. He "got it all ground out or dug down – got all that dug down, hauled away, and ground out all the mortar, repointed it, and started laying the brick myself." In addition, he had removed all the loose bricks and stacked them on a pallet.

¶ 13 Levan believed the insurance company should be responsible for the cost of the brick repairs. The insurance company denied his claim for the brick damage and a lawsuit he filed against the insurance company was pending. Levan, a 12-year union carpenter, had been laid off for nearly a year and was relying on prevailing in the lawsuit to pay for the brick repairs. The brick repairs were estimated to be $85,000. He estimated the net value of the real estate as $5,000 when he requested a waiver of filing fees in September 2013.

¶ 14 Josie Ecker testified for Levan. She was a structural engineer and had examined Levan's property in 2011 to determine the cause of the brick collapse. In her opinion, the collapse resulted from dilapidated mortar. She confirmed the bricks were a veneer and the house was supported by stud walls. Due to the lack of protection from the brick veneer, the stud walls could deteriorate but it would take some time before the deterioration would cause a collapse. She also opined one wall falling down would be indicative that other walls could fall. She was concerned about some bricks that looked like they were hanging and could fall on someone if they were too close to the house. Esker said the brick wall could be repaired.

¶ 15 On November 27, 2013, the trial court entered a demolition order. Levan moved for reconsideration. He again argued lack of service regarding notice of the dangerous and nuisance building. His motion was heard and denied. Levan appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, the issue is whether the trial court erred when it granted Peoria's complaint for demolition. Levan argues that Peoria failed to provide notice of dangerous and nuisance building, that the trial court erred in affording Peoria's code enforcement inspector witness expert status, and that Peoria did not prove his residence was a dangerous building in need of demolition. Levan also argues that Peoria was estopped from obtaining a demolition order while his building permit was valid.

¶ 18 A municipality may demolish or repair, or cause the demolition or repair of "dangerous and unsafe buildings." 65 ILCS 5/11-31-1(a) (West 2012). The demolition action should be brought before the trial court for a demolition order when the property owner, "after at least 15 days' written notice by mail to do so, have failed to put the building in a safe condition or to demolish it" or for an order requiring the owner to demolish or repair the building. 65 ILCS 5/11-31-1(a) (West 2012). Two findings must be made before the trial court may issue an order of demolition: the trial court must first find the building dangerous and unsafe and then find it is beyond reasonable repair. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 131 (2004). We will not reverse a trial court's decision to order a demolition unless it was against the manifest weight of the evidence. *Stokovich*, 211 Ill. 2d at 131.

¶ 19 We first consider the adequacy of the notice of dangerous building provided Levan by Peoria. Levan submits that Peoria failed to serve him notice and did not to comply with the notice requirements of the City Code.

¶ 20 The City Code requires notice of an unsafe or dangerous condition be served on the property owner and all parties with an interest in the property. City Code § 5-404(a) (adopted April 20, 1993). The notice must "briefly and concisely specify the conditions and factors of the building or structure which renders it dangerous or unsafe." City Code § 5-404(b) (adopted

April 20, 1993). Notice must also specify that the owners must make the building safe or begin demolition within 15 days of the notice; the demolition shall commence no later than 15 days after notice; and a date for completion of demolition. City Code § 5-404(b) (adopted April 20, 1993). The date to complete repairs or demolition "shall be reasonable set in light of the nature of the building, weather conditions, and other related factors." City Code § 5-404(b) (adopted April 20, 1993).

¶ 21 Notice to the building owner must be made by personal service or by certified mail with return receipt. City Code § 5-404(c) (adopted April 20, 1993). Where the whereabouts of the owner is not ascertainable, notice mailed to the recorded taxpayer is sufficient. City Code § 5-404(d) (adopted April 20, 1993). Where the owner fails to comply with the deadlines in the notice of dangerous building, the City may file a demolition action, subject to the notice requirements in section 5-404 of the City Code. City Code § 5-404(e) (adopted April 20, 1993). Whether a party received proper notice is a question of law we review *de novo*. *Stewart v. Lathan*, 401 Ill. App. 3d 623, 626 (2010).

¶ 22 It is undisputed that Peoria did not provide notice to Levan regarding its assertion that his building was unsafe and dangerous as required under section 5-404 of the City Code. City Code § 5-404 (adopted April 20, 1993). McCartney posted a notice of dangerous and nuisance building on August 24, 2012, at the Monroe Street residence. On August 28, 2012, notice was mailed to Levan at the Monroe Street address. The trial court found that a demolition complaint cannot be filed before service is perfected, but that Levan waived the service requirements by filing a general answer and participating in the demolition proceedings. The trial court also found that service was perfected by publication.

¶ 23 We agree with the trial court's finding that Levan waived any objections to service regarding the demolition action. That waiver, however, has no effect regarding sufficiency of service that the building was dangerous or unsafe. Peoria could not seek a demolition order without first complying with the notice requirements under the City Code. It is undisputed Peoria did not personally serve Levan or send him notice via certified mail. Posting the notice on the building and mailing it through regular mail do not satisfy the notice requirements. The purpose of the notice requirement is to allow the homeowner an opportunity to remedy the code violations before Peoria instigates a demolition action in the trial court. By proceeding with the demolition action despite lack of notice, Levan had no options to correct the code deficiencies. We accordingly find that Peoria should not have proceeded with the demolition action in the absence of proper notice of the dangerous and nuisance building.

¶ 24 Although the lack of notice is dispositive, we address the other issues raised by Levan. The next issue for our review is whether the trial court erred in qualifying McCartney as an expert witness. Levan objects to the sufficiency of her expertise and argues that she was not qualified to offer an expert opinion that the building was dangerous.

¶ 25 Expert testimony may be admitted where the expert is qualified by knowledge, skill, experience, training or education, and the testimony will aid the fact finder in understanding the evidence. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003). Testimony of an expert includes knowledge that is beyond the command of the average juror. *Zavala v. Powermatic, Inc.*, 167 Ill. 2d 542, 546 (1995) (quoting *Plank v. Holman*, 46 Ill. 2d 465, 471 (1970)). Practical experience in the witness's field may qualify her as an expert and a specific degree or formal academic training are not necessary qualifiers. *Thompson v. Gordon*, 221 Ill. 2d 414, 429 (2006) (quoting *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 459 (1992)). We will not reverse a trial

court's decision to admit expert testimony unless it was an abuse of discretion. *Snelson*, 204 Ill. 2d at 24.

¶ 26 McCartney had been a code enforcement inspector for 15 years. She had participated in trainings and seminars on topics applicable to her duties, including dangerous buildings, since she started in her position. McCartney had inspected and deemed 30 to 40 buildings as dangerous and testified in 15 cases. She offered evidence regarding the condition of Levan's residence and the repairs that were needed to bring the building into compliance with the City Code. Levan challenges McCartney's educational background, arguing that the ordinary fact finder has a high school education. However, the average fact finder with a high school education would not be able to determine the safety of a building as Levan had done on numerous occasions. McCartney's testimony provided information that would aid the trial court in reaching its determination. We find the trial court did not abuse its discretion is allowing McCartney to testify as an expert witness.

¶ 27 Next, we consider Levan's claim that Peoria did not prove his residence was a dangerous building in need of demolition. Levan complains that the evidence did not establish his building was dangerous, but rather, showed that he removed all the loose bricks from the structure and was working on repairs.

¶ 28 The Peoria city code prohibits any owner from keeping a building or any part of a building in "any unsafe or dangerous condition." (City Code) § 5-401 (adopted April 20, 1993). The City Code sets forth a number of definitions of "a dangerous building," including buildings that have been damaged and where a portion is likely to fail or collapse and injure people. City Code § 5-402(1)-(13) (adopted April 20, 1993). The code official or designee is authorized to

demolish, repair, or cause to be demolished or repaired, any dangerous building within the city. City Code § 5-403 (adopted April 20, 1993).

¶ 29 Courts have used several factors when determining whether a building is dangerous and unsafe and in need of demolition, including the extent of damage or needed repairs; delay in making the repairs; location of the purportedly unsafe building; and whether the cost to repair the unsafe conditions exceeds the value of the building. *City of Alton v. Carroll*, 109 Ill. App. 3d 156, 161-62 (1982). A court should not order demolition where the dangerous conditions cannot be remedied by repair without major reconstruction. *City of Aurora v. Meyer*, 38 Ill. 2d 131, 132 (1967). We will not reverse a trial court's determination that a building is dangerous and unsafe unless it is against the manifest weight of the evidence. *Meyer*, 38 Ill. 2d at 132.

¶ 30 McCartney did not provide any testimony on the standards she uses to determine how she deems a building dangerous and unsafe. While she provided specific information about the condition of the Levan's building based on her inspection of it, McCartney did not explain how those deficiencies made the building unsafe and dangerous. She testified the support beam on the porch could deteriorate but it had not yet done so. She acknowledged the brick wall was a façade and not a structural element. She did not know if the wall would be structurally sound once the bricks were removed. McCartney stated that she was not an engineer, and admitted that she did not know the condition of the structural wall, and that she had not been inside the building. Esker also testified the bricks were not structural. She opined that while the interior wall could deteriorate, it had not done so and it would take considerable time to deteriorate to the point of collapse.

¶ 31 After the building permit was issued to him, Levan begin making repairs on his home. He connected the columns on the side porch to the building and removed the exposed electrical

wire. He removed all the loose bricks from the wall and began to make the brick repairs himself. McCartney and Esker testified that bricks could continue to fall and expressed concern that more bricks could fall out of the wall if a person stepped too close to it. However, Levan said there were no neighbors on that side of the house because it abutted a park. Moreover, we see no reason precluding Levan from continuing to remove any bricks that might loosen.

¶ 32 Although the evidence demonstrated the brick repairs would cost $85,000 and the building had a net worth of $5,000, the permit issued by Peoria estimated the value of the brick repairs at $1,000. Because of these facts, we do not afford deferential weight to the substantial cost estimated for a third party to make the repairs. Considering these factors as a whole, we find the trial court's conclusion that the building was dangerous and unsafe was against the manifest weight of the evidence.

¶ 33 As discussed above, Peoria failed to demonstrate that Levan's residence was dangerous and unsafe or that it could not be reasonably repaired within the permit period. Accordingly, we find that the trial court erred when it granted Peoria an order of demolition against Levan.

¶ 34 Lastly Levan claims that Peoria should be estopped from obtaining a demolition order while his building permit remained effective. However, because the building permit expired in June, 2014, his equitable estoppel argument was not considered in reaching our determination.

¶ 35 For the foregoing reasons, the judgment of the circuit court of Peoria County is reversed and the cause remanded.

¶ 36 Reversed and remanded.