2017 IL App (1st) 170456-U

No. 1-17-0456

Third Division
December 20, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ATANACIO SANCHEZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 2016 CH 09006
	)	
VILLAGE OF WHEELING,	)	Honorable
	)	Thomas R. Allen,
Defendant-Appellant.	)	Judge, presiding.
	)	

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

O R D E R

¶ 1 *Held*: Administrative hearing officer's determination that plaintiff's business was not lawfully established and thus not a legal nonconforming use was not against the manifest weight of the evidence. The doctrines of equitable estoppel, vested rights, and laches were not applicable against municipality absent compelling circumstances.

¶ 2 Defendant, the Village of Wheeling (the Village), appeals from the circuit court's order reversing an administrative hearing officer's finding of a zoning violation by plaintiff Atanacio Sanchez. The Village contends that circuit court failed to give proper deference to the hearing officer's determination that plaintiff's business was not a legal nonconforming

use and that the doctrines of equitable estoppel, vested rights, and laches did not apply. We reverse the circuit court's reversal and remand to the administrative hearing officer.

¶ 3 I. BACKGROUND

¶ 4 Since 1982, plaintiff has operated a landscaping business from one of his four adjoining parcels of land in what is now part of the Village. Although the property at issue was originally located in unincorporated Cook County, the Village annexed it in 1988 and the parcel was zoned as a residential district. In May 2015, the Village filed a complaint against plaintiff, alleging that his business violated zoning ordinances. An administrative adjudication hearing was heard before a hearing officer on May 23, 2016.

¶ 5 At the start of the hearing, the parties stipulated that plaintiff operated a landscaping business at 2814 East Hintz Road. The property was zoned as R-1, a residential zone that does not permit such a business.

¶ 6 Andrew Jennings, the director of the Village's Community Development Department, testified that he had informally spoken with a representative in the records division of Cook County's zoning board to determine what types of records would be available concerning the operation of businesses in the county. In February 2014, he submitted a record request for the county's zoning files regarding business operations for several parcels of land including plaintiff's property. Although there were a few records for other parcels near plaintiff's property, there were no records indicating that plaintiff had obtained county approval to operate his business on the property prior to the annexation. Based on the lack of records regarding plaintiff's property, Jennings concluded that plaintiff's business was not lawfully established when the property was part of unincorporated Cook County. Jennings further testified that plaintiff's property had been annexed in 1988 during a "boundary war" between

the Village and the bordering city of Prospect Heights. The Village initially annexed two of plaintiff's four parcels through a voluntary petition, which in turn allowed the Village to annex the remaining two parcels, including the property at issue, through a forced annexation.

¶ 7 Plaintiff testified that he first acquired the parcel of property at issue in 1982 and began using it for his landscaping business as well as for his personal residence. He subsequently bought the three adjoining parcels. Plaintiff's sons live in homes on two of the parcels and the third is a vacant lot. He testified that he also used the other three parcels for the landscaping business. Prior to the annexation, plaintiff had a discussion with a neighbor and "two or three [people who] used to belong to [the Village]" about whether he would be joining the Village or Mount Prospect. When he asked one of the individuals what he would gain from joining the Village, the individual told him that he would be able "to keep staying there and working there" and that he would have a "special use." Plaintiff did not know the name of the individuals nor their positions with the Village. He did not have a written agreement with the Village before signing the voluntary annexation petition. He also never received "anything from Cook County allowing or permitting [him] to operate a landscape business."

¶ 8 Barbarito Sanchez, plaintiff's son, testified that he was employed by his father's landscaping company and lived in a house on one of the other parcels. The parcel he lives on is also used "as part of the landscaping business." On May 14, 2015, Sanchez's brother received a letter from the Village indicating that the property at issue and the parcel on which the brother lived were nonconforming and would be the subject of a hearing. It stated that enforcement actions would not begin until January 2016. However, the Village filed an

ordinance violation complaint two weeks later. Sanchez further testified that the landscaping business operates on all four parcels of property. From April through November, workers begin working on the property at 6:00 a.m. with the landscaping trucks leaving at 7:30 a.m. They return between 4:00 and 5:30 pm. when operations shut down for the day. During the winter, the company solely operates snowplows out of the property. It stores landscaping waste on the property, but it is taken out "like every three days." "A semi-load or two" of landscaping materials like topsoil, gravel, and sand are also stored on the property. An eight foot fence screens the property from the nearby road.

¶ 9 The Village allowed permits for several improvements to the four parcels of land. A shed was replaced in early 2000, but in seeking the permit Sanchez stated that the building would not be used for the landscaping business. In 2008, the Village issued a permit for an electrical service upgrade costing $2,750 to Sanchez's house. In 2011, the Village issued permits for siding replacement, costing $5,000 and $2,500, to houses on two of the parcels. That year, plaintiff also obtained a permit to replace the roof of the house on the parcel at issue for $3,500. In 2012, the Village issued permits for the construction of fencing on two of the parcels, costing $5,200 and $8,700. Finally, Sanchez obtained a permit to replace the roof of his house for $3,800 in 2013. Sanchez testified that all of the permits were for residential purposes except for the eight foot fence. It was specifically to screen the business from the public.

¶ 10 On June 23, 2008, the Village sent a notice of violation to plaintiff's landscaping business that directed the company to "[r]emove all accessories, structures, equipment, and material that were not part of the business as operated before annexation" from the parcel at issue. Sanchez testified that the business did not comply with the notice, but the Village told him

"just not to bring anything else" onto the property. The Village contacted the landscaping business about three further violations in 2011. The first involved rotting lawn waste stored on the parcel in question that was removed within a week of the notice. The second violation was for a fence on another parcel that had damaged sections, which were also repaired within a week. Finally, the company paid to repair heavy tire ruts on a nearby road caused by its trucks. The Sanchez family never personally received any complaints from neighbors regarding the business.

¶ 11 Stephen Lenet, a land planning and zoning consultant, also testified for plaintiff. Reviewing the Village's plan for future property development, Lenet noted that it recommended that plaintiff's property be used for public open space. He opined that this use was not consistent with neighboring property uses which include a self-storage facility, a day-care, and an auto body shop. He further opined that plaintiff's business had had no "adverse impact" on the surrounding areas.

¶ 12 The Village called Mark Jackson, a municipal inspector, as a rebuttal witness. Jackson testified that the Village had received numerous complaints about plaintiff's business, although the received complaints were all remedied by the business.

¶ 13 Jennings also testified as a rebuttal witness, stating that one of the fences the Village issued a permit for is allowed in the residential district. The taller fence is also permitted in a residential district if an exception is granted by the Community Development Department. However, the Village specifically permitted the taller fence to screen the company's commercial vehicles from the nearby street.

¶ 14 Following the hearing, the hearing officer issued his findings and decision on June 6, 2016. The officer explicitly found "[t]here is no credible evidence" that the landscaping

business was ever lawfully established and ruled that plaintiff's business violated §19-04-020(b) of the Village of Wheeling Municipal Code (Code) (§19-04-020(b) (amended Mar. 24, 2015)). Plaintiff filed a complaint for administrative review in the circuit court of Cook County and the court overturned the officer's determination.

¶ 15 II. ANALYSIS

¶ 16 A. Standard of Review

¶ 17 Plaintiff sought review of the hearing officer's decision pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)). In such a case, we review the decision of the administrative agency and not the ruling of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). The degree of deference afforded to the administrative agency's decision depends upon whether the question considered is a question of fact, a question of law, or a mixed question of law and fact. *Id*. at 532. Rulings on questions of fact will be reversed only if against the manifest weight of the evidence, whereas questions of law are reviewed *de novo*. *Id*. A mixed question of law and fact is reviewed under the clearly erroneous standard. *Id*.

¶ 18 Plaintiff argues that his business was a legal non-conforming use, the Village should be estopped from enforcing the zoning regulations, and that he had a vested right in operating his business. Each of these arguments[1] concerns the hearing officer's resolution of factual questions, and thus will only be overturned if they are against the manifest weight of the evidence. See *Taylor v. Zoning Bd. of Appeals of City of Evanston*, 375 Ill. App. 3d 585, 591-92 (2007) (applying manifest weight standard in considering legal nonconforming use); *City of Chicago v. Unit One Corp.*, 218 Ill. App. 3d 242, 247 (1991) (applying manifest weight

[1] Plaintiff also raises a laches argument that bears a separate consideration of the standard of review, which we discuss further below.

standard in considering estoppel); *Reserve at Woodstock, LLC v. City of Woodstock*, 2011 IL App (2d) 100676, ¶ 50 (applying manifest weight of the evidence standard in considering vested-right doctrine). Under this standard, an appellate court will reverse an agency's factual determinations only if "the opposite conclusion is clearly evident" from the record. *Hoffman v. Orland Firefighter's Pension Board*, 2012 IL App (1st) 112120, ¶ 18. We will not reweigh the evidence or make an independent determination of the facts. *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 234 Ill. 2d 446, 463 (2009). The "mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). An agency's factual determinations should be affirmed if the record contains some evidence to support its conclusions. *Marconi*, 225 Ill. 2d at 534.

¶ 19 B. Legal Nonconforming Use

¶ 20 The Village argues that the hearing officer's determination that plaintiff's business was not a legal nonconforming use was not against the manifest weight of the evidence. It asserts that there was no evidence that plaintiff's business was initially permitted by Cook County and, therefore, it was not legally established. Plaintiff responds that his business was in operation at the time of the property's annexation, and thus it constitutes a legal nonconforming use.

¶ 21 The parties stipulated that plaintiff's business is not permitted within the R-1 zone in which it is located. However, where a use that is not permitted under the current zoning ordinance predates that ordinance, the use is typically allowed to continue as a legal nonconforming use. *Taylor*, 375 Ill. App. 3d at 592; see also Wheeling Municipal Code §19-

10-040(b) (amended Mar. 24, 2015)). A use can only continue as a legal nonconforming use if it was "lawful at its inception." *Id.* If the nonconforming use was not lawfully established, it may not continue regardless of whether it predates the ordinance in question. See *Wright v. County of Du Page*, 316 Ill. App. 3d 28, 39 (2000).

¶ 22 Jennings testified that he had searched Cook County records and was unable to find any documents indicating that the county had permitted plaintiff to operate his business within the residential zone. Despite finding such records for other surrounding properties, he found no permits or other documents for plaintiff's property and concluded that the business was not legally established while a part of Cook County. Plaintiff admitted that he had never received any documents or permission from the county to operate his business. Accordingly, we hold that there was some evidence in the record supporting the hearing officer's determination that plaintiff's business was not lawfully established, and consequently, was not a legal nonconforming use. Therefore, the officer's determination was not against the manifest weight of the evidence.

¶ 23 Plaintiff cites *Bainter v. Village of Algonquin*, 285 Ill. App. 3d 745, 750 (1997), for the proposition that "[a] legal nonconforming use is a nonpermitted use under currently applicable zoning ordinances which predates the applicable zoning ordinance and is legalized on that basis." He argues that because his business undisputedly predates the ordinance it must therefore be regarded as lawfully established based solely on the date of its inception. Although plaintiff accurately quotes *Bainter*, he fails to acknowledge the very next sentence of that opinion: "A use which was not lawful at its inception is not a legal nonconforming use and thus cannot be protected from elimination for violation of present zoning ordinances." *Id.* His argument is unpersuasive.

¶ 24 C. Equitable Estoppel

¶ 25 The Village also argues that the hearing officer did not err in finding that estoppel did not bar it from enforcing its zoning ordinances against plaintiff. Plaintiff argues that estoppel is proper where he was told by representatives of the Village that he would be able to continue to practice his business if he allowed his property to be annexed.

¶ 26 The doctrine of equitable estoppel is generally invoked "when a party reasonably and detrimentally relies on the words or conduct of another." *Brown's Furniture, Inc. v. Wagner*, 171 Ill. 2d 410, 431 (1996). Generally, estoppel will not be enforced against a municipality "absent extraordinary and compelling circumstances." *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 94. It will be applied only "when necessary to prevent fraud or injustice." *Underwood v. City of Chicago*, 2016 IL App (1st) 153613, ¶ 29.

¶ 27 The party seeking estoppel must show (1) an affirmative act by either the government entity itself or an official with express authority to bind the entity and (2) "reasonable reliance upon that act by the plaintiff that induces the plaintiff to detrimentally change its position." *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 40. The affirmative act must be from "the public body itself, such as a legislative enactment, rather than the unauthorized acts of a ministerial officer or a ministerial misinterpretation." *Morgan Place of Chicago v. City of Chicago*, 2012 IL App (1st) 091240, ¶ 33.

¶ 28 Plaintiff argues that estoppel was appropriate because he relied upon his conversation with unnamed representatives of the Village in signing the annexation petitions. This argument is unpersuasive. First, our standard of review requires that we make all reasonable inferences in support of the finding (*Haynes v. Police Bd. of the City of Chicago*, 293 Ill. App. 3d 508, 511 (1997)) and we will not second guess the hearing officer's credibility

determinations (see *Iwanski v. Streamwood Police Pension Bd.*, 232 Ill. App. 3d 180, 184 (1992)). Plaintiff's argument assumes that we take his testimony as credible and accurate. However, the hearing officer's determination implies that it did not find plaintiff's vague and self-serving account of a meeting with unidentified village representatives credible. Even if we were to accept plaintiff's testimony as true, it is insufficient to show an act by the Village itself, as opposed to the mistaken assertions of a ministerial officer. His assertion that he met with two unnamed individuals with unexplained connections to the Village is insufficient to provide the extraordinary and compelling circumstances necessary to invoke equitable estoppel. Accordingly, the hearing officer's determination not to apply estoppel was not against the manifest weight of the evidence.

¶ 29 D. Vested Right

¶ 30 Plaintiff also argues that the hearing officer failed to recognize that he had a vested right in continuing to operate his business on his property. He asserts that he is an innocent party who has made substantial expenditures in reliance on the Village's inaction regarding his business.

¶ 31 The vested-right doctrine typically involves circumstances where a property owner incurs substantial expenditures or obligations for the development of the property but the attempted development is thwarted by a subsequent zoning change. See, *e.g.*, *Furniture L.L.C. v. City of Chicago*, 353 Ill. App. 3d 433, 435 (2004). A municipality has the right to amend its zoning ordinances (*Ropiy v. Hernandez*, 363 Ill. App. 3d 47, 51 (2005)), and a property owner should understand that zoning classifications may change (*Furniture LLC*, 353 Ill. App. 3d at 438). Accordingly, the general rule is that a property owner has no vested right in the

continuation of a zoning classification. *Pioneer Trust & Savings Bank v. County of Cook*, 71 Ill. 2d 510, 517 (1978).

¶ 32 Nevertheless, under the vested-right doctrine, a property owner may acquire a vested right in a prior zoning classification where he or she undertook a significant change of position in good-faith reliance upon the probability of the issuance of a building permit under the prior zoning structure. *People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove*, 16 Ill. 2d 183, 191 (1959). In order to claim a vested right, the property owner must show that he or she (1) made expenditures or obligations in good-faith reliance on the probability that he or she would obtain the necessary approvals to develop the property under the prior zoning classification and (2) the expenditures or obligations were substantial. *1350 Lake Shore Associates v. Randall*, 401 Ill. App. 3d 96, 103 (2010). If these are proven, the property owner is entitled to a zoning certificate and building permit. *1350 Lake Shore Associates v. Healey*, 223 Ill. 2d 607, 628 (2006).

¶ 33 As the case at bar involves plaintiff's already developed property, and not a thwarted potential development, it is unclear how the vested right doctrine applies. In arguing that the doctrine applies, plaintiff largely reiterates the unfairness arguments he sets forth in his estoppel and laches argument. We decline to extend the vested right analysis to the case at bar and find that the hearing officer's determination that the doctrine was inapplicable to the current facts was not erroneous.

¶ 34 E. Laches

¶ 35 The Village argues that the hearing officer did not abuse his discretion in determining that laches did not apply. Plaintiff responds that he operated his business for 27 years with

the full knowledge of the Village and improved the property numerous times in reliance on the Village's inaction.

¶ 36 Initially, we note that our standard of review is more complicated for the issue of laches. Typically, where a trial court applies the doctrine of laches, we review the circuit court's determination for an abuse of discretion. See *Lee v. City of Decatur*, 256 Ill. App. 3d 192, 196 (1994). Yet on administrative review, the appellate court reviews the decision of the administrative agency and not the circuit court. *Marconi*, 225 Ill. 2d at 531. Here, plaintiff raised the argument of laches before the hearing officer who considered the issue in the context of his factual findings. Under the circumstances, the officer's laches determination is entitled to "significant deference and [we] will reverse that determination only if it was against the manifest weight of the evidence." *Wabash County v. Illinois Municipal Retirement Fund*, 408 Ill. App. 3d 924, 933 (2011).

¶ 37 Laches is an equitable doctrine that precludes a litigant from asserting a claim when the litigant's unreasonable delay in raising the claim has prejudiced the opposing party. *Madigan v. Yballe*, 397 Ill. App. 3d 481, 493 (2009). In order to prevail on the affirmative defense of laches, a defendant must prove: (1) that there was a lack of due diligence by the plaintiff in bringing suit; and (2) plaintiff's delay resulted in prejudice to the defendant. *Lozman v. Putnam*, 379 Ill. App. 3d 807, 822 (2008).

¶ 38 Although laches can be invoked to bar administrative complaints, courts are reluctant to impose laches on a government entity. *Wabash*, 408 Ill. App. 3d at 933. In order to apply laches to a municipality, a party must show extraordinary circumstances because any resulting impairment of government functions might harm the public. *Yballe*, 397 Ill. App. 3d

at 493-94. Moreover, laches will apply only if the government entity committed an affirmative act that induced the party to act, making it inequitable to permit the entity to retract what it had done. *City of Chicago v. Alessia*, 348 Ill. App. 3d 218, 229 (2004).

¶ 39 The parties focus much of their arguments on whether the Village's knowledge of plaintiff's business should be considered as beginning with the annexation or when Village representatives discovered that the business had not been lawfully established. Although this determination factors into the consideration of whether the Village showed due diligence, it is unnecessary to our ultimate disposition. Even if we accept plaintiff's contention that the Village knew of his business in 1988, he still has failed to show he has suffered prejudice attributable to the Village's delay that amounts to compelling or extraordinary circumstances.

¶ 40 It is true that there may be significant cost in the relocation of plaintiff's business; yet that cost is not attributable to any delay by the Village as immediate enforcement would have also resulted in the cost of relocation. See *Lozman*, 379 Ill. App. 3d at 822 (Party must prove that opposing party's "delay resulted in prejudice.") Plaintiff's son testified that numerous improvements were made to plaintiff's properties, but he admitted that all but one of those improvements was made to the residences and not the business. He further testified that when an attempt had been made to improve the business, the Village promptly noted the violation and directed him to remove such improvements. Thus, the only evidence in the record of prejudice that can be arguably tied to the delay in enforcement is that the business installed an eight-foot fence, which cost $8,700. Although the fence does constitute a cost that plaintiff would not have paid if the Village had promptly enforced its zoning regulations in 1988, we cannot say that this alone constitutes the compelling and extraordinary circumstances required to enforce laches against a municipality. See *IP Plaza, LLC v. Bean*,

2011 IL App (4th) 110244, ¶ 49 (finding compelling circumstances where developer spent $2.3 million in reliance on government actions); see also *County of Du Page v. K-Five Construction Corp.*, 267 Ill. App. 3d 266, 276 (1994) (finding compelling circumstances where property owner spent approximately $600,000 on improvements to property). For that reason, the hearing officer's decision not to apply laches was not against the manifest weight of the evidence.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we hold that the hearing officer did not err in finding that plaintiff's business was not a legal nonconforming use and determining that equitable estoppel, vested right doctrine, and laches did not apply. Accordingly, the circuit court of Cook County's order reversing hearing officer's order is reversed and the case remanded to the administrative hearing officer.

¶ 43 Reversed and remanded.