[Cite as *Mentor v. Eichels,* 2015-Ohio-1068.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

CITY OF MENTOR,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NO. 2014-L-097**
THEODORE J. EICHELS, et al.,	:	
Defendants,	:	
LYNDA EICHELS,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 13 CV 000347.

Judgment: Affirmed.

Joseph P. Szeman, Mentor City Assistant Law Director, 8500 Civic Center Boulevard, Mentor, OH 44060 (For Plaintiff-Appellee).

Lynda Eichels, pro se, 6510 Sycamore Street, Mentor, OH 44060 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Lynda Eichels, appeals the June 19 and August 22, 2014 Judgment Entries of the Lake County Court of Common Pleas, declaring "the residential dwelling located at 6510 Sycamore Street, Mentor, Ohio * * * a public nuisance pursuant to R.C. 3767.41," and appointing a receiver for the purpose of "taking possession and control of the property." The issues before this court are whether a

party may dispute the ownership of real property which is the subject of a nuisance action contrary to admissions made in the answer and in the absence of a transcript of the evidentiary hearing; whether a search of property pursuant to Civil Rule 34 violates an occupant's Fourth Amendment rights; and whether a declaration that property is a public nuisance constitutes a constitutional taking under the Fifth and Fourteenth Amendments. For the following reasons, we affirm the decision of the court below.

{¶2} On February 14, 2013, plaintiff-appellee, the City of Mentor, filed a Complaint for Injunctive and Declaratory Relief; Public Nuisance in the Lake County Court of Common Pleas against Theodore J. Eichels[1], Lynda Eichels, and various John Doe defendants.

{¶3} The Complaint alleged:

> 3. Situated in the City is real property located at 6510 Sycamore Street and known as permanent parcel no. 16-C-082-J-00-013-0 (hereinafter, the "subject property").
>
> 4. The record owner of the subject property is "Harry A. Eichels, Trustee for Theodore Joseph Eichels, a minor grandson" who acquired title by deed recorded in Volume 742, Page 264 of the Lake County Records.
>
> 5. Harry A. Eichels died on July 19, 1978.
>
> 6. Defendant Theodore J. Eichels is the grandson of Harry A. Eichels, as referenced in the deed, who at all times pertinent has been of the age of majority.

1. Theodore Eichels did not appear or otherwise defend the action.

7. Upon information and belief, Defendant Theodore J. Eichels is the lawful owner of the subject property, and, as such he is charged with the legal compliance of the City's ordinances set forth herein.

8. Upon information and belief, at all times pertinent Defendant Theodore J. Eichels has not occupied the subject property.

* * *

10. At all times pertinent the defendant, Lynda Eichels, has been in actual possession and control of the subject property and, as such, she is charged with the legal compliance of the City's ordinances set forth herein.

* * *

12. Situated on the subject property are one single-family residential dwelling, a detached garage, and an accessory building.

{¶4} The City of Mentor sought, in relevant part, an order requiring the defendants "to repair and restore the subject property in conformity with the pertinent requirements of the [Mentor Codified Ordinances]," and a declaration that the subject property is "a public nuisance."

{¶5} On March 27, 2013, Lynda Eichels filed an Answer in which she admitted the averments contained in paragraphs 3, 4, 5, 6, 7, 8, 10, and 12 of the City's Complaint.

{¶6} On April 19, 2013, the City of Mentor filed a Motion to Compel Discovery, as Lynda Eichels had refused the City permission to inspect the premises in accordance

with Civil Rule 34 ("any party may serve on any other party a request * * * to enter upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property"). Eichels responded on May 7, 2013.

{¶7} On July 18, 2013, the trial court granted the City's Motion to Compel Discovery.

{¶8} On June 19, 2014, following an evidentiary hearing held pursuant to R.C. 3767.41(B)(2), the trial court declared the property at 6510 Sycamore Street a public nuisance:

> Based upon the evidence presented, the court finds that the residential dwelling is a menace to the public health, safety and welfare and is therefore a public nuisance pursuant to R.C. 3767.41. The premises has been severely neglected for many years and is no longer habitable due to inadequate maintenance. Additionally, the dwelling is dilapidated, unsanitary, dangerous to human life and unfit for human habitation.

{¶9} On August 22, 2014, after further hearing, the trial court determined that "no interested party is willing and/or able to undertake the work and to furnish the materials necessary to abate this public nuisance and that appointment of a receiver to take possession and control of the property is necessary."

{¶10} On September 22, 2014, Lynda Eichels filed a Notice of Appeal. On appeal, she raises the following assignments of error:

{¶11} "[1.] The court failed to require the plaintiff to meet its burden of proof to establish that Lynda Eichels was not the owner of the property located at 6510 Sycamore Street."

{¶12} "[2.] The trial court violated the defendant's constitutional rights."

{¶13} In her first assignment of error, Eichels contends the property located at 6510 Sycamore Street is not subject to proceedings under R.C. 3767.41, inasmuch as that section applies to a "building" and "'building' does not include any building or structure that is occupied by its owner." R.C. 3767.41(A)(1).

{¶14} Eichels acknowledges admitting in her Answer that "Theodore J. Eichels is the lawful owner of the subject property," but now seeks to retract that admission. Eichels maintains that "about 1970, her husband fraudulently transferred the property to his father, Harry A. Eichels, who transferred the property to a trust for his grandson, Theodore J. Eichels." Thus, she remains "one-half owner of the property." Eichels also maintains that "she did assert at a court hearing her belief that she is the true owner of the property."

{¶15} This court is unable to grant the relief sought by Eichels. In its August 22, 2014 judgment entry, the trial court found that "title to the property is now held in trust, in the name of a deceased trustee, and Defendant Theodore J. Eichels is the apparent beneficiary of that trust instrument." The court further noted that "Lynda Eichels * * * claims a legal interest in the property although no written instrument memorializing the nature of such interest has been presented to the Court."

{¶16} According to the public records, Theodore J. Eichels is the owner of the property as the beneficiary of a trust. This is sufficient evidence to prove ownership.

Thus, the burden was on Lynda Eichels to prove that the property was transferred fraudulently. There is no argument or evidence in the record demonstrating that the property was fraudulently transferred, or even an explanation as to why the transfer was fraudulent.

{¶17} As a court exercising appellate jurisdiction, this court reviews the proceedings of the trial court for error. "An appellate court reviewing a lower court's judgment indulges in a presumption of regularity of the proceedings below." *Concord Twp. Trustees v. Hazelwood Builders, Inc.*, 11th Dist. Lake No. 2000-L-040, 2001 Ohio App. LEXIS 1383, 6 (Mar. 23, 2001). As the party claiming error in the trial court, Lynda Eichels bore "the burden to demonstrate error by reference to matters made part of the record in the court of appeals." *Id.*; App.R. 9(B)(1) ("[i]t is the obligation of the appellant to make reasonable arrangements to ensure that the proceedings the appellant considers necessary for inclusion in the record * * * are transcribed").

{¶18} In the present case, two evidentiary hearings were held at which evidence and argument regarding the ownership of the property were presented. No transcript, or statement of the evidence or proceedings, was filed with this court. In the absence of anything in the record to the contrary, we must accept the trial court's conclusions regarding ownership of the property. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980) ("[w]hen portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm"); *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 19-20, 520 N.E.2d 564 (1988).

{¶19} The first assignment of error is without merit.

{¶20} In the second assignment of error, Lynda Eichels contends that the inspections of the property at 6510 Sycamore Street were conducted without search warrants and, thus, violated the Fourth Amendment to the United States Constitution. *Michigan v. Tyler*, 436 U.S. 499, 506, 98 S.Ct. 1942, 56 L.E.2d 486 (1978) ("[s]earches for administrative purposes, like searches for evidence of crime, are encompassed by the Fourth Amendment"); *Camara v. Mun. Court of San Francisco*, 387 U.S. 523, 538, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) ("'probable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling," and "may be based upon the passage of time, the nature of the building (*e. g.*, a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling").

{¶21} Assuming, arguendo, that the constitutional challenges are properly before this court, we find no violation of the Fourth Amendment.

{¶22} In its August 22, 2014 judgment entry, the trial court noted that Tim Cox, Public Health Environmentalist for the Lake County General Health District, "inspected the house on June 24, 2011, and issued an Order of Condemnation on July 7, 2011, determining that the dwelling was unfit for human habitation." Eichels claims that "[t]here is no evidence that a search warrant was obtained * * * for this inspection."

{¶23} As an initial matter, the record does not indicate that Eichels ever challenged the constitutionality of the 2011 inspection. We will not infer the absence of a warrant where the inspection was not challenged and there is no transcript of the

hearing in which the inspection's results were introduced. To do so would be to infer error from a silent record.

{¶24} Assuming the 2011 inspection was conducted without a warrant and/or probable cause, we find no grounds for reversal inasmuch as the declaration of nuisance is supported by a subsequent inspection, conducted on September 4, 2013, pursuant to Civil Rule 34. This inspection was conducted by Andrew Rose, Mentor's Supervisor of the Code Enforcement Division, who testified and introduced photographs of the property.[2]

{¶25} Eichels contends the 2013 inspection was likewise "tainted by a violation of [her] constitutional rights" in that "she was detained by a Mentor police officer at the rear of her property while the city inspectors entered her house."

{¶26} Eichels cites no authority for the proposition that Civil Rule 34 discovery is subject to the Fourth Amendment's warrant requirement. To the extent that the issue has been considered, it has been held that procedures for conducting discovery established by rules of civil procedure ensure the constitutional reasonableness of such intrusions for the purposes of the Fourth Amendment. In other words, the Fourth Amendment requires that searches be reasonable and civil discovery rules, with their regulation of the manner and limitation of the scope of discovery, are presumptively reasonable. *Lease v. Fishel*, M.D.Pa. No. 1:07-CV-0003, 2009 U.S. Dist. LEXIS 29305, 15 (Apr. 3, 2009) ("the rules of civil procedure * * * provide limitations on the scope and

2. According to the trial court's August 22, 2014 judgment entry: "The exterior photographs depicted peeling paint, bare wood, multiple holes, evidence of rot, and missing siding with untreated OSB exposed. The interior photographs evidenced, inter alia, unsecured light fixtures with exposed wires, water stains in the ceilings, gaps in the wood flooring, peeling paint, an electrical box lacking the front panel with wires exposed, a furnace in the basement with vent pipes not connected to ducts, mold and mildew and moisture on the basement floor, animal scat, open walls with exposed electrical wiring and insulation, and large amounts of clutter throughout the house."

character of civil discovery [and] * * * help ensure that civil discovery does not run afoul of the Fourth Amendment"); *United States v. Jensen*, D.Utah No. 94-C-1214 B, 1995 U.S. Dist. LEXIS 15277, 2-3 (Sept. 26, 1995) ("Rule 34(a)(2) F.R.C.P. [which] allows a party, as part of the discovery process, to be permitted to enter on designated land in the possession or control of a party for inspection, etc. of the premises * * * meets the standards of a reasonable Fourth Amendment Entry"); *United States v. Internatl. Business Machines, Corp.*, 83 F.R.D. 97, 102 (S.D.N.Y.1979) ("when the government initiates a civil action it discards its investigative role for that of litigant," and "it would appear the protection sought resides in the Federal Rules of Civil Procedure, not the fourth amendment").

{¶27} Lastly, Eichels contends that the declaration of nuisance and appointment of a receiver constitute a taking without just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

{¶28} In the absence of demonstrable error in the nuisance proceedings, Eichels' position is untenable. While "[t]he United States and Ohio Constitutions prohibit the taking of private property for public use without just compensation * * *, such compensation is not mandated when the state legitimately exercises police power to abate a property nuisance." *Embassy Realty Invests., Inc. v. Cleveland*, 572 Fed.Appx. 339, 344 (6th Cir.2014); *Davet v. Cleveland*, 456 F.3d 549, 553 (6th Cir.2006) ("the takings claim failed because '[d]emolition, compliant with local law and procedure, in order to enforce building codes or abate a public nuisance does not constitute a taking as contemplated by the federal and Ohio Constitutions'") (citation omitted); *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 491-492, 107 S.Ct. 1232, 94

L.Ed.2d 472 (1987) ("[l]ong ago it was recognized that 'all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community,' * * *, and the Takings Clause did not transform that principle to one that requires compensation whenever the State asserts its power to enforce it") (citation omitted).

{¶29} The second assignment of error is without merit.

{¶30} For the foregoing reasons, the June 19 and August 22, 2014 Judgment Entries of the Lake County Court of Common Pleas, declaring the residence at 6510 Sycamore Street to be a public nuisance and appointing a receiver, are affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.