[Cite as *Pelzl v. Greene Cty. Combined Health Dist.*, 2008-Ohio-2068.]

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

DANIEL PELZL, ET AL.	:	
Plaintiffs-Appellants	:	C.A. CASE NO. 07-CA-05
vs.	:	T.C. CASE NO. 2006-CV-700
GREENE COUNTY COMBINED HEALTH DISTRICT	:	(Civil Appeal From
Defendant-Appellant	:	Common Pleas Court)

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O P I N I O N

Rendered on the 29th day of February, 2008.

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Plaintiffs-Appellants, Pro Se

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GRADY, J.

{¶ 1} Plaintiffs, Daniel and Corinne Pelzl, appeal from a judgment of the court of common pleas overruling their appeal from a decision of the Board of Health of Greene County.

{¶ 2} On May 6, 2004, Matthew Funk, the Public Health

Sanitarian of Greene County Combined Health District ("GCCHD"), sent a letter to the Pelzls to notify them that their house at 321 Dayton Street in Yellow Springs was a public health nuisance. Funk listed eleven violations of the GCCHD Housing Regulations that needed to be remedied. The Pelzls were given 60 days to abate the nuisance through rehabilitation or demolition. Later that day, Daniel Pelzl sent an e-mail to Diane Leopold, a Director at GCCHD, setting forth his intention to rehabilitate the property and listing various conditions that he intended to remedy and repair.

{¶ 3} On May 13, 2004, the Pelzls sent a letter to Mark McDonnell, a Health Commissioner with the GCCHD, requesting a hearing to obtain an extension of the 60 days given to abate the nuisance. GCCHD granted the Pelzls an extension of time in which to abate the nuisance. The Pelzls and representatives of GCCHD exchanged additional correspondence between June of 2004 and September of 2004 regarding repairs to be made to the house at 321 Dayton Street.

{¶ 4} After an inspection of the exterior of the house in early June of 2005, Matthew Funk sent another letter to the Pelzls informing them that there had been only "minimal progress" in repairing the house since May of 2004. The Pelzls were given 30 days to abate the nuisance by either

demolition or rehabilitation.

{¶ 5} On September 12, 2005, the Pelzls were again notified that if they did not make the necessary repairs to the property by October 28, 2005, they would be required to appear before the Board of Health on November 3, 2005, to show cause why the Board should not declare the structure at 321 Dayton Street a public nuisance and demolish the structure. The Pelzls failed to make the repairs by October 28, 2005, but they attended the November 3, 2005 Board meeting.

{¶ 6} At the November 3, 2005 meeting, the Board of Health heard testimony from the Pelzls and representatives of GCCHD regarding the condition of the property at 321 Dayton Street and what progress had been made in repairing the property since May of 2004. Based on promises made by the Pelzls, the Board agreed to give the Pelzls one last opportunity to abate the nuisance through rehabilitation rather than demolition. The Board stayed execution of the demolition order until March 31, 2006 to allow the Pelzls to comply with the minimum standards set by the Greene County Housing Code for the exterior of the property. If the Pelzls met this deadline, the stay of the demolition order would be extended further until June 30, 2006 to allow the Pelzls sufficient time to comply with all minimum standards set by the Greene County

Housing Code and obtain an occupancy permit or properly secure and board the property until such time that an occupancy permit could be obtained.

{¶ 7} The Pelzls did not meet the deadlines they agreed to meet at the November 3, 2005 Board meeting. In late June of 2006, the Pelzls requested to meet with the Board. The Pelzls attended the next meeting of the Board of Health on July 6, 2006. Leopold and Funk explained to the Board that the Pelzls had failed to meet the deadlines established in the November 3, 2005 meeting and had made only superficial progress in rehabilitating the property. The Pelzls admitted that they had not made the required structural repairs to the roof and requested additional time to do so. At the conclusion of the testimony, the Board voted unanimously to take no action on the request of the Pelzls to extend the stay of execution, which allowed the demolition order to go into effect.

{¶ 8} The Pelzls appealed the Board's July 6, 2006 decision to the court of common pleas of Greene County pursuant to R.C. 2506.04. On December 21, 2006, the trial court overruled the assignment of error and found:

{¶ 9} "GCCHD relied on reliable, probative, and substantial evidence in deciding to take no action on the application to extend the stay of execution requested,

allowing the demolition order to go into effect. GCCHD and the Board exercised its discretion in allowing the Pelzls more than two years to bring the property into compliance. The Pelzls failed to comply with their own representations that repairs would be completed, and failed to complete any substantial structural repairs as required."

{¶ 10} **The Pelzls filed a timely notice of appeal, and have**

{¶ 11} **filed a brief on appeal pro se. They do not identify the error they assign for review, as App.R. 16(A)(3) requires. However, from their arguments we surmise that the Pelzls contend that they had insufficient notice of the conditions GCCHD wanted them to correct and that those conditions have been substantially corrected, and therefore the trial court abused the discretion conferred on the court by R.C. 2509.04 when it overruled the Pelzls' appeal from GCCHD's demolition order.**

{¶ 12} **"'Abuse of discretion'" has been defined as an attitude that is unreasonable, arbitrary or unconscionable. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, 19 OBR 123, 126, 482 N.E.2d 1248, 1252. It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary.**

{¶ 13} "A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue *de novo,* would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *AAA Enterprises v. River Place Community* (1990), 50 Ohio St.3d 157, 161.

{¶ 14} R.C. 2506.04 sets forth the standard of review to be applied by the court of common pleas in an appeal from decisions of a board of health:

{¶ 15} "The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules,

Chapter 2505 of the Revised Code."

{¶ 16} Unlike the common pleas court, which considers the whole record before a board or agency, the review we perform is limited to questions of law, "which does not include the same extensive power to weigh 'the preponderance of substantial, reliable and probative evidence' as is granted to the common pleas court." *Henley v. Youngstown Board of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147, quoting *Kisil v. Sandusky*, (1984), 12 Ohio St. 3d 30, 34. Instead, in an appeal from a judgment entered pursuant to R.C. 2506.04, we review the trial court's decision for an abuse of discretion. *Id.* When applying the abuse of discretion standard of review, we may not substitute our judgment for that of the trial court. *In re Jane Doe I* (1991), 57 Ohio St.3d 135, 138.

{¶ 17} The Pelzls have identified fourteen "statements" of the trial court that "are in error." Some of these "statements" are taken from the trial court's December 21, 2006 judgment entry, while many of these "statements" are actually arguments made by the Pelzls. Overall, it appears that the Pelzls take issue with many of the factual findings contained in the trial court's December 21, 2006 judgment entry.

{¶ 18} The Greene County Board of Health has authority

under R.C. 3707.01 to abate and remove nuisances. Representatives of GCCHD provided sufficient notice to the Pelzls that the house at 321 Dayton Street constituted a nuisance. The Pelzls expressed a desire to rehabilitate the house rather than demolish it. Based on the correspondence in the record and the minutes from the November 3, 2005 Board meeting, it is clear that representatives of GCCHD attempted to work with the Pelzls to rehabilitate rather than demolish the house. Over two years had passed between the time the Pelzls were notified of the nuisance and the time the Board finally decided to proceed with the demolition order. That the existence of the nuisances at 321 Dayton Street continued at that time is supported by the record before the trial court, including the pictures, correspondence, and testimony. Further, the record supports the finding that the Pelzls failed to abate the nuisance.

{¶ 19} Our task is not to determine whether a nuisance existed or was abated. Our task is to determine whether the trial court abused its discretion when it determined those questions adverse to the Pelzels. Based on the record before it, we find that the trial court did not abuse its discretion in finding that the Board's decision was supported by the preponderance of substantial, reliable, and probative

evidence. R.C. 2506.04.

{¶ 20} The assignment of error is overruled. The judgment of the trial court will be affirmed.

WOLFF, P.J. and BROGAN, J., concur.

Copies mailed to:

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Hon. Stephen A. Wolaver