[Cite as *Steinbrick v. Danbury Twp. Bd. of Zoning Appeals*, 2015-Ohio-2447.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Thomas Steinbrick, et al.	Court of Appeals No. OT-14-036
Appellants	Trial Court No. 13CV060
v.	
Danbury Township Board of Zoning Appeals	**DECISION AND JUDGMENT**
Appellee	Decided: June 19, 2015

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George C. Wilber, for appellants.

John A. Coppeler, for appellee.

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YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Ottawa County Court of Common Pleas on an R.C. Chapter 2506 administrative appeal, in which the trial court

affirmed the decision of appellee, Danbury Township Board of Zoning Appeals ("BZA"). For the reasons that follow, we affirm.

A. Facts and Procedural Background

{¶ 2} Appellants, Thomas and Christine Steinbrick, own a 17-acre plot of land in Ottawa County. One acre, located at the front of the property alongside the road, contains mini storage buildings. That acre is zoned commercial. The remaining acreage is zoned agricultural. Appellants' residence sits at the rear of the property.

{¶ 3} In 1995, appellants were granted a conditional use permit for the property between the existing mini storage buildings and the residence. Appellants had intended to expand the storage facility in this area, but ultimately only built five of the 32 proposed buildings. Notably, the conditional use permit contained in BZA's records lists as a condition, "No business activity or outside storage except boat storage at rear of property." Appellants, however, presented a copy of the permit delivered to them, which lists as a condition, "No business activity, outside storage permitted at rear of property."

{¶ 4} The genesis of the present matter began in 2011 when appellants started a taxi business. Appellants stored the taxicabs at the rear of their property near the residence. When a call came in, it was forwarded to Thomas's, Christine's, or their son's cell phone. The person receiving the call would then dispatch a taxi to complete the fare. Thomas testified that, in addition to his family, he had six other independently contracted drivers that would operate the taxicabs. Those drivers would leave their personal vehicles on appellants' property while they took the cab out for their shift. Thomas

described that oftentimes he would meet a driver at a gas station to receive the money earned from the fare, but occasionally, the driver would leave the money locked in the taxi back on appellants' property. Regarding the other aspects of the business, Thomas testified that he would sometimes complete preliminary paperwork at his residence before sending it to his accountant. He also offered that he checked the oil in the taxis on his property from time to time, but any maintenance was done offsite.

{¶ 5} In January and May 2012, the zoning inspector had conversations with appellants regarding whether the taxi business was being run from the home. The inspector suggested that appellants apply for a home occupation permit, but appellants refused. Thomas was adamant that he was not running a business from his home, despite the fact that multiple taxis were visible from the roadway, and were often seen coming and going. At the time, the zoning inspector took Thomas's word, but on August 8, 2012, the inspector received an anonymous complaint that appellants were operating the taxi business from their permanent residence. After an investigation into the matter, the zoning inspector found that appellants had registered the business at the permanent residence, had applied for the taxicab permit at the permanent residence, had the phone number for the business at the permanent residence, and on multiple internet listings had the permanent residence listed as the business address. Accordingly, on September 10, 2012, the zoning inspector issued a notice of violation.

{¶ 6} Appellants appealed the notice of violation to the BZA. Before the BZA, Thomas argued that he was not operating a business as that term is defined in the zoning

ordinances. Instead, he asserted that he was merely storing the taxis on his property consistent with his conditional use permit, which allowed outside storage at the rear of the property. Thomas stated that he stored the taxis at the rear of his property, close to his residence, for security purposes. After hearing the matter, the BZA found that appellants were engaged in a commercial use that was not permitted in the "A" agricultural zoning district. Thus, on January 16, 2013, the BZA issued its decision finding that the zoning inspector's notice of violation was legitimate.

{¶ 7} Pursuant to R.C. Chapter 2506, appellants appealed the decision of the BZA to the Ottawa County Court of Common Pleas. Following briefing and a hearing on the matter, the trial court issued its decision on September 2, 2014, affirming the decision of the BZA. The trial court identified that the Danbury Township zoning regulations define business as "The purchase, sale, or exchange of goods, or services and the maintenance or operation of offices and recreational and amusement enterprises." The court then found that appellants used their permanent residence as the business mailing address for bills, telephone service, and for a taxi license. Further, it found that the drivers would come to the permanent residence to pick up the taxis, and that some bookkeeping and money collection is done at the residence. Thus, the trial court reasoned that the BZA's decision was not "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by a preponderance of substantial, reliable and probative evidence."

B. Assignment of Error

{¶ 8} Appellants have timely appealed the trial court's September 2, 2014 judgment, assigning one error for our review:

> 1. The Trial Court erred in affirming the Decision of the Danbury Township Board of Zoning Appeals upholding the Zoning Inspector's issuance of a Notice of Violation to Appellants as the preponderance of the evidence in the record establishes that Appellants use of their property did not violate the provisions of the Township Zoning Resolution, or the provisions of Appellants' conditional zoning permit.

II. Analysis

{¶ 9} In administrative appeals under R.C. Chapter 2506, common pleas courts and courts of appeal employ different standards of review. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 735 N.E.2d 433 (2000). "The common pleas court considers the 'whole record,' including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence." *Id.* In contrast, "[t]he standard of review to be applied by the court of appeals in an R.C. 2506.04 appeal is '*more limited* in scope.'" (Emphasis sic.) *Id.*, quoting *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34, 465 N.E.2d 848 (1984). "This statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on '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." *Id.* "Within the ambit of questions of law for appellate-court review is whether the common pleas court abused its discretion." *Independence v. Office of the Cuyahoga Cty. Executive*, 142 Ohio St.3d 125, 2014-Ohio-4650, 28 N.E.3d 1182, ¶ 14. "The court of appeals must affirm unless it finds, as a matter of law, that the trial court's decision is not supported by a preponderance of reliable, probative, and substantial evidence." *Id.*

{¶ 10} In their brief, appellants reiterate the argument that they made before the trial court, citing four cases that they contend support the conclusion that they are not operating a business. We disagree, and find the cases to be distinguishable from the present situation.

{¶ 11} In the first case, *Wooten v. Neave Twp. Bd. of Zoning Appeals*, 150 Ohio App.3d 56, 2002-Ohio-5992, 779 N.E.2d 784 (2d Dist.), the trial court reversed the decision of the board of zoning appeals that the property owner had a "home occupation." In that case, Wooten owned property in a residential zone. The property contained a barn in which Wooten stored a 21-ton dump truck that he used to haul gravel as a sole proprietor. The evidence revealed that during the relevant time, Wooten had one client for whom he hauled gravel. Each day, he would drive his truck to the client's place of business, pick up the material, and then deliver it to the customer. At the end of the day, Wooten drove his truck home and parked it inside the barn. Later, Wooten acquired a second truck and hired another individual to drive it. Notably, Wooten did not store any

of the material at his residence, he did not contact customers, he did not advertise, and he was not listed as a business in the phone book. However, Wooten did do bookkeeping for the business at home, and occasionally performed routine maintenance on the trucks.

{¶ 12} In affirming the trial court's decision, the Second District reasoned that the trucks were merely used to commute to work, similar to using an employer-owned vehicle for commuting purposes. Further, the court noted that "home occupation" contemplated services such as babysitting, insurance sales, typing, etc., that are conducted on the premises. The court concluded that Wooten did not perform services on the premises, but instead simply stored the vehicles, which he then used to commute to another location for work. Therefore, the Second District held that Wooten was not engaged in a "home occupation." *Id*. at ¶ 16.

{¶ 13} In the second case, *Kiracofe v. Ketcham*, 3d Dist. Allen No. 1-05-19, 2005-Ohio-5271, the Third District affirmed the trial court's award of summary judgment to the defendants of a complaint that sought declaratory relief for an alleged violation of deed restrictions.[1] In *Kiracofe*, the defendant, Ketcham, owned residential property that included a deed restriction prohibiting use of the property for any trade, business, or industrial purpose. The dispute arose because Ketcham routinely parked a semi-tractor and tanker trailer, which was owned by Ketcham's employer, at his residence. The record revealed that Ketcham would regularly drive the truck to a refinery where it was

[1] The decision of the Third District was entered by three judges from this court, sitting by assignment.

loaded with oil. Ketcham would then transport the oil to a Campbell's Soup Plant, and return home with his empty truck. In determining that Ketcham's activity did not violate the deed restrictions, the Third District held, "as a matter of law the mere parking of a commercial vehicle used solely for transport to and from work does not amount to a business activity." *Id.* at ¶ 18.

{¶ 14} Like *Kiracofe*, the third case cited by appellants, *Miller v. Frye*, 5th Dist. Stark No. CA-8862, 1992 WL 238505 (Aug. 31, 1992), involved a situation where the defendant, Frye, parked a semi tractor-trailer on his residential property. In that case, the zoning inspector filed a complaint seeking to permanently enjoin Frye from parking his semi tractor-trailer on the property because it was alleged that Frye was conducting a business in a residential district. An evidentiary hearing revealed that Frye had a business known as Frye Trucking, but that he used his truck to deliver loads exclusively for another trucking company. Each afternoon, Frye would call the headquarters of the trucking company to find out if there was a job for him the next day. When there was a job, Frye would leave in the morning, drive to the site where the load was located, transport the load to its destination, then return home and park his truck at the end of the day. The trial court also noted that Frye did not have a business phone at his residence, nor did he advertise at his residence. The trial court further found that the only use of his premises for the purpose of earning a living was that Frye's property is where he parked his truck. Thus, the court concluded that Frye's activity did not constitute a commercial business use. The Fifth District affirmed, reasoning that the mere fact that Frye parked

his income-producing truck on his residential property during non-income producing hours did not establish that he was operating a trucking business from his home. *Id.* at *3.

{¶ 15} Finally, appellants cite *Brunswick Hills Twp. Bd. of Trustees v. Ludrosky*, 2012-Ohio-2556, 972 N.E.2d 132 (9th Dist.), wherein the Ninth District reversed the trial court's grant of an injunction sought by the township. In that case, Ludrosky owned an incorporated business that provided crane services to individuals and contractors. When the two cranes that Ludrosky owned as part of her business were not in use, she stored them in a pole barn on her property. After receiving a complaint from a neighboring property owner, the board of zoning appeals determined that Ludrosky was operating a business from her property in violation of the zoning resolutions. Ludrosky attempted to appeal the decision to the common pleas court, but failed to properly file a praecipe. As a result, the appeal was dismissed. Thereafter, the township sought an injunction to restrain Ludrosky from continuing to use the property in violation of the zoning resolutions. The trial court ultimately entered an order granting the permanent injunction and ordering Ludrosky to "cease to store, park, or place any cranes or other construction equipment" on her property.

{¶ 16} On appeal, the Ninth District reversed the judgment of the trial court, finding that the court abused its discretion when it determined that Ludrosky was engaged in a "home occupation." In reaching its conclusion, the Ninth District analyzed the decisions in *Wooten*, *Kiracofe*, and *Frye*, and applied their holdings to the facts before

it. Specifically, the court cited *Kiracofe* for the proposition that "the mere parking of a commercial vehicle on residential property, without conducting any activity of the business on that property, does not amount to a business practice." *Ludrosky* at ¶ 21. It then relied on *Wooten* for the proposition that the performance of bookkeeping and occasional routine maintenance did not amount to a home occupation. Finally, it cited *Frye* as support for the proposition that occasional phone calls to customers, and the listing of the residence as the business address, was not equivalent to using the residence for business purposes. Following these cases, a 2-1 majority of the court concluded that Ludrosky's actions at her residence in storing the cranes, conducting maintenance on them, delivering them to customers, occasionally calling customers, and performing bookkeeping, did not amount to a home occupation, and that the trial court abused its discretion in determining otherwise. *Id.* at ¶ 21-22.

{¶ 17} As an initial matter, we note that, of the cases cited by appellants, only *Wooten* involved the unique standard of review of an administrative appeal under R.C. Chapter 2506, and in that case the appellate court affirmed whereas we are being asked to reverse. Thus, because the cited cases were decided under a different standard of review and a different procedural posture, they are of limited precedential value. Turning now to the facts here, we find *Wooten*, *Kiracofe*, and *Frye* to be distinguishable on the basis that in those cases the defendants worked exclusively for one other company—either as an employee or an independent contractor—and it was the other company that was engaged in the business of soliciting customers and providing services. The defendant in each of

those cases effectively used the vehicle to commute to work. In contrast, appellants are the providers of services in this case; they receive calls from customers via a phone number registered to their permanent residence, and then dispatch the taxis from their residence to pick up the customer. We believe *Wooten*, *Kiracofe*, and *Frye* would be more appropriately applied to the question of whether one of appellants' independent contractors was engaged in a business if he or she kept the taxi at his or her own residence. Thus, we find appellants' arguments based on those cases to be unpersuasive.

{¶ 18} *Ludrosky*, on the other hand, is more similar to the present case in that both property owners provided services to customers from their residences. Nevertheless, we decline to follow *Ludrosky* for two reasons. First, we are not moved by the Ninth District's reasoning that because elements of running a business, such as storing equipment, calling customers, and listing the residence as the business address, have been individually held not to establish a "home occupation," then collectively they must also not prove the existence of a home occupation. Instead, we think that the accumulation of those factors can demonstrate the existence of a business where one of those factors by itself may not. Furthermore, even if we were to agree with the reasoning in *Ludrosky*, we find the present situation to be distinguishable based on the degree of the activity. In *Ludrosky*, the defendant stored two cranes; here appellants have six taxis. There, the court noted that the defendant would make occasional calls to customers; here appellants have a large enough volume of business that they have six independently contracted drivers in addition to appellants' family. Finally, the defendant in *Ludrosky* occasionally

used the residence as her business address; here appellants, to the exclusion of any other address, have advertised their taxi business, applied for a taxi license, and registered their business phone line at their permanent residence. Therefore, we do not find appellants' reliance on *Ludrosky* to be persuasive.

{¶ 19} The issue before us is straightforward: Did the trial court abuse its discretion when it affirmed the BZA's finding that appellants operated a business from their residence. In light of the undisputed evidence that appellants received phone calls through a line registered at their residence, that the taxis left from and returned to the property near the residence,[2] that the taxi license was registered at the residence, that the taxi company was advertised as being at the residence, and that some money collection and preliminary paperwork was done at the residence, we hold that the trial court's decision did not constitute an abuse of discretion.

{¶ 20} Accordingly, appellants' assignment of error is not well-taken.

III. Conclusion

{¶ 21} For the foregoing reasons, the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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[2] Notably, the fact that such taxis may be parked in compliance with a conditional use permit is irrelevant to the issue before us as the notice of violation centered on the operation of a business, not the storage of vehicles, and both versions of the conditional use permit prohibited "business activity."

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE