[Cite as *State ex. rel Cleveland v. Cornell*, 2005-Ohio-1977.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 84679

STATE OF OHIO, EX REL., CITY OF CLEVELAND,	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
vs.	:	AND
GEORGE CORNELL, et al.,	:	OPINION
Defendants-Appellees	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION		APRIL 28, 2005
	:	
	:	
CHARACTER OF PROCEEDING	:	Civil appeal from Common Pleas Court Case No. CV-470577
JUDGMENT	:	REVERSED AND REMANDED
DATE OF JOURNALIZATION	:	

APPEARANCES:

For Plaintiff-Appellant:

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MARY EILEEN KILBANE, J.:

{¶ 1} The City of Cleveland ("The City") appeals from an order terminating the closure of a gentlemen's club known as "Plush 2000." The City claims that R.C. 3767.06(A) mandates a one-year closure of the premises from the date the court issued a permanent injunction. We reverse and remand.

{¶ 2} The record reveals that in early May 2002, Cleveland Police arrested George Cornell and his daughter Yolanda Mitchell, owners of a gentlemen's club known as "Plush 2000," for operating a bottle club, selling alcohol without a permit, and public gaming. Both were tried and convicted, and their individual appeals are currently pending before this court as CA 84257 and CA 84258.

{¶ 3} Shortly after their arrest, the City filed a petition for injunctive relief and a motion for temporary restraining order, seeking to board and secure the premises. In late May 2002, the court granted a preliminary injunction.

{¶ 4} Following a modification of the original order in January

of 2004, the City moved for summary judgment and for a permanent injunction. The court granted the City's motion in April 2004 finding causes of action for nuisance in violation of R.C. 3767.01(C)(2), lewd behavior and assignation, R.C. 3767.01(C)(3), illegal distribution of intoxicating liquors on the premises, and R.C. 2915.04, public gaming, and issued a permanent injunction. However, the court simultaneously found that since the property had been closed since the issuance of the temporary restraining order on May 13, 2002, the one-year period for a permanent injunction had lapsed, and the property was ordered returned to Cornell and Mitchell.

{¶ 5} The City moved to stay the order and moved for reconsideration. The court denied both motions and the city appeals in a single assignment of error which states:

> **"The trial court erred by failing to close 14210 Miles road, Cleveland, Ohio for one year starting on April 29, 2004 - the day it issued the permanent injunction. R.C. 3767.06(A) mandates a one-year closure from the date the trial court issues the permanent injunction even if the premises was closed by court order before the permanent injunction was issued."**

{¶ 6} When reviewing a trial court's statutory interpretation, an appellate court employs the de novo review. See *Akron v. Frazier* (2001), 142 Ohio App.3d 718, 721. The plain language of R.C. 3767.06(A) provides that if the trial court determines that a nuisance exists, the court "shall continue for one year any closing order issued at the time of granting the temporary injunction."

{¶ 7} In interpreting this language, the trial court found the existence of a nuisance, which Cornell does not challenge, but additionally found that a strict statutory interpretation provided that the club be closed for a *maximum* of one year. The City, however, claims that the year long closure of a premises begins with the grant of a permanent injunction, not from the original date of closure and asserts that the trial court's interpretation of *State ex rel. Rezcallah* (1998), 84 Ohio St.3d 116, is misplaced.

{¶ 8} In *Rezcallah*, supra, the Ohio Supreme Court invalidated the closure provision of R.C. 3767.06(A) but addressed the provision only as it related to property owners who did not participate or acquiesce in the nuisance. The court in *Cincinnati ex rel. Cosgrove v. Grogan* (2001), 141 Ohio App.3d 733 also addressed the issue of closure and found that once ordered, the nuisance abatement statutes limit the closure to a one year period. Both cases, however, are distinct from the case at hand. *Grogan*, supra, involved a defendant whose bar was closed due to numerous drug transactions taking place on the premises. The owner consistently maintained that despite the numerous arrests at the bar and the pervasive smell of marijuana throughout the premises, his bar was a nice, quiet place where no one knew of the occurrence of any felony drug transactions. He maintained that since the City failed to prove his participation in the felony drug cases, it was prohibited from closing the bar. In the instant case, Cornell

does not dispute the finding of a nuisance, nor does he protest his knowledge and/or role in the creation or acquiescence of the nuisance. While both *Rezcallah* and *Grogan* specifically address a Fifth Amendment taking of property, both cases involve an innocent owner or one who maintains a lack of proof of participation in the nuisance- a situation dissimilar to the case at hand.

{¶ 9} More appropriately, the court in *State ex rel. Rothal v. Smith* (2002), 151 Ohio App.3d 289, 2002-Ohio-7328, recently addressed the maximum length of a closing order, and found that, "In reviewing R.C. 3767.06(A), it directs the trial court to 'continue for one year any closing order' previously issued. This language is unambiguous; it clearly provides that any prior closing order shall be continued for one year. No where in the statute does it provide that the maximum length of a closing order, regardless of its inception, must not exceed one year."

{¶ 10} We find no indication in the language of the statute that the total closure of a premises is limited to a one year maximum period, but rather the statute specifically states that the closure may be continued for one year.

{¶ 11} The City's sole assignment of error has merit. Accordingly, we reverse the decision of the trial court and remand for further proceedings consistent with this opinion.

It is ordered that the appellant recover from appellee costs

herein taxed.

The Court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE
JUDGE

KENNETH A. ROCCO, J., CONCURS

PATRICIA A. BLACKMON, A.J., DISSENTS (SEE SEPARATE DISSENTING OPINION ATTACHED)

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E), unless a motion for reconsideration with supporting brief, per App.R. 26(A) is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84679

STATE OF OHIO, EX REL., CITY :
OF CLEVELAND :

Plaintiff-Appellant	:	
	:	D I S S E N T I N G
-vs-	:	
	:	O P I N I O N
GEORGE CORNELL, ET AL.	:	
	:	
Defendants-Appellees	:	
	:	

DATE: APRIL 28, 2005

PATRICIA ANN BLACKMON, A.J., DISSENTS:

{¶ 12} With all due respect to the Majority Opinion, I dissent. The closure order in this case expired after one year of its commencement. The Majority Opinion holds a closure order against any use shall exist for more than one year because the mandatory one-year period in R.C. 3767.06(A) does not commence until final judgment. In many cases, final judgment is the last act imposed by the trial court on an owner charged with maintaining a nuisance; accordingly, several years could elapse before final judgment.

{¶ 13} In essence, the Majority Opinion ignores the language of the statute. R.C. 3767.06(A) in essence mandates a closure against an owner for any use or any purpose of the owner's property for a maximum of one year. It is the any use or any purpose language, I believe, that controls the closure order. Several cases have held that the maximum closure order is one year. See *State ex rel. Pizza v. Rezcallah* (1998), 84 Ohio St.3d 116, *Cincinnati ex rel. v. Cosgrove S. Grogan* (2001), 141 Ohio App.3d 733, and *State ex rel.*

Miller v. Nu-Look Bookstore (Apr. 30, 1991), 10th Dist. No. 90 AP-939.

{¶ 14} *Pizza v. Rezcallah* points out that "where the owner has not provided a bond prior to the trial on the merits, and where no prior closure order was issued against the use of the property, the order shall direct closure of the real property against any use for one year. Id. at 122. This interpretation seems credible because the one-year order is against any use, or any purpose legal or illegal.

{¶ 15} Thus, the one-year period does not apply to the illegal use, where a nuisance has been established. After it has been established, the nuisance is permanently enjoined and the owner is perpetually enjoined from a nuisance at the offending property and any other property so owned or maintained. *Pizza v. Rezcallah*'s reasoning underscores that the final order will always operate against the nuisance behavior, perpetually. However, the closure order against an owner for any use or any purpose is restricted by R.C. 3767.06(A) for one year.

{¶ 16} Nevertheless, the Majority Opinion relies upon *State ex rel. Rothal v. Smith,* 2002-Ohio-7328 and concludes that it is wrong to rely on the one-year maximum length interpretation, without addressing the commencement issue. However, nowhere in the statute does the language "closure from date of final order or judgment" exist. The language in R.C. 3767.06(A) states clearly the closure

order for any use shall exist only for one year.

{¶ 17} The Majority Opinion recognizes that the one-year period is the maximum length of the closure; however, it wants to extend the closure time by urging that it commences at final judgment. In this case, this approach would extend the closure for three years for any use, or any purpose which includes a legal use. I believe the trial court made the correct interpretation. I would affirm.