

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

City of Toledo

Court of Appeals No. L-11-1315

Appellee

Trial Court Nos. CRB-11-00420

v.

Duane J. Tillimon

DECISION AND JUDGMENT

Appellant

Decided: April 12, 2013

* * * * *

David Toska, Chief Prosecuting Attorney, and
Joseph J. Howe, Assistant Prosecuting Attorney, for appellee.

Duane J. Tillimon, pro se.

* * * * *

OSOWIK, J.

{¶ 1} This is a pro se appeal from a judgment of the Toledo Municipal Court that found appellant guilty of failing to obey or abide with an order to abate a public nuisance. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant Duane J. Tillimon sets forth the following assignments of error:

FIRST ASSIGNMENT OF ERROR

The trial court committed reversible error by allowing the City of Toledo to prosecute the improper defendant as defined by Toledo Municipal Codes 1726 and 1733.

SECOND ASSIGNMENT OF ERROR

The trial court committed reversible error by not requiring the City of Toledo to prove that a nuisance actually existed at 4602 Suder Avenue, Toledo, Ohio.

THIRD ASSIGNMENT OF ERROR

The trial court committed reversible error because there was not sufficient admissible, competent, credible evidence to support its decision, and the court allowed the re-prosecution of charges previously dismissed, and repeatedly granted the prosecutor continuances when he was unprepared for trial, and the trial court further abused its discretion by denying proper discovery, and by admitting into evidence photographs required, but not produced in discovery, and photographs not taken until after the nuisance orders were issued.

{¶ 3} It is relevant to some of appellant's arguments in this matter that on December 7, 2007, he filed bankruptcy. In April 2008, the bankruptcy court appointed a trustee to take control of appellant's real estate and finances. Although the bankruptcy

court records are not part of the record before this court, it is undisputed that at the time appellant filed bankruptcy he had a net worth of approximately \$1,700,000, consisting largely of equity in real estate. Included in appellant's real estate holdings is the property which is the subject of this case, a single-family rental residence located at 4602 Suder Avenue in Toledo, Ohio.

{¶ 4} On March 24, 2009, appellant was served with two orders issued by the city housing inspector to abate nuisances on the Suder Avenue property. Appellant was ordered to board or secure the property within 72 hours and to bring the property up to code within 30 days. As a result of appellant's failure to comply with the orders, the city filed a complaint on July 14, 2009, pursuant to TMC No. 1726.08(a) for failing or neglecting to obey or abide with an order to abate a public nuisance. The record of that case, however, is not before this court since the matter was dismissed on January 5, 2011. (case No. CRB-09-11313)

{¶ 5} On November 19, 2010, the city issued two new nuisance orders regarding the same Suder Avenue property. When the Suder Avenue property was not brought into compliance, the city filed a new complaint on December 30, 2010, under case No. CRB-11-00420, again charging appellant with failure to abate a nuisance. Following a trial to the court on November 29, 2011, appellant was found guilty. Appellant was ordered to pay a fine of \$500 and sentenced to 60 days in jail; the jail term was suspended. This appeal followed.

{¶ 6} Appellant’s first and second assignments of error will be addressed together. In support of his first assignment of error, appellant asserts that he was not responsible for abating the nuisance and that the city should have prosecuted his bankruptcy trustee for allowing the property to deteriorate while under the trustee’s control. In support of his second assignment of error, appellant asserts that the city did not prove that a nuisance actually existed on the Suder Avenue property.

{¶ 7} Toledo Municipal Code 1726.08(a) provides that “[n]o owner, as defined by Section 1726.01(b), shall fail to obey an order issued pursuant to Toledo Municipal Code Part Seventeen Health Code.”

{¶ 8} Toledo Municipal Code 1726.01(b) states in relevant part that “‘owner’ means any of the following: (1) Any person * * * who has * * * legal title to the premises * * *.”

{¶ 9} Additionally, Toledo Municipal Code 1726.01(a) defines “public nuisance,” in relevant part, to include any house or premises which, by reason of the condition in which the same is found or permitted to remain, endangers the health of or may cause injury to any individuals by reason of being: a menace, a threat or hazard to the general health of the community, a fire hazard, or unsafe for occupancy or use -- by reason of a lack of adequate maintenance, or by reason of being vacant.

{¶ 10} As to appellant’s first assignment of error, we find that appellant has not denied that he possesses “legal title” to the property in question. As legal title holder of the Suder Avenue property pursuant to Toledo Municipal Code 1726.01(b), above,

appellant was properly prosecuted for failing to obey the two orders issued on November 19, 2010, pursuant to 1726.01(a).

{¶ 11} Having properly charged appellant, the city was required to prove that a nuisance existed and that appellant failed to abate said nuisance. The record reflects that the city offered evidence in the form of photographs of the property taken in November 2010 and November 2011. City building inspector Christine Guerrero identified photographs she took while inspecting the property. Guerrero stated that she inspected the property several times since the orders were issued in 2010 and that the property had never come into compliance with the code. Guerrero noted that the property was in worse condition than it was the first time she inspected it. The photographs admitted into evidence depicted a large hole on the roof, open windows throughout as well as an open basement window at ground level, hanging gutters, peeling paint, overgrown foliage and debris on the porch.

{¶ 12} Upon consideration of the foregoing, we find that appellant did not provide the trial court with any evidence that he was ever divested of legal title to the property. Appellant does not dispute that he currently holds legal title to the property, nor does he provide any legal authority for his arguments that he was wrongly named defendant in this action. Further, we find that the city offered sufficient evidence as summarized above to support a finding of guilty. Accordingly, appellant's first and second assignments of error are not well-taken.

{¶ 13} In support of his third assignment of error, appellant asserts that the city failed to provide competent, credible evidence in support of a finding of guilt. As to appellant's argument that the prosecutor failed to present sufficient evidence for a conviction, this assertion was addressed and found to be meritless under appellant's second assignment of error.

{¶ 14} Appellant complains that the nuisance orders issued in November 2010 were identical to those issued in March 2009 and that he was wrongly "re-prosecuted." A review of the record reflects that, while the complaint regarding the Suder Avenue property was dismissed in January 2011, the new complaint was based on more recent inspections as well as appellant's continued failure to abate the cited nuisances. This argument is without merit.

{¶ 15} Appellant also argues that the trial court erred by granting several continuances prior to trial. The record reflects that the trial court continued the trial date two times between September and November 2011. Whether to grant a continuance is a matter within a trial court's discretion. *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078 (1981). This argument is without merit.

{¶ 16} Appellant further asserts that the photographs of the property were improperly admitted. Our review of the record reflects that the photographs were identified by the city building inspector who took them. The inspector testified as to what the photographs depicted and when they were taken. Appellant objected to admission of the photographs during trial, claiming that they were not provided during

discovery. When the prosecutor stated that he had just received them that day and that he showed them to appellant, the trial court overruled the objection.

{¶ 17} Based on the foregoing, appellant’s third assignment of error is not well-taken.

{¶ 18} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

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, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.