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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-509 / 90-120

CITY OF CEDAR RAPIDS, IOWA,

Appellee,

vs.

ROBERT D. BARRY,

Appellant.

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Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge.

Barry appeals a district court judgment declaring his two properties to be public and private nuisances and ordering their demolition. He contends that: 1) the district court incorrectly considered aesthetics and urban blight; 2) there is insufficient evidence to support a finding that the properties are nuisances; and 3) even if they are nuisances, demolition is not the appropriate remedy. **AFFIRMED.**

Ronald L. Ricklefs of Eganhouse, Ricklefs & Feeney, Cedar Rapids, for appellant.

Mohammad H. Sheronick, Assistant City Attorney, Cedar Rapids, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

DONIELSON, P.J.

Robert Barry owns two parcels of real estate in Cedar Rapids, Iowa. In 1981 neighbors complained to the Director of Housing Inspection, Terry Steinbach, about the condition of the Barry properties. The properties appeared literally to be crumbling at their foundations and were otherwise in a severe state of disrepair. Steinbach contacted Barry regarding his properties. Barry told Steinbach that he was going to renovate and improve the properties. Barry did neither and Steinbach again contacted Barry in 1984 and in 1987. Finally in the spring of 1988, Steinbach presented the matter to the city council. The city council passed a resolution declaring the properties to be a public and private nuisance. Barry did nothing to abate the nuisance.

The City of Cedar Rapids then filed the present equity action seeking a judicial determination that Barry's properties were nuisances and that they be abated by demolition. Following trial, the district court found that Barry's properties were both public and private nuisances and ordered their demolition.

Barry appeals. First, he contends that the district court applied an incorrect legal standard because it considered aesthetics and urban blight. Barry also claims that there is insufficient evidence to support a finding that his properties are nuisances. Finally, he argues that

even if his properties are nuisances, demolition is not the appropriate remedy. We affirm.

In this equity action, our scope of review is de novo. Iowa R. App. P. 4. We give weight to the factual findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(1).

Barry contends the trial court erred in finding that his properties were a private and public nuisance. Barry maintains the problems with his buildings are merely aesthetic rather than structural and that he plans to renovate them in the near future. Barry argues even if the properties are a nuisance, demolition is not the appropriate remedy. We disagree.

Pursuant to Iowa Code section 364.12(3)(a) (1989), a city has the power to "[r]equire the abatement of a nuisance, public or private, in any reasonable manner." Section 364.12(3)(c) provides the city may "[r]equire the removal, repair, or dismantling of a dangerous building or structure." If the property owner does not, within a reasonable time after notice, comply with the directives of the city regarding the nuisance, the city is empowered to perform the required action and assess the costs against the property. Iowa Code § 364.12(3)(h).

Iowa Code section 657.1 (1989) defines a nuisance as "[w]hatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of

property, so as essentially to interfere with the comfortable enjoyment of life or property . . . ." Under this section, a civil action by ordinary proceedings may be brought to enjoin and abate the nuisance and recover damages sustained on account thereof. Id. The city may also seek abatement of the nuisance pursuant to Iowa Code section 657A.2. Under this section, if the court finds at the hearing that the building is dangerous or unsafe and the owner of the building has been afforded reasonable opportunity to correct the dangerous or unsafe condition, the court may appoint a receiver to perform the work necessary to alleviate the nuisance. Iowa Code § 657A.3-4.

Section 657A.1(7) defines a public nuisance as "a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life . . . ."

A private nuisance is an action or interference with another's interests in the private use and enjoyment of his land. Larson v. McDonald, 212 N.W.2d 505, 508 (Iowa 1973).

Applying the foregoing principles to the facts of the present case, we believe the trial court was correct in finding that Barry had more than sufficient time to abate the problems pointed out by Steinbach and that the properties owned by Barry were public and private nuisances and should be demolished. Barry urges that the great

disrepair of his buildings is not a threat to anyone and that the complaints from the surrounding neighbors are based on aesthetic differences rather than any real and present threat to their health or safety. The record, however, is replete with evidence of the serious decay and dangerous condition of the buildings.

The record shows that vertical boards outside the structures were pulling apart from each other. Stairways had completely crumbled away from the interior of one building. The foundation on one building was literally bowing along the entire exterior. Most of the windows were boarded over, and many of the windows had pulled apart from the main structural trim. The limestone foundations were lacking in mortar; Steinbach testified he could see right through the foundation to the inside. The wooden frames of the buildings were rotting. These holes in the structures invited disease-bearing vermin, birds, and other animals to take up residence in the buildings. The porches had virtually collapsed. Steinbach's testimony at trial also revealed that with vacant housing of this type there is an open invitation for vandals, arsonists, and drug users to take over such housing. Steinbach testified a neighboring building unrelated to the subject properties had been used by drug users. A fire had been started in one of the buildings.

Barry alleges he has plans to renovate the buildings. Barry alleges the structures are not unlivable and insists

he will be living in one of the structures in the near future. Nonetheless, it is clear the trial court was correct in finding that the properties were nuisances.

Barry alternatively argues that even if the trial court was correct in finding that a nuisance existed, demolition of the properties is not necessary. He contends he has not been given enough time to alleviate the nuisance. The record reflects that local citizens had complained to city officials concerning the decayed state of Barry's properties as early as 1981. Steinbach and Barry had a meeting in 1984 concerning the properties. Barry told Steinbach at the meeting he had plans to renovate the properties and ultimately lease the structures. Three years later, Barry had made no progress towards these plans.

In 1987, Steinbach wrote Barry a letter stating the city considered the properties to be problem properties and requested Barry to contact him within thirty days to discuss his overall plans. Barry did not respond to this letter. In June 1988 Steinbach still had not seen any improvements on the properties and referred the matter to the city. Barry was served with public notice of a hearing to determine whether his properties were nuisances. Barry, however, elected not to attend the public hearing. The city council subsequently declared Barry's properties to be nuisances. Even after the hearing and findings of the council, Barry did nothing to alleviate the problems.

It is obvious from the record Barry has made no serious attempt to clean up his properties since the initial complaints were registered eleven years ago. Installing a few new windows does not indicate a serious attempt to abate the nuisances. Barry has had ample time within which to work with the city to correct the problems. Barry has chosen to ignore them. We conclude that after a decade of decay, the dilapidated and unsafe buildings should be demolished.

AFFIRMED.