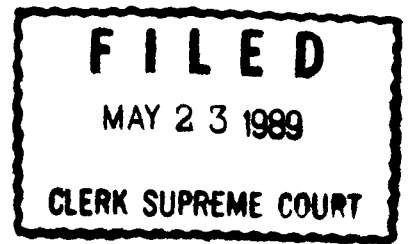


IN THE COURT OF APPEALS OF IOWA



LESTER SCHMIDT,)
Plaintiff-Appellant,)
vs.)
BOARD OF APPEALS, CITY OF)
MARSHALLTOWN,)
Defendant-Appellee.)

291

8-478
87-1478

Appeal from the Iowa District Court for Marshall County
(36079), M. D. Seiser, Judge.

Plaintiff appeals the decision of the district court
affirming the decision of the defendant. **AFFIRMED.**

Plaintiff-appellant, pro se.

Patrick W. Brooks, Assistant City Solicitor,
Marshalltown, for defendant-appellee.

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

HABHAB, J.**292**

Plaintiff, Lester Schmidt, appeals the decision of the Iowa district court affirming the decision of the Board of Appeals, City of Marshalltown. He asserts, among other arguments, the board improperly considered evidence obtained through the use of an illegal search warrant. We disagree with his assertions and accordingly affirm the decision of the district court.

The plaintiff is the owner of property located at 404 and 404-1/2 Bromley Street, Marshalltown, Iowa. The City of Marshalltown had received numerous complaints regarding this structure. A hearing was held on September 6, 1985, in which the Board of Appeals¹ determined the house to be dangerous and ordered Mr. Schmidt to make repairs. The order further stated the premises would be demolished if such repairs were not completed or an extension applied for within thirty days. Another inspection was made on April 4, 1986. At this time it was determined by a structural engineer only cosmetic repairs had been completed and the foundation and frame of the structure remained in poor condition. Demolition of the property followed.

Mr. Schmidt, representing himself on appeal, makes numerous arguments concerning the trial court's review of this matter. We note most of his arguments have no

1. The Board of Appeals of the City of Marshalltown was established pursuant to City Ordinance for the purpose of determining whether structures or buildings are dangerous.

supportive authority or reference to the record. Arguments submitted to us in this fashion may be deemed waived. Iowa Rule of Appellate Procedure 14(a)(3). We note his many arguments either dispute factual findings, are assertions not previously raised before the board or district court, or concern the legality of the search warrant. We will not consider those issues not properly raised and preserved prior to our review. Foods Inc. v. Leffler, 240 N.W.2d 914, 919 (Iowa 1976).

Mr. Schmidt contends the district court erroneously found no repairs had been made to the Bromley Street property prior to demolition. While it is true the court made this statement, we find it harmless error. The evidence establishes that the repairs made upon this structure before it was demolished were cosmetic and did not restore the building to a safe condition. The roof continued to leak, the roof and floor joists were not repaired, rot in the framing still existed, and the foundation had deteriorated to where it no longer supported the structure in places.

The plaintiff next contends the search warrant obtained by the fire chief for inspection purposes was obtained illegally, and thus, any evidence gathered as a result and used against him in the proceeding before the board should be excluded. We disagree.

The issues of the validity of the search warrant are of a constitutional nature and thus require a de novo review. In this regard, we note that an application supporting a search warrant is presumed valid. Franks v. Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978). When we review the proceedings relating to the search warrant, we find that the plaintiff's constitutional rights were not violated. There has been no showing that the search warrant was obtained illegally, nor is there any evidence that demonstrates improper conduct was involved in obtaining the same. Plaintiff's arguments in this regard are therefore without merit.

Mr. Schmidt also objects to the sufficiency of the evidence. He asserts no evidence was admitted to prove the duplex was dangerous to the life, health, property or safety of the public. To the contrary, the evidence clearly established the fact that the building was in a dangerous condition. The foundation of the house was unstable, the framework and floorboards had rotted extensively and could not support human weight in some areas. Evidence was admitted vandals and children had gained entry into the building. Even after the cosmetic work had been completed by Mr. Schmidt, the more serious structural difficulties still remained. Mr. Schmidt had more than adequate opportunity to make repairs or to apply for an extension. He chose to do neither.

Finally, the plaintiff objects to the fact that Fire Chief Hilsabeck did not produce proper credentials upon requesting admittance to the Bromley Street property for reinspection. Since the Bromley Street property was unoccupied, the inspector had to make a "reasonable effort to locate the owner." Marshalltown Code § 7-32(c). When we consider the totality of the circumstances concerning the effort made by the Fire Chief to contact the owner, we find such actions and efforts to be reasonable.

Mr. Schmidt asserts the Fire Chief did not present proper credentials before demanding entry. He asserts this is in contravention of Marshalltown Code section 7-32(c), which states:

- (c) Whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever the building official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises dangerous as defined in this article, the building official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the building official by this article; provided that if such building or premises be occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the building official or his authorized representative shall have recourse to every remedy provided by law to secure entry. "Authorized representative" shall include the officers named in this section and their authorized inspection personnel. No owner or occupant or

any other person having charge, care or control of any building or premises shall fail or neglect, after proper demand is made as herein provided, to promptly permit entry therein by the building official or his authorized representative for the purpose of inspection and examination pursuant to this article. Any person violating this section shall be guilty of a misdemeanor. The city health officer and fire marshall are likewise, empowered to make the above described inspections under the rules as set forth above.

(Emphasis added.)

A careful reading of this section discloses that production of credentials is only required if the premises are occupied. They were not. This argument is also without merit.

For the above reasons, we affirm the decision of the district court.

AFFIRMED.