

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT VI

CAUSE NO. 53C06-2303-CT-000633

JOSEPH BRADLEY DAVIS,
Plaintiff,

And

CITY OF BLOOMINGTON,
Defendant.

ORDER ON MOTION FOR PRELIMINARY INJUNCTION

On June 26, 2023, the Court held hearing on *Plaintiff's Affidavit for Emergency Preliminary Injunction*. Plaintiff, Joseph Bradley Davis, appeared in person and self-represented. Defendant, City of Bloomington, appeared by counsel, Christopher Wheeler. Argument was heard and evidence presented.

The Court, considering the same and being duly advised, now finds and orders as follows:

1. Procedural Posture

On March 24, 2023, the Plaintiff filed his Complaint asking the Court to rescind the Order of Abatement from the Board of Public Works, and grant judgment against defendant in order to be made whole from damages in the form of reimbursement for unjust fines, filing fees, lost income opportunity and punitive relief.

On April 10, 2023, the Defendant, City of Bloomington, filed Defendant's Motion to Dismiss. This motion was set for hearing on May 3, 2023, but was continued on Defendant's Motion to June 6, 2023. The June 6, 2023, hearing was continued on Plaintiff's motion to August 22, 2023. Plaintiff asked for the continuance to give him time to hire legal counsel.

On June 22, 2023, Plaintiff filed *Plaintiff's Affidavit For Emergency Preliminary Injunction* because he had received a letter from the City of Bloomington that stated they were going to abate his property on June 26th and June 27th. The Court set a hearing at its earliest setting, which was June 26, 2023, at 8:00 a.m. and advised the Defendant to take no action on the abatement until the Court could rule on the request for preliminary injunction.

2. Findings of Fact

The Plaintiff requests this Court grant the emergency injunction to keep the status quo until the August 3, 2023, court date. He alleged he would suffer irreparable harm because the City had told him they were coming to his property with heavy equipment, several dumpsters

and a big crew. Plaintiff believes that means that they are going to scrape everything outside of his home, off of his lot. Plaintiff alleged that a HAND representative Mr. Hewitt, came to his property for the first-time last Friday June 23, 2023, to point out items that were not allowed by Title VI of the Bloomington Municipal Code.

Mr. Hewitt told Plaintiff that mulch garden beds, leaves, wood chips etc. are not allowable under Bloomington Municipal Code, Title VI. Mr. Hewitt told Plaintiff that everything on his property was trash.

Plaintiff testified that he is an organic farmer and master gardener, he has a degree in sustainable systems from Indiana University. Plaintiff testified that Mr. Hewitt described the things on his property as “putrescible” and in violation of Title VI of the Bloomington Municipal code. The definition of putrescible in the code is “waste that is subject to organic decomposition.” Plaintiff submitted the dictionary definition of putrescible which states “liable to become putrid” *Plaintiff's Exhibit A*. He also discussed the dictionary definition of putrid which included “being in a state of putrefaction: rotten and foul, malodorous. *Id.* Plaintiff stated that nothing on his property is rotten or stinks.

Plaintiff has a certificate of zoning compliance and a building permit. He characterized the things on his property as building supplies. He has a one hundred (100) year old, tongue and groove, garage door that he intends to use for walls for his proposed structure. He conceded that there was a tiny amount of rot on the bottom where the door had been in the ground but stated that the rest of the door was solid and could be repurposed.

Plaintiff stated that he was told “everything has to go”. Mr. Hewitt told him the mulch around trees in front was putrescible. The video shows leaves placed around the trees on the ground. Plaintiff told Mr. Hewitt that the City of Bloomington is encouraging people to mulch their leaves and leave them on their property. *Defendant's Exhibit 1*. Plaintiff had a piece of wood from forest that he thought decayed in “a really cool way”, in his front flowerbed and Mr. Hewitt said it needed to go. Plaintiff said Mr. Hewitt was making aesthetic judgments about his property. Mr. Hewitt pointed to an Ailanthus tree on the back edge of his property and said that is an invasive species and it needed to go. On the video, submitted as Defendant's Exhibit 1, Plaintiff asked Mr. Hewitt if the City was doing any other abatements for that tree, Mr. Hewitt responded that they were not.

The Defendant called no witnesses, but counsel stated that the City does not want an injunction granted because the Abatement Order that Plaintiff is asking the Court to review is a continuous abatement order that was originally issued August 11, 2022, and that expires on August 11, 2023. If the City is not able to abate the property they will have to start over again and Plaintiff will appeal again, and at some point, municipal enforcement will be frustrated and judicial economy. Defendant says the damage to them is that the neighbors continually complain about the property and are losing faith that the Defendant will enforce their codes.

In lieu of calling witnesses the Defendant asked the Court to view two videos which would speak to the condition of the property. The first video that the Defendant presented seemed to be taken by a camera attached to someone's belt, most of it was extremely shaky and

was showing the ground. There were some items shown, without much or any context. There was a small pile of branches laying on the ground which were pointed out, they appeared to be freshly cut. The only information that the Court could glean from the video is that the Plaintiff's back wall might be slightly over the property line stake and that there was an Ailanthus tree, buckets lying on their side, a rotten chair, "ugly logs", rotten fence, piles of leaves and a bathtub in the front yard. The person on the video, presumably Mr. Hewitt, says that the items violate Title VI in that they are "trash". Trash is not a definition that the Court could locate in Title VI of the Bloomington Municipal Code. There is a term "refuse" which means "all putrescible and non-putrescible solid waste, including animal wastes, garbage, solid waste, ashes, dead animals, abandoned vehicles ..." *Bloomington Municipal Code, Title VI*.

Plaintiff testified that he put thirty (30) hours of work into the property over the weekend and that the first video was stale. In response to that objection the Defendant asked the Court for an order to video the property immediately after the hearing to preserve evidence for the August hearing, that motion was granted, and a second video was submitted as a supplement to *Defendant's Exhibit 1*. The second video did show improvements to the property including the wall being moved back to closer to the property line, the buckets stacked and in some sort of temporary shed or shelter. The unidentified representative from the City showed that there were still leaves on the property, old lap, a large collection of framework from an antenna and some rotting boards.

Plaintiff alleges that the Defendant has not shown him what is allowed and what is not trash and the video seems to support that, at least not in any detail.

3. Conclusions of Law

The grant or denial of a request for a preliminary injunction rests within the sound discretion of the trial court. "A preliminary injunction is a remedy that is generally used to preserve the status quo as it existed prior to a controversy pending a full determination on the merits of that controversy[,]to make out a successful case for a preliminary injunction, a plaintiff need only show a prima facie case on the merits". *Tomahawk Village Apartments v. Farren*, 571 N.E. 2d 1286.

"To obtain a preliminary injunction, the moving party has the burden of showing by a preponderance of the evidence the following: (1) the movant's remedies at law were inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) it had at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) its threatened injury outweighed the potential harm to the appellant resulting from the granting of an injunction; and (4) the public interest would not be disserved." *Ind. Family & Soc. Servs. Admin v. Walgreen Co.*, 769 N.E.2d 158.

"An injunction does not create or enlarge the rights of a party; it merely protects existing rights and prevents harm to the aggrieved party that cannot be corrected by final judgment."

Indiana v. Michigan Elec. Co. v. Whitley County Rural Elec. Membership Corp., 316 N.E.2d 584, 586 (Ind. Ct. App. 1974).

4. Conclusions of Law

Plaintiff filed a Complaint asking, among other things, for judicial review of an administrative decision. There is a Motion to Dismiss set on that complaint on August 3, 2023. Because the City opted to move forward with the Abatement Order which is at issue in the case, the Plaintiff's remedy of law, review of the decision, is not adequate to stop the changes to his property.

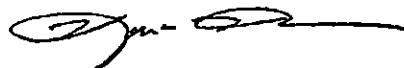
Plaintiff has at least a reasonable likelihood of success at trial by establishing a prima facie case. The Defendant presented the Court with no context to the videos they submitted as evidence. The Defendant did not call any witnesses.

Plaintiff threatened injury, the loss of property that has not been inventoried, outweighs the potential harm to the Defendant which is the Defendant having to field calls from neighbors who don't like the way Plaintiff's property looks. Fielding complaints from neighbors is a municipal function, and although, possibly annoying, the Court does not agree that it could be characterized as harmful.

The City made no allegations in the hearing that there were dangerous conditions or that the public interest would be disserved by granting the injunction.

IT IS THEREFORE ORDERED that the Plaintiffs' Motion for Preliminary Injunction is granted and will remain until a ruling has been issued on the August 3, 2023, hearing on Defendant's Motion to Dismiss.

SO ORDERED this 30th day of June 2023.



Kara E. Krothe
Judge, Monroe Circuit Court VI

DISTRIBUTION:
Plaintiff
Defendant