

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ji J. Lian,
Appellant-Defendant,

v.

Health and Hospital Corporation
of Marion County,
Appellee-Plaintiff

November 30, 2023

Court of Appeals Case No.
22A-OV-2758

Appeal from the Marion Superior
Court

The Honorable Cynthia J. Ayers,
Judge

The Honorable Travis G.
Sandifur, Magistrate

Trial Court Cause Nos.
49D04-2205-OV-15236, 49D04-
2106-OV-21426, 49D04-2205-OV-
15244

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

- [1] This appeal involves three ordinance violation cases (the OV Cases) concerning Ji Jing Lian’s property, which includes a residence, at 6310 Michigan Road in Indianapolis. Following evidentiary hearings conducted on October 18, 2022, the trial court issued orders requiring Lian to remedy the various health code violations on the interior and exterior portions of her property by a certain date. In the event Lian did not timely comply, the trial court ordered Health and Hospital Corporation of Marion County (HHC) and/or its contractors to vacate the premises and clean up the exterior of the property, with a resulting lien for the costs incurred.
- [2] On appeal, Lian does not directly challenge the orders issued in the OV Cases but rather argues that the OV Cases originated from an improper inspection order issued in a related case eighteen months earlier.
- [3] We affirm.

Facts & Procedural History

- [4] Prior to 2021, Lian’s property had been the subject of several cases filed by HHC and was one of the properties often discussed at code-compliance neighborhood meetings. Andrew Whitmire, an environmental health specialist with HHC, conducted a “routine survey of the area” in early March 2021 and observed “a number of trash violations” on the two parcels that make up Lian’s property. *Appellee’s Addendum* at 6.

[5] On March 10, 2021, HHC filed a petition for administrative hearing under Cause No. 49D04-2103-MI-8334 (MI-8334), pursuant to which HHC sought an order to inspect the property. HCC alleged in part:

Inspector Whitmire observed large rubbish and junk, wood on the ground, building material, and scattered rubbish. Inspector Whitmire was unable to view the entirety of the property due to a fence surrounding the property. Based on Inspector Whitmire's observations from the roadside, he believes there is a reasonable likelihood of additional violations based on his training and experience and past interactions with this property.

Id. Following a hearing on March 16, 2021, the trial court issued an order for HHC to inspect the exterior of the property, including the fenced-in portions.

[6] Whitmire conducted the court-ordered inspection of the exterior of the property on April 8, 2021, and documented several violations. HHC then issued an administrative notice to Lian, detailing each of the violations and giving Lian until April 22 to correct them.

[7] While conducting the exterior inspection, Whitmire also observed sanitary and maintenance violations through the windows of the home, which prompted HHC to file another petition for administrative hearing, this time seeking an order to inspect the interior of the home. This petition, filed under Cause No. 49D04-2104-MI-12335, alleged in part:

Inspector Whitmire observed items piled up in several windows, blocking access to the windows, apparently not leaving space for adequate ingress/egress should an emergency arise. Based on his training and experience, and observations of the windows from

the exterior of the property, Inspector Whitmire reasonably believes that the home is unsafe and potentially unfit for human habitation.

Id. at 13. After a hearing on April 20, 2021, the trial court issued an order for HHC to inspect the interior and exterior of the residence “for the purpose of evaluating the extent of any health and safety hazards on the property, as well as determining whether housing code violations exist for the health and safety of the workers and/or surrounding residents.” *Id.* at 15.

[8] Whitmire conducted the court-ordered inspection on April 29, 2021, and documented violations within the residence. Administrative notice of the violations was sent to Lian that same day with a demand to bring the property into compliance.

[9] On June 24, 2021, HHC filed an emergency complaint for injunction and fine under Cause No. 49D04-2106-OV-21426 (OV-21426). This complaint addressed the interior violations that HHC believed remained inside the residence. The alleged defects were described in the complaint as follows:

[D]welling is not maintained in a clean, sanitary and safe condition, the electrical accessories are in poor repair, and water and/or waste pipes are not properly installed or maintained, leading to sewage leaking in the dwelling, yard or other surfaces, subject property presents an imminent health or safety hazard to its occupants and to the general citizenry of Marion County, Indiana.

Appellant's Appendix at 26. For reasons unclear in the record, hearings on this complaint were reset many times for more than a year, as Lian continually failed to appear.

[10] In the meantime, on May 9, 2022, HHC filed two additional complaints for injunction and fine with the trial court under Cause Nos. 49D04-2205-OV-15236 (OV-15236) and 49D04-2205-OV-15244 (OV-15244). These complaints, one for each parcel, addressed alleged ordinance violations on the exterior of Lian's property. Laura Zhao, Lian's daughter purportedly with power of attorney, eventually appeared in the matter and obtained two continuances.

[11] The trial court held a hearing on September 13, 2022, to address the three pending cases, the OV Cases. Lian did not appear. The court made no findings as to the alleged violations because HHC had been unable to reinspect the property prior to the hearing due to the privacy fence. Accordingly, in each of the OV Cases, the court issued an order to inspect. Specifically, HHC was ordered to conduct an inspection of Lian's property on October 10, 2022, to verify whether the health and safety hazards/violations continued to exist. The court also ordered Lian to appear for an evidentiary hearing scheduled for October 18, 2022.

[12] Whitmire, along with the Pike Township Fire Marshall Jonathan Kempler, inspected the interior and exterior of Lian's property on October 10 and observed several outstanding violations. Whitmire took pictures of the violations throughout the interior and exterior of the property.

[13] On October 18, 2022, the trial court held two hearings. The first hearing addressed the interior violations alleged in OV-21426, and the second addressed the exterior violations alleged in OV-15236 and OV-15244. Whitmire testified at both hearings regarding the existing violations. He opined that the interior of the residence was not fit for habitation and that the junk, rubbish, and inoperable vehicles on the exterior of the residence created a health and safety hazard with rodent and mosquito harborage. The photographs taken during his recent inspection were admitted into evidence without objection from Lian’s counsel.

[14] Kempler testified only at the OV-21426 hearing and noted that he observed a large amount of combustibles in the residence, that there was insufficient egress throughout, and that there were some electrical issues. He ultimately opined that the condition inside the residence “would pose an immediate threat to the safety of occupants or firefighters responding to rescue occupants from the building.” *Transcript* at 21. Like Whitmire, Kempler did not believe the residence was safe for habitation.

[15] Zhao testified on behalf of Lian at the hearings. She was generally argumentative and nonresponsive during her testimony. In sum, she testified that the home was not being used as a residence but rather “as a warehouse” to store building materials and that the photographs admitted into evidence were taken in April 2021, not October 2022. *Id.* at 24. Zhao essentially claimed that Whitmire and Kempler did not testify truthfully about the current condition of Lian’s property.

- [16] In closing at the hearing on the interior violations, Lian’s counsel argued that the case should be dismissed because the home was not occupied and thus represented no threat to health or safety of any individuals. The trial court disagreed, finding by a preponderance of the evidence that the home was being occupied based on the food items, electrical cords, and space heaters present in the home. The court then addressed the multiple violations inside the home and ordered Lian to make it fit for human habitation by November 28, 2022. Otherwise, the court ordered HHC and/or its contractors to vacate the property on or after that date.
- [17] In the exterior violation cases, Lian’s counsel argued for dismissal because the photographs admitted into evidence, according to Zhao, were not from the recent inspection and the materials still on the property were “construction material and not trash and rubbish.” *Id.* at 61. Counsel also argued that “none of the materials are visible from the public right-of-way.” *Id.* The trial court rejected each of these arguments.
- [18] In finding health and safety hazards, the court explained, “there is a heavy accumulation of junk vehicles on the property; large rubbish and junk on the property; building materials that have exceeded their lifespan; appliances that are not meant to be stored outdoors” and “tarps that are not taunt [sic], that can be breeding grounds for rodents.” *Id.* at 62. The court emphasized that just because something cannot be seen from a public right-of-way does not mean it does not produce a health and safety hazard:

[A]esthetics aren't really an issue on the Health and Hospital docket. The Health and Hospital docket is, "does it produce a health and safety hazard, whether it's fenced in or observable from the public right-of-way or not." And again, the current state of the exterior on both parcels is such that it does create that health and safety hazard.

Id. The court ordered Lian to bring the exterior portions of the two parcels into compliance by November 28, 2022, or face "a clean and lien order." *Id.* at 65.

[19] Written orders consistent with the court's oral rulings followed on October 20, 2022. It is from these orders in the OV Cases that Lian now appeals.

Discussion & Decision

[20] Lian's argument on appeal is short and not well developed. In effect, she challenges the original inspection order issued in March 2021, which allowed Whitmire onto her property and inside the fenced area. Lian does not address the petition filed in MI-8334 or provide us with a transcript of the evidentiary hearing that resulted in issuance of that initial inspection order. Rather, she baldly claims that the order was invalidly issued in violation of her Fourth Amendment rights because Whitmire could not see any violations from the public right-of-way due to the privacy fence.

[21] The flaws in Lian's appellate argument are plentiful. Initially, we observe that the verified petition in MI-8334 alleged that although Whitmire could not view the entirety of the property, he was able to see some violations from his roadside vantage point and believed there were likely additional violations on

the property. Based on the evidence presented at the administrative hearing, the court found, by a preponderance of the evidence, that there was a reasonable belief that violations exist on the property. Accordingly, the court issued an inspection order on March 18, 2021.

[22] While we do not have the transcript from the administrative hearing, we do have Whitmore's testimony at the October 2022 hearings. At the hearing on the exterior violation cases, Whitmore testified that he could see violations through the privacy fence, which prompted HHC to pursue the March 2021 inspection order. Later, he explained that the trash on the property was visible from the public right-of-way when foliage was off the trees.

[23] Moreover, we observe that Lian never presented a Fourth Amendment claim to the trial court or sought to suppress any evidence obtained as a result of the court-ordered inspections. In fact, her attorney expressly indicated that he had no objection when the photographs of the interior and exterior of the property were admitted into evidence. Although Lian's attorney addressed whether the items inside the fence were visible from the public right-of-way, it is evident that his focus was on whether the public could see the alleged violations, not whether Lian's privacy rights were violated. The trial court rejected this argument and explained that visibility/aesthetics are not the issue when determining whether health and safety hazards exist. As Lian did not raise the Fourth Amendment below, she will not now be heard to complain. *See Hite v. Vanderburgh Cnty. Off. of Fam. & Child*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006)

(“It is well established that we may consider a party’s constitutional claim waived when it is raised for the first time on appeal.”).

[24] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.