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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE CITY OF SAN DIEGO,

Plaintiff and the Respondent,

v.

JIMMIE WILLIAM JOHNSON,

Defendant and Appellant.

D058684

(Super. Ct. No. 701428)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy B. Taylor, Judge. Affirmed.

In this action to abate nuisance conditions at several properties owned by Jimmie William Johnson, the City of San Diego (the City), through the People of the State of California, asserted that Johnson was in violation of a 1997 stipulated judgment ordering that he correct public nuisance conditions at his properties. The City alleged that despite being given numerous extensions of time to correct the conditions at his properties, Johnson failed to correct them and his properties continued to be a public nuisance that was dangerous to the health and safety of the public.

In 2010 the court granted a permanent injunction, finding Johnson's properties constituted a nuisance and ordering that the nuisance conditions be abated.

Johnson appeals, in propria persona, asserting (1) the court abused its discretion in finding his properties constituted a public nuisance; and (2) the court failed to address his claim that his property rights were being violated by allowing the City to conduct "intrusive and random inspections of his properties without proper notice, for an unspecified and indefinite duration." We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The original stipulated judgment, executed on June 30, 1997, restrained Johnson from violating any applicable health, housing, electrical, plumbing, building, zoning and nuisance laws and regulations including the San Diego Municipal Code (SDMC), and Health and Safety Code, as they related to the properties. Additionally, the stipulated judgment ordered Johnson to hire a licensed general contractor within 30 calendar days of the entry of the stipulated judgment to perform all the rehabilitative work required in the stipulated judgment for the properties. Each property was defined in the stipulated judgment and Johnson was given specific instructions and terms on how each property needed to be brought into compliance. Johnson also agreed in the stipulated judgment to allow the City to inspect the interior and exterior of the properties with written or posted 72-hour notice so that compliance with the terms of the judgment might be monitored.

According to the City, Johnson continually failed to comply with the stipulated judgment despite numerous extensions and opportunities to cure the violations on the properties.

Over the years, the City conducted numerous inspections to monitor compliance with the stipulated judgment. Each time, Johnson was notified at least 72 hours before with written and/or posted notice, but in practice he was given additional notice. On January 11, 2010, the City exercised its authority under the court-ordered stipulated judgment and conducted an inspection of the properties. The results of that inspection were as follows:

On 12 South 35th Street there was excessive vegetation creating a rat harborage and fire hazard; no permits were issued for the residence and garage, the property was not properly secured allowing access to the structure; there was nonincidental storage on the property including large amounts of trash and debris; the garage was dangerous and unsafe and needed to be demolished; and an unregistered recreational vehicle was being illegally stored on the property.

On Parcel No. 545-410-08-00, the property contained nonincidental storage and unapproved fencing in disrepair.

On Parcel No. 545-410-16-00 (also known as 13 South Francis Street), the property contained nonincidental storage and an illegal storage shed..

On Parcel No. 545-410-17-00, the property contained nonincidental storage, trash and debris, and inoperable and/or unregistered vehicles.

As for 3485 Webster Avenue, Johnson refused to allow the City to inspect the property. However, from the public right of way the following conditions were observed as to the exterior of the property: a recreational vehicle (RV), which appeared to be lived in, was on the property, had a broken window and was covered with graffiti; fencing on

the property was in disrepair, had graffiti and was not constructed with approved fencing materials; nonincidental items, including trash and debris, were stored; the garage door had been removed and stuccoed over without the required permits; the rear yard contained several cars and excessive nonincidental storage; there was a mattress and shopping cart leaning on the fence outside of the rear yard; and storage and overgrown plant material created a rat harborage on the property.

On June 23, 2010, City Attorney Investigator Deanna Walker viewed the properties from the public right of way and observed several individuals loitering on the property located at 12 South 35th Street. Investigator Walker also observed excessive storage on the property and vehicles being stored inside and outside of the gate. On the 21 South Francis Street property, she observed the illegal storage of vehicles, mattresses, furniture, electronics and other items strewn about the property. Further, at the property located at 3485 Webster Avenue, she observed the illegal garage conversion, illegal storage in the driveway and rear yard and a recreational vehicle stored in the side yard area.

According to the City, due to Johnson's failure to abide by the stipulated judgment and bring the properties into compliance, the structures on the properties had fallen into even more disrepair and had become severely dilapidated over the years. Two of the structures on the properties (the structure on lot 545-410-16-00 also known as 13 South Francis Street and the structure on 607 North 64th Street) had since burned down further proving the risk of fire, which in turn posed a severe risk to the surrounding neighbors and community. Many of the structures were unsafe and dangerous and the general

condition of the properties had fallen into such disrepair and in such a condition to pose a health and safety threat to the community.

Transients, documented gang members, parolees and narcotic users/dealers frequented the properties, and there was continual criminal activity at the properties. There had been consistent criminal activity and several arrests on these properties over the last several years with the most recent arrest on March 27, 2010. This arrest involved felony possession of drugs in which drugs, specifically heroin, were recovered on the property located at 12 South 35th Street. The arrested suspect admitted to living on the property inside of an illegal camper in the yard. The suspect further indicated to the police that his brother, who was on parole, used the property to move narcotics in and out, selling the drugs.

Johnson had also failed to comply with several notices of violations regarding the properties since the issuance of the stipulated judgment.

B. Procedural Background

The City determined the poor conditions existing at these properties constituted a public nuisance which needed to be abated. The City filed an application for modification of final judgment in order to abate the public nuisance at the properties and bring the properties into compliance.

The City offered into evidence photos documenting each of the inspections, including aerial photographs by the San Diego Police Department's Air Borne Law Enforcement. The City also offered into evidence information on criminal arrests and

contacts on the properties, as well as declarations by city inspectors and investigators concerning the conditions of the property, as detailed, *ante*.

Johnson did not offer any photos or documentation into evidence. Johnson also did not file an opposition to the application. He did file a motion for dissolution of the original stipulated judgment on the day of the hearing for the City's application.

The court granted the City's application, except for the request to ban certain named individuals from the properties. The court denied Johnson's motion to dissolve the stipulated judgment.

DISCUSSION

A. *Standard of Review*

"The grant or denial of a permanent injunction rests within the trial court's sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 390; see also *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 427.) "The exercise of discretion must be supported by the evidence and, 'to the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences from the presented facts, [we] review such factual findings under a substantial evidence standard.' " (*Horsford*, at p. 390, quoting *Cabrini Villas Homeowners Assn. v. Haghverdian* (2003) 111 Cal.App.4th 683, 688-689. "[A]ll factual conflicts and questions of credibility [should be resolved] in favor of the prevailing party [and courts should] indulge all reasonable inferences to support the trial court's order." (*Horsford*, at p. 390.) "[U]nless there has been a miscarriage of justice a reviewing court will not

substitute its opinion and thereby divest the trial court of its discretionary power."

(*Loomis v. Loomis* (1960) 181 Cal.App.2d 345, 349.)

B. The Properties Constituted a Nuisance

Civil Code section 3480 defines a public nuisance as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." Substandard conditions as well as building and housing code violations may constitute a public nuisance. (See *Bakersfield v. Miller* (1966) 64 Cal.2d 93, 96-98.) In addition, conditions at a property that create a fire hazard have also been recognized as a public nuisance. (*Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 659-660.)

Johnson asserts that since there were no specific neighbors complaining about the properties' condition they were not a public nuisance. Further, he contends that the trash and mess was kept out of the eyesight of the public, thus not affecting the community.

However, he cites no authority for the proposition that there has to be a specific complaining neighbor or neighbors in order to declare a property a public nuisance. Further, Johnson's assertion about the condition of his properties is contradicted by the evidence (photos and declarations) submitted to the court in support of the City's motion for the injunction. Many of the public nuisance conditions were observable from the public right of way, as documented by photos taken from the street. A recreational vehicle tagged with graffiti had been parked on the lawn, outside of the fence for many years. This vehicle was being illegally lived in and drugs were sold inside of the vehicle. Aerial photos were also taken of the properties to document for the court how much of a

negative impact the properties had on the community. They showed the extent of the storage, trash, and general substandard conditions of the properties.

In *People v. Oliver* (1948) 86 Cal.App.2d. 885, 890, the Court of Appeal noted: "When people live in urban and congested areas they acquire certain rights against, and they assume certain responsibilities towards, their neighbors. While they have the right to use their property, within certain limits, as they see fit, even if it annoys the neighbors or depreciates the value of adjoining property, they have no legal right to put their land to an unnatural use and to create thereon an unnecessary hazard to other properties [T]here must be a balancing of conveniences and of rights. Where the danger to an entire neighborhood is demonstrated . . . and where the condition created is unnecessary and can be remedied, prudence, common sense, fair play and justice require that the danger to the entire neighborhood be eliminated."

Moreover, "[i]t is this community aspect of the public nuisance, reflected in the civil and criminal counterparts of the California code that distinguishes it from its private cousin, and makes possible its use, by means of the equitable injunction, to protect the quality of organized social life." (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1105.)

The City submitted substantial evidence to the court demonstrating the nuisance conditions at the properties and the danger they created, including affecting the surrounding neighborhood as a whole. Johnson neglected his properties for well over 10 years, and as a result, dangerous conditions developed. In fact, two structures previously on the properties had burned down due to the dangerous conditions on the properties.

There were fire hazards on the properties, criminal activity, substandard conditions, and building code violations. Excessive vegetation, trash, debris and storage throughout the properties were a rat harborage and created a fire hazard. These conditions affect the surrounding neighborhood in a negative manner and were dangerous and injurious to health.

SDMC section 54.0201, subdivision (a) provides, "Every person has the duty to maintain real property which is under his or her control free from weeds, rubbish and other forms of waste." The City declared in subdivision (c) of this section that "[t]he existence of such conditions is injurious to the public health, safety and welfare [and] [t]he increased presence of litter and other forms of waste requires expenditures to protect against hazards and diminution of property values, prevent crime and preserve the public health, safety and welfare."

"The [City] further declares that all weeds, waste or other obstructions found upon or in front of streets, sidewalks, and private property within the City of San Diego are public nuisances that adversely affect the public health, safety, and general welfare." (SDMC, § 54.0201, subd. (f)).

The pictures presented as evidence in support of the injunction show waste, storage, vegetation and debris strewn throughout the properties owned by Johnson. Further, there has been unpermitted work on the properties, including failure to obtain building, electrical and plumbing permits, inspections and approvals. This poses a danger to the community as failure to have electrical items approved and inspected creates potential fire hazards, and faulty plumbing could cause flooding. Moreover, the

vacant structures on the properties were not properly boarded and secured. Unsecured structures have been declared to be a public nuisance. In this regard, SDMC section 54.0301 states: "(a) Structures that are vacant and unsecured or boarded attract vagrants, gang members and other criminals as prime locations to conduct illegal criminal activities. [(¶)] (b) Structures that are vacant and not properly secured are extremely vulnerable to being set on fire by unauthorized persons. [(¶)] (c) Structures that are vacant and unsecured or boarded are a blight and cause deterioration and instability in neighborhoods. [(¶)] (d) Structures that are vacant and unsecured or boarded pose serious threats to the public's health and safety and therefore are declared to be public nuisances. [(¶)] (e) Immediate abatement and rehabilitation of these structures is necessary and can be accomplished by using the judicial or administrative procedures found in this Code."

The structures that were not vacant and unsecured did not meet minimum building and habitability standards due to improper maintenance, illegal alteration and faulty construction. Johnson was informed on numerous occasions that the structures on the properties could not be rented or occupied until all of the code violations were addressed. Johnson was given a timeline in the original stipulated judgment in which to remedy the code violations and nuisance conditions on the properties. Johnson failed to not only adhere to those timelines, but also to correct the violations on the properties allowing the nuisance conditions to increase over time.

C. Condition of Properties at Time Injunction Sought

Johnson asserts that the evidence the City presented did not show the condition of the properties at the time it sought the injunctive relief. This contention is unavailing.

The City presented pictures documenting the conditions on the properties, taken from July 2008 through June 2010, that consistently showed the nuisance conditions at the properties. Indeed, Johnson presented no evidence that contradicted this evidence or showed the nuisance conditions had been abated by the time the City sought and obtained the injunction.

D. Inspections of Properties

Johnson asserts that the original stipulated injunction and the permanent injunction were unconstitutional because they allowed the City unfettered access to his property through "random" inspections.

However, the stipulated judgment only allowed inspections upon 72 hours written or posted notice and could only occur Monday through Friday from 8:00 a.m. to 5:00 p.m. Moreover, the current judgment similarly does not allow random inspections. They must be upon 24 hours notice and must be done between the hours of 8:00 a.m. and 6:00 p.m.

E. Background Checks on Residents

Last, Johnson asserts that the injunction improperly required him to conduct "criminal background checks" on people residing at his properties. We reject this contention.

The condition Johnson complains about does not require Johnson to conduct criminal background checks. Rather, it forbids him from "[a]llowing narcotic users/sellers, parolees, or documented gang members to live/enter or access the PROPERTIES

at any time." Given the history of criminal activity on Johnson's property, it was reasonable for the court to impose this condition.

DISPOSITION

The judgment is affirmed. The City shall recover its costs on appeal.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.