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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF RIVERSIDE,

Plaintiff and Respondent,

v.

LON BIKE et al.,

Defendants and Appellants.

E055712

(Super.Ct.No. RIC10013157)

OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge.

Affirmed.

Gary J. Bryant for Defendants and Appellants.

Pamela J. Walls, County Counsel, Patti F. Smith and Lisa A. Traczyk, Deputy County Counsel, for Plaintiff and Respondent.

Defendants and appellants Lon Bike and Sandra Bike own a 5.84-acre parcel of land in an unincorporated area of Riverside County, and reside in a recreational vehicle (RV) that they have parked on the property. The applicable zoning ordinances, however, do not permit residence in an RV. Plaintiff and respondent County of Riverside (County)

brought suit against defendants seeking injunctive relief, which the trial court granted after a bench trial.¹

On appeal, defendants argue (1) that their use of the property does not constitute a nuisance; (2) that no public nuisance per se was demonstrated, because the applicable zoning ordinances were not properly judicially noticed; and (3) that enforcement of the zoning ordinances against them interferes with their right to privacy under the California Constitution, and no compelling reason for such interference has been shown.

We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

Defendants reside in an RV on a 5.84-acre parcel of land in the unincorporated area of Riverside County known as La Cresta—their testimony at trial was that they have done so since 2003. On July 1, 2010, the County brought suit, filing a Complaint for Injunctive Relief and Civil Penalties, alleging two causes of action: (1) “Illegal Land Use In Violation of Riverside County Ordinance No. 348,” and (2) “Public Nuisance.” A first amended complaint, filed July 7, 2010, added a cause of action for “Violation of Riverside County Ordinances Constituting [a] Public Nuisance Per Se.”

A one-day bench trial was conducted on May 24, 2011. After posttrial briefing by the parties in lieu of oral closing statements, the trial court issued a written “Ruling on Submitted Matter” on August 18, 2011. The trial court rendered its decision in favor of the County, granting the request for an injunction. The injunction issued by the court

¹ The County initially sought civil penalties, as well, but withdrew that request.

(1) requires defendants to “vacate the RV and remove it from the Property within thirty (30) days from the date of entry of this Judgment”; (2) requires them to “allow immediate access to Riverside County for inspection and determination that the violations have been removed from the Property, after expiration of thirty (30) days from the date of entry of this judgment”; and (3) enjoins them “from allowing any new or further violations of Riverside County Ordinances to exist on the Property.” The trial court further awarded the County “all reasonable and actual costs . . . related to this action including, but not limited to, inspection costs, investigation costs, enforcement costs and attorney fees and legal costs,” in an amount to be determined later on noticed motion by the County.

II. DISCUSSION

Though defendants have attempted to change the topic, this appeal turns on the fundamental question of whether the County has the power to enforce its land use ordinances. It does. We will therefore affirm.

Civil Code section 3479 defines nuisance to include “[a]nything which is injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property”

Further, a “public” nuisance is defined under the Civil Code 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.” (Civ. Code, § 3480.) A county may seek to abate a public nuisance. (Civ. Code, § 3494; Gov. Code, § 25845.)

Riverside County Ordinance No. 725 provides that private property within the unincorporated areas of Riverside County must comply with county “land use ordinances,” and declares that any violation thereof is “unlawful and a public nuisance.” (Riverside Co. Code, § 1.16.020.) “Land use ordinance” is defined by Ordinance No. 725 to include Ordinance No. 348. (Riverside Co. Code, § 1.16.010.) Defendants’ property is located within a zone classified under Ordinance No. 348 as “Residential-Agricultural” (R-A). This zone classification does not specifically list residency in an RV as a permitted or conditionally permitted use.² (Riverside Co. Code, § 17.32.010 [listing permitted uses in R-A zone].) Ordinance No. 348 further provides, with exceptions not relevant here, that “[w]hen a use is not specifically listed as permitted or conditionally permitted in a zone classification, the use is prohibited”³ (Riverside Co. Code, § 17.12.040)

² Residency in a one-family dwelling or mobilehome would, with the proper permits, be allowed in an R-A zone. (Riverside Co. Code, § 17.32.010, subds. (A)(1), (12).) Defendants claim to have bought the property with the intention of building a one-family dwelling on the property, but ran out of funds to do so. Whatever the reason, however, under the Riverside County Code, permanently dwelling in an RV, as defendants have been doing, is allowed only within recreational vehicle parks designed and permitted for permanent occupancy. (See Riverside Co. Code, §§ 17.268.060, 17.268.080.)

³ The County has requested we take judicial notice of portions of several Riverside County ordinances, including those we discuss here. The request is framed as being pursuant to Evidence Code sections 452 and 453. We are a reviewing court, not a trial court, so the applicable statutory provision is more properly Evidence Code section 459. Nevertheless, defendants have not submitted any opposition to the request, despite a reasonable opportunity to do so. (See Evid. Code, §§ 459, subd. (c), 455.) We therefore exercise our discretion to grant the request for judicial notice, pursuant to Evidence Code section 459, subdivision (a).

It is undisputed that defendants reside on their R-A zoned property in an RV. Defendants have raised no argument on appeal that their residency is somehow not in violation of the county land use ordinances, discussed above, nor have they raised any argument that the ordinances were not validly enacted. The conclusion that inexorably follows from these premises is that defendants have been using their property in violation of county land use ordinances, and the trial court's injunction against further violations is appropriate.

Defendants nevertheless contend that their use of their property does not constitute a public nuisance. This argument is based on the conditions of the property, which they assert do not meet the definitions provided by Civil Code sections 3479 and 3480. It is settled law, however, that “[v]iolations of a planning code constitute a public nuisance. [Citation.]” *Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 255 (*Golden Gate Water Ski Club*). The various factors that must generally be considered and balanced in determining whether there is a nuisance are therefore immaterial here. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1207 [“where the law expressly declares something to be a nuisance, then no inquiry beyond its existence need be made and in this sense its mere existence is said to be a nuisance per se”].)

Defendants further argue that the County is not empowered to declare a public nuisance. They note that Government Code section 38771 provides, “By ordinance the city legislative body may declare what constitutes a nuisance,” but no similar statute explicitly confers authority on a county. This argument fails because the County has a

constitutional right to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) “It therefore is not particularly relevant whether a particular violation of a zoning law is or is not a public nuisance . . . it is enough that [the County] has the power to act.” (*Golden Gate Water Ski Club, supra*, 165 Cal. App. 4th at pp. 255-256.)

Additionally, defendants argue that the county ordinance provisions that must have been considered by the trial court to find defendants’ use of their property to be a violation of the law were “not properly judicially noticed,” and assert—without any citation to case law or other authority—that they therefore “must be disregarded.” The County requested that the trial court take judicial notice of several sections of Riverside County Ordinance No. 348, but did not specifically request judicial notice of the portions of the Riverside County Code we discuss above, establishing that residency in an RV is prohibited on an R-A zoned property. Under Evidence Code section 452, however, the trial court is empowered to take judicial notice of “[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.” (Evid. Code, § 452, subd. (b).) County ordinances fall within this category. (See Comment to Evid. Code § 452.) Moreover, the court may take judicial notice of such matters on its own motion. (Evid. Code, § 452 [“Judicial notice *may* be taken of the following matters”] (italics added); see also Comment to Evid. Code, § 452 [“The court *may* take judicial notice of these matters, even when not requested to do so”] (italics added).) To the extent judicial notice of any particular county ordinance or section thereof was required to support the judgment below, and was not

requested by the parties, the trial court implicitly took judicial notice on its own motion. (See, e.g., *Shafer v. Los Angeles County Sheriff's Dept.* (2003) 106 Cal.App.4th 1388, 1401, fn. 6 [“A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.”].) Given that these same ordinances were explicitly at issue in the case throughout, beginning with citations thereto in the County’s complaint, defendants hardly can claim unfair surprise or lack of reasonable opportunity to argue the applicability of the ordinances to the facts of the case. (See Evid. Code, § 455 [regarding opportunity to present information to the court].)

Finally, defendants contend their right to privacy under the California Constitution is violated by enforcement of country ordinances in this case, which would cause them to “be removed from the privacy and solitude of their own property and forced to live with others in a trailer park,” at least absent any showing of “compelling public need.” Defendants cite no authority, however, that supports the notion that the right to privacy may trump enforcement of public nuisance or zoning laws, and we are aware of none. The lone case cited by defendants in support of their argument, *Robbins v. Superior Court*, is inapposite, addressing a county policy that conditioned receipt of a public benefit on waiver of the constitutional right to privacy. (See *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 203, 212-213 [policy regarding general assistance benefits for county residents who are single and employable, giving them the choice of either residing in a county shelter or foregoing benefits, violates right to privacy].) Defendants are not compelled by the injunction issued by the trial court to live anywhere in particular; they

are only required to cease violating county zoning ordinances by residing in an RV on their property, a use that is not allowed under the applicable zoning ordinance. In short, the “right to be left alone” does not extend to the right to ignore county restrictions on land use.

III. DISPOSITION

The judgment is affirmed. The County shall recover its costs⁴ on appeal.

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HOLLENHORST

Acting P. J.

We concur:

KING

J.

MILLER

J.

⁴ We note that the County has requested in its briefing recovery of attorney fees. Our award of costs here neither includes attorney fees, nor precludes the County from seeking them in the manner provided by the California Rules of Court. (Cal. Rules of Court, rule 8.278(d)(2); see also *id.*, rule 3.1702.)