

STATE OF MICHIGAN
COURT OF APPEALS

JASPER LOVE,

Plaintiff-Appellant,

v

CITY OF MUSKEGON,

Defendant-Appellee.

UNPUBLISHED

November 23, 2010

No. 293767

Muskegon Circuit Court

LC No. 09-046659-AS

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals as of right from an order dismissing his complaint for superintending control. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owned an industrial property located at 1850 Park Street. Defendant took action to demolish the building when plaintiff failed to complete repairs to the roof. Plaintiff filed a complaint for superintending control in the circuit court. He represented that he had spent more than \$15,000 toward the roofing repair, that the repair was more than eighty percent complete, and that he could have the sheathing on the roof within 30 to 45 days. However, the circuit court determined that plaintiff was not entitled to superintending control and granted defendant's motion to dismiss the complaint.

The circuit court correctly concluded that the issue with regard to the complaint for superintending control was not whether defendant should continue to negotiate with plaintiff, but whether defendant's decision was authorized by law and supported by competent, material, and substantial evidence on the whole record. See *Cole's Home & Land Co v Grand Rapids*, 271 Mich App 84, 88-89; 720 NW2d 324 (2006). The court concluded that defendant had met this standard. We review the circuit court's decision for clear error. *Id.* at 89.

Preliminarily, plaintiff takes issue with photographs submitted by defendant, maintaining that they were predated to misrepresent the condition of the building at the time of the hearing. However, there was no representation that these photographs were taken at any time other than the time reflected by the time-stamp. We note that defendant's counsel referred to photographs at the hearing. However, the context of her remarks indicates that she was referring to photographs attached to *plaintiff's* brief, which showed the current state of the repairs. She noted

that the photographs depicted “a few boards, but it’s still wide open.” Photographs attached to plaintiff’s brief show boards in place.

Based on the evidence presented, we conclude that the City Commission’s decision to demolish the building was authorized by law and supported by competent, material, and substantial evidence on the whole record. The building inspector provided a notice to plaintiff as required by Muskegon City Ordinance 10-103(b), which indicated, among other problems, that a section of the roof had collapsed. Plaintiff was ordered to repair or demolish the structure on March 30, 2007, and to commence work on repairs within 30 days, in accordance with Muskegon City Ordinance 10-103(b). On May 3, 2007, it was noted that the roof problem, as well as other problems, had not been corrected,¹ and the building was deemed dangerous or substandard in accordance with Muskegon City Ordinance 10-61. On May 24, 2007, when plaintiff failed to make repairs, defendant initiated a hearing before the Housing Board of Appeals, as required by Muskegon City Ordinance 10-103(c). It is undisputed that the Board provided another opportunity for repair in accord with Muskegon City Ordinance 10-104. However, having found a continuing dangerous and substandard structure that it deemed a public nuisance, the Board subsequently recommended demolition. The matter was then turned over to the City Commission for concurrence in accord with Muskegon City Ordinance 10-104. The City Commission modified the order pursuant to Muskegon City Ordinance 10-104(b), giving plaintiff additional time to make the repairs. It is undisputed that plaintiff made progress on repairs, but failed to complete them. Given this failure, the City Commission was authorized to order that the building be demolished. Muskegon City Ordinance 10-104(b)(4).

The Muskegon City Ordinances authorized the Commission’s actions. Moreover, the failure to complete the repairs constituted competent, material, and substantial evidence to support that decision. Thus, the circuit court did not clearly err in upholding the City Commission’s decision.

Plaintiff next argues that he was denied due process of law, asserting he was not permitted to fully speak at the hearing or present photographs showing progress on the roof. However, the photographs were attached to plaintiff’s brief in support of superintending control and were part of the record considered on defendant’s motion. Regarding the inability to speak, the circuit court stopped plaintiff while he was speaking, indicating that his attorney should speak for him. The points that plaintiff wished to make were apparently presented by his attorney. There is no indication that the circuit court failed to consider these points.

Finally, plaintiff argues that he was subject to race discrimination. This issue was not argued below, and thus is not preserved. However, “[t]his Court may . . . address constitutional questions that were not addressed below where no question of fact exists and the interest of

¹ Plaintiff represented at the motion hearing that there had been an agreement that problems with the electrical, plumbing, and heating would not have to be addressed because plaintiff’s intent was to use the building just for storage. Accordingly, plaintiff’s failure to deal with these problems will not be addressed.

justice and judicial economy so dictate.” *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 426; 576 NW2d 667 (1998). Nonetheless, there simply is nothing to support the assertion that persons of other races would not have been required to submit an engineering or architectural design for the repairs, or that they would have received more favorable treatment with respect to extensions to complete the repairs. Accordingly, we decline to consider this argument.

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood