

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES TOUSSAINT,

Plaintiff-Appellant,

v

CITY OF STERLING HEIGHTS and DANIEL
KOT, d/b/a QUALITY TREE SERVICE,

Defendants-Appellees.

UNPUBLISHED

May 15, 2003

No. 230265

Macomb Circuit Court

LC No. 98-003436-CH

Before: Bandstra, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a jury verdict of no cause of action in this case involving the removal of a tree from plaintiff's property. Plaintiff sued defendants for trespass and inverse condemnation after defendant Daniel Kot, acting pursuant to a contract with defendant City of Sterling Heights, entered plaintiff's property and removed a large maple tree. Defendants claimed that their actions were lawful because the tree constituted a nuisance and because the city complied with its ordinance procedures for abating a nuisance, including the procedures for giving appropriate notice to the property owner. The jury agreed, and we affirm.

Plaintiff is the legal owner of a parcel of property in Sterling Heights. The recorded deed indicates that he is the sole owner of the property. However, plaintiff's niece, Michele Harris, was the owner listed on the city's property tax assessment rolls. The property in question included the maple tree, which plaintiff apparently regarded as valuable to the development and sale potential of the property. After the city discovered that the tree was rotting and infested with insects, a city employee, Daniel Sears, determined that the tree was a hazard and that it violated § 5116 of the Sterling Heights Code of Ordinances. This section requires property owners to remove trees that are infected by disease or insects if necessary for protection of the public safety, health, and welfare. Sears checked the city's Treasurers and Assessing Records ("TAAS") computer system to find the owner of the property and found that it listed Harris as the owner.

The city sent notices to Harris, and after receiving no response, it accepted Kot's bid to remove the tree for \$1,500. The city assessed plaintiff for the cost of the tree removal on his property tax bill. Plaintiff then sued for trespass and inverse condemnation, claiming that defendants entered on his property and removed the tree without his authorization or knowledge. He argued at trial that the city should have taken steps to ensure that the notices about the alleged

nuisance were being sent to him, the actual property owner, and not merely to the person listed on the assessment record.

On appeal, plaintiff alleges that the court improperly submitted to the jury the question of defendants' liability. Plaintiff contends that the relevant issues were issues of law – specifically, whether the city followed its own ordinance and whether this ordinance “satisfactorily provide[s] procedural due process” – and that the court therefore should have decided the case on its own. This argument is without merit.¹

First, plaintiff did not object at trial to having the salient issues submitted to the jury. Accordingly, he failed to preserve his current argument for appellate review. *Sowels v Laborers' International Union of North America*, 112 Mich App 616, 623; 317 NW2d 195 (1981). Although we are empowered to address unpreserved issues that solely involve questions of law, see *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998), we are not required to do so. Here, because no manifest injustice would result from our failure to address the issue,² we find no compelling reason to address it. See *Herald Co, Inc v Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998).

Moreover, while we agree with plaintiff that questions relating to the interpretation and constitutionality of an ordinance are questions of law for the court to resolve, we cannot conclude that the trial court violated this precept. Indeed, plaintiff's presentation of this case below did not include the explicit assertion of a legal argument that the ordinance's notice provisions were constitutionally inadequate. Rather, plaintiff made a factual argument that, in his case, the city's agents should have known that their usual procedures were not adequate and should have taken alternative steps to identify and notify the legal owner of the property in question. Plaintiff contended that the city should have realized the TAAS system is not always an accurate record of ownership, that the city should have realized it was sending notices to the wrong person, and that it would be feasible for city employees to consult the Register of Deeds when they have reason to believe the TAAS system is not listing the correct owner. Plaintiff simply did not present a legal issue about the adequacy of the ordinance; he framed the case as a factual question about whether the city did, in fact, notify him in his particular case and whether it should have made greater efforts to find the owner. Moreover, and significantly, plaintiff did not move for summary disposition on the ground that the notice provisions were constitutionally inadequate, and plaintiff provides no authority for the proposition that a trial court must grant summary disposition sua sponte if it believes such a result is warranted.³ Plaintiff has not provided an adequate basis for reversal of the jury's verdict in this case.

¹ This Court reviews questions of law de novo. See *Burt Twp v Dep't of Natural Resources*, 459 Mich 659, 662-663; 593 NW2d 534 (1999).

² Indeed, as noted *infra*, no constitutional violation occurred in the instant case.

³ In fact, the sua sponte granting of summary disposition is disfavored. See, e.g., *Haji v Prevention Insurance Agency, Inc*, 196 Mich App 84, 87; 492 NW2d 460 (1992). Moreover, this Court disfavors resolving a question on constitutional grounds when not necessary. *Auto Club v Farmington Hills*, 220 Mich App 92, 100-101; 559 NW2d 314 (1996). Sua sponte declaring an
(continued...)

Next, plaintiff argues that the city ordinance concerning notice in regard to nuisances is unconstitutional on its face. However, plaintiff did not raise this issue below, and therefore we need not address it. *Sowels, supra* at 623. Even if we were to address this issue, however, we would find no basis for reversal.

The Due Process Clauses in the federal and state constitutions bar the state from depriving a person of property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17; *Dow v State of Michigan*, 396 Mich 192, 195; 240 NW2d 450 (1976). Plaintiff contends that the city’s nuisance ordinance is facially unconstitutional because it allows the city to take property without affording the owner due process of law. Specifically, he contends that the notice provisions are not reasonably calculated to notify owners of impending proceedings that may result in loss of property. Section 33-4 of the Sterling Heights Code of Ordinances provides, in pertinent part, the following procedures:

(a) *Notice to owner or to person or persons responsible*: Whenever the code enforcement official determines that there has been a violation of this chapter . . . notice shall be given to the owner or person or persons responsible in the manner prescribed in section 33-4(b) and 33-4(c). If the responsible party fails to abate the nuisance within ten (10) days, the code enforcement official will request a hearing before the board in the manner set forth in section 33-(a) to determine whether a nuisance exists which should be abated.

(b) *Service of notice to abate nuisance or of notice of hearing*: Service of the notice to abate or notice of hearing is deemed to have been properly served upon the owner if a copy is delivered to the owner personally; or by leaving the notice at the usual place of abode of the owner in the presence of someone in the family of suitable age and discretion who shall be informed of its contents; or by regular mail, certified mail, (return receipt requested), or registered mail addressed to the owner at the last known address shown on the tax records of the city

(c) *Form of notice to abate*: Whenever a notice to abate is required, the code enforcement official shall issue a notice in writing that includes [instructions to abate the nuisance within ten days and notice that the City will abate the nuisance and impose the cost on the owner] if and to the extent authorized by the city council at a meeting of which the property owner has been given notice in accordance with this chapter.

The owner is identified under § 33-2, which provides the following definition of “owner”:

(...continued)

ordinance unconstitutional also would run contrary to the principle that the “power to declare a law unconstitutional should be exercised with extreme caution” See *Council of Organizations & Others for Ed about Parochiaid, Inc v Governor*, 455 Mich 557, 570; 566 NW2d 208 (1997).

Owner: Any person, agent, operator, firm, or corporation having a legal or equitable interest in the property as determined by the assessment records or in the official records of the state, county or municipality; or otherwise having control of the property, including the guardian of any such person, and the personal representative of the estate of such person if ordered to take possession of real property by a court.

MCL 211.24 provides that the tax assessor must complete an assessment roll stating the name and address of “every person liable to be taxed” and the “name and address of the owner or occupant,” if known. According to plaintiff, this scheme for identifying and notifying the owner of impending nuisance proceedings and abatement is constitutionally infirm because the tax assessment records are not a reliable means of determining ownership.

When this Court construes a statute, it presumes that every word has some meaning and it avoids “any construction that would render the statute, or any part of it, surplusage or nugatory.” *Karpinski v St John Hosp Macomb Center Corp*, 238 Mich App 539, 543; 606 NW2d 45 (1999). “The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances.” *Gora v City of Ferndale*, 456 Mich 705, 711; 576 NW2d 141 (1998). Moreover, “[s]tatutes and ordinances must be construed in a constitutional manner if possible.” *Id.* “Because ordinances are presumed constitutional, the party challenging the validity of an ordinance has the burden of proving a violation.” *Id.* An ordinance can be deemed facially invalid “only if there are no factual circumstances under which the provision could be constitutionally implemented.”⁴ *Id.* at 722.

Here, there are numerous factual circumstances under which the provision could be constitutionally valid because, among other things, the individual listed on the assessment roles is often the true owner of the property. In fact, plaintiff himself admits that the ordinance as written may provide notice to the true owner “more often than not.” Under the circumstances, no facial unconstitutionality is apparent.

Finally, plaintiff argues that the ordinance is unconstitutional as applied. Once again, we need not address this issue because plaintiff did not raise it below. *Sowels, supra* at 623. Nevertheless, we find no constitutional violation. First, the ordinance is “reasonably calculated” to convey the necessary information. See *Dow, supra* at 206, and *Smith v Cliffs on the Bay Condominium Association*, 463 Mich 420, 429, n 7; 617 NW2d 536 (2000) (discussing the requirement that notice be “reasonably calculated” to apprise the pertinent parties of the proceedings). Second, the city did indeed send notices to Harris, who received them and who was both related to plaintiff and involved with the property to a certain extent.⁵ Moreover, the Supreme Court held in a different context in *Smith* that sending notice to a “tax address of

⁴ Plaintiff argues that this principle applies only when an ordinance is challenged on the ground that it violates substantive due process, and not, as here, where the plaintiff challenges the ordinance on procedural due process grounds. This argument is waived, however, because plaintiff does not cite any authority in support of this distinction. See, e.g., *Dresden v Detroit Macomb Hosp Corp*, 218 Mich App. 292, 300, 553 NW2d 387 (1996).

⁵ Apparently, Harris was involved with plaintiff’s plans to plat and subdivide the property.

record” passes constitutional muster.⁶ See *Smith, supra* at 421. *Smith* stands for the proposition that the government is not constitutionally obligated to seek alternative means of notice when a generally reasonable notice procedure fails in a particular situation. Under the circumstances, we find no unconstitutionality.

Affirmed.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Patrick M. Meter

⁶ Plaintiff contends that because *Smith* involved a tax sale for failure to pay taxes, there was a necessary relationship between the person listed on the tax record and the person to be notified of the consequences for failing to pay taxes. Plaintiff contends that “[n]o such relationship to support the reasonableness of the notice procedure exists in the case at bar.” However, we note that the cost of abatement of a nuisance under the city’s ordinance is added *to the property tax bill*.