COURT OF APPEALS
DECISION
DATED AND FILED

July 7, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3372

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

CITY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

V.

ALLOS, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

SCHUDSON, J.[1] Allos, Inc., appeals from a judgment entered after the circuit court concluded that it failed to comply with an order to correct condition of premises for building code violations issued by the City of Milwaukee Department of Building Inspection (Department). Allos raises three

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

issues on appeal: (1) whether "the owner of a residential building [is] responsible for installing a guardrail and balusters for a porch that a previous owner . . . sealed off …."; (2) whether "a residential building owner [is] responsible for installing a guardrail and balusters on an abandoned porch when actual notice of the order to correct condition of premises is not received until after the building has been sold to a new owner"; and (3) whether MILWAUKEE CODE OF ORDINANCES § "200-12-2-b,[2] which provides for service of an 'Order to correct condition of premises' in a manner not reasonably intended to give the owner actual notice and differing from accepted service of process statutory requirements, violates the due process clause of the United States constitution." (Footnote added.) This court affirms.

This case arises from the issuance of an order to correct condition of premises for building code violations. On or about May 31, 1995, City of

[2] MILWAUKEE CODE OF ORDINANCES § 200-12-2-b, (1995), provides:

> b. Service. Orders shall be served upon the owner, the operator or the occupant, or agent, provided that the order shall be deemed to be properly served upon the owner, agent, operator or occupant if served either by mailing a copy to the person's last known address or by delivering a copy to the person or the registered agent personally, or if not found, by leaving a copy at his or her usual place of abode in the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof. If the owner has not filed with the department as required in s. 200-51.5 a current address or the name and address of the person empowered to receive service of process, it shall be deemed sufficient notice to the owner that violations have been found if a copy of the order is mailed to the last known address of the owner as identified by the records of the commissioner of assessments or the commissioner of building inspection, as the case may be. When service has been completed as prescribed in this paragraph, the order shall be effective as to anyone having interest in the property whether recorded or not at the time the order was issued, shall be effective against any subsequent owner of the premises as long as the violation exists and there remains a city record of the order in a public file maintained by the commissioner of building inspection.

Milwaukee Building Inspector, Daulton Daniels, inspected the duplex located at 2736-38 North 26th Street, and issued an order to correct condition of premises. Specifically, the order cited the lack of guardrails and balusters on the second floor porch as a violation of MILWAUKEE CODE OF ORDINANCES § 275-32-3-g.[3]

In accordance with § 200-12-2-b, a copy of the order was mailed to the then-owner, Oscar Shannon. On June 29, 1995, Allos received a deed in lieu of foreclosure from Shannon. The conveyance of Shannon's interest in the property to Allos was recorded with the Register of Deeds on July 3, 1995. Allos failed, however, to record its ownership of the property with the Department, as required under § 200-51.5.[4]

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[3] Section 275-32-3-g provides:

> Stairways and Porches. Every inside and outside stairway, porch and appurtenance thereto shall be constructed as to be reasonably safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and in a reasonably good state of maintenance and repair.

[4] Section 200-51.5 provides:

> **200-51.5 Recording of Residential and Commercial Buildings. 1.** PURPOSE. Recording of residential and commercial buildings is essential for the proper enforcement of the city's building maintenance code and for the department to carry out its responsibilities to safeguard persons and property.
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> **2.** RECORDING REQUIRED. a. All persons owning residential or commercial buildings shall file with the department on forms provided by the department, an application to record such buildings in compliance with this section. The application shall contain all information listed in sub. 4. An application of recording shall be filed with the department for each tax key-numbered parcel containing a residential or commercial building. Multiple buildings on a parcel with a single tax key number shall be recorded on one application. Failure to record with the department as required in this section shall subject the owner to the provisions provided in subs. 7 and 8.
>
> **3.**

After a series of reinspections, the Department repeatedly tried to contact Shannon. When the Department learned that Shannon had transferred his interest to Allos, it attempted to serve Allos. However, because Allos had failed to record its ownership and current address with the Department, the Department did not have an accurate mailing address.

On September 20, 1995, the Department mailed a copy of the order to correct condition of premises to the duplex's address. On October 5, 1995, a copy of the order was mailed to Jerome E. Randall, doing business as Allos, at a residence in the Village of Whitefish Bay. Finally, on November 10, 1995, a copy of the order was sent to Jerome Randall, registered Agent of Allos, at an address in Wauwatosa. On November 11, 1995, Allos executed a warranty deed conveying the property to Willie Dewalt. This deed was not recorded until July 1, 1996.

On April 30, 1996, the City commenced a civil forfeiture action against Allos, in the Milwaukee Municipal Court.[5] The municipal court found Allos not guilty. On appeal, however, the circuit court found in favor of the City and entered a judgment against Allos in the amount of $500.

Allos first argues that an owner of a residential building should not be responsible for installing guardrails and balusters for a porch that was inaccessible, and, thus, was not a "porch," subject to the code. In response, the City argues that the circuit court correctly found that the condition of the upper rear porch violated the City of Milwaukee Building Code throughout the period of violation. The City is correct.

[5] Allos's registered agent, Jerome E. Randall, was served with a summons and complaint on April 24, 1996. Allos does not challenge the municipal court's jurisdiction over that action.

Inspector Daniels's undisputed testimony established that the duplex was in violation of the code, and further, that the repairs had never been done. Daniels's testimony also indicated that although it might have been possible to seal off the doorway, and thus, eliminate the need for guardrails and balusters, such alterations would have required a permit authorizing the work. Daniels testified that the permit was necessary to ensure that the duplex maintained adequate exits from the second floor. In addition, the permit would have ensured that a construction inspector reviewed the porch entry to be sure that it was properly sealed from the interior, and that the exterior side of the porch opening blended with the exterior wall of the duplex. Daniels testified that he was not aware of any permit authorizing the removal of the doorway. At trial, Allos never produced evidence of a permit. Accordingly, the circuit court correctly concluded that the violation cited in the order existed unabated throughout the period of violation because Allos failed to either replace the guardrails and balusters or produce evidence that a permit was taken out to seal off access to the porch.

Next, Allos argues that it is not responsible because it did not receive notice of the violations until after it sold the duplex. Allos's argument is without merit.

Section 200-12 of the MILWAUKEE CODE OF ORDINANCES specifies the required form, content, and manner of service for orders issued by the Department. The notice provision of § 200-12-2-b provides for constructive notice on any subsequent owner. Section 200-12-2-b provides, in relevant part:

> When a service has been completed as prescribed in this paragraph, the order shall be effective as to anyone having interest in the premises whether recorded or not at the time the order was issued, shall be effective against any subsequent owner of the property as long as the violation exists and there remains a city record of the order in a

> public file maintained by the commissioner of building inspection.

The evidence established that the Department inspected the property on May 31, 1995, and that an order to correct condition of premises was served on Oscar Shannon, the then-owner of the property. Service of the order on Shannon was made in compliance with § 200-12-2-a,[6] and a record of the order was maintained in a public file by the Commissioner of the Department of Building Inspection. When Shannon transferred his ownership interest in the property to Allos, the order to correct became effective against Allos. Accordingly, the circuit court correctly ordered the forfeiture.

Finally, Allos argues that the notice provision of § 200-12-2-b is unconstitutional. Allos claims that the ordinance "provides for service of an 'Order to correct condition of premises' in a manner not reasonably intended to give the owner actual notice and differing from accepted service of process statutory requirements" and, therefore, violates the Due Process Clause.[7] This court disagrees.

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[6] Allos argues that the circuit court erred in finding that the City had properly served Shannon. In his brief to this court, however, Allos has failed to provide: (1) a copy of the transcript recording the circuit court's findings; and (2) record references for the testimony he claims establishes that the City failed to serve Shannon. It is the appellant's responsibility to ensure that the record is sufficient to review the issues raised on appeal. *See* ***State Bank v. Arndt***, 129 Wis.2d 411, 423, 385 N.W.2d 219, 225 (Ct. App. 1986). If an appellant chooses to proceed on an incomplete record, this court will assume that every fact essential to sustain the circuit court decision is supported by the record. *See* ***Suburban State Transport v. Squires***, 145 Wis.2d 445, 451, 427 N.W.2d 393, 395 (Ct. App. 1988).

[7] In its analysis, Allos cites to § 62.17, STATS., which provides the methods of serving building code violations in other parts of the state, and argues that the constructive notice provision of the City's code does not comply with § 62.17's service requirements. In response, the City argues that § 62.17 is not applicable to the City, *see* § 62.03, STATS., and thus, it contends that it is not bound by the notice standard of the statute. Allos offers no reply to the City's argument. ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis.2d 297, 109, 297 N.W.2d 493, 499 (Ct. App. 1979) (arguments that are not refuted are deemed admitted).

(continued)

The constitutionality of a statute is a question of law that this court reviews de novo. ***State v. McKenzie***, 151 Wis.2d 775, 778, 446 N.W.2d 77, 78 (Ct. App. 1989). Judicial review of legislation starts with a presumption of constitutionality and the requirement that the challenger prove unconstitutionality beyond a reasonable doubt. ***Laskaris v. Wisconsin Dells***, 131 Wis.2d 525, 533, 389 N.W.2d 67, 71 (Ct. App. 1986) (citation omitted). This is true whether the challenged legislation is a statute or an ordinance. ***Id.*** (citation omitted).

Before depriving a person of property, the City, to comply with the mandates of procedural due process, must provide the person with notice and an opportunity to be heard. *See* ***Mullane v. Central Hanover Bank & Trust Co.***, 339 U.S. 306, 314 (1950). Procedural due process requires that the City afford an individual an opportunity to be heard at a reasonable time and in a meaningful manner. ***Mathews v. Eldridge***, 424 U.S. 319, 333 (1976). To satisfy due process, the notice must be reasonably calculated to apprise the interested party of the nature of the proceeding. *See* ***Mullane***, 339 U.S. at 314.

Section 200-12 of the MILWAUKEE CODE OF ORDINANCES complies with the mandates of the Due Process Clause by affording a residential building owner notice of the violation. First, it provides several alternative methods of service. Second, it provides for the recording of the order in a public file maintained by the commissioner of building inspection. *See* § 200-12-2-b. These methods of giving notice satisfy the mandates of procedural due process. Moreover, they are rationally related to the City's management and regulation of residential buildings for the health, safety and welfare of its residents.

As the City argues, the constructive notice provision of 200-12-1-b represents a policy determination by the Common Council of the City of Milwaukee to place a duty on those acquiring property in the city to determine whether the property is subject to outstanding orders to correct the property. The City explains:

> The Common Council's choice was reasonable and perfectly consistent with the doctrine of constructive notice which has developed in other areas of the law, such as that regarding encumbrances on real property. For example, persons acquiring real property are deemed to have constructive notice of encumbrances to the land being purchased. A purchaser is charged with notice of all information which could be obtained by the exercise of reasonable diligence in consulting: 1) the records of the Office of the Registrar of Deeds; 2) other public records; and 3) the land itself. ***Bump v. Dahl***, 26 Wis.2d 607, 614-615, 133 N.W.2d 295, 300 (1965).

Accordingly, the City contends, Allos, as the subsequent owner, had a duty to know the condition of its property. This court agrees. Therefore, this court concludes that the ordinance is constitutional and affirms the judgment of the trial court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.