

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001378-MR

YVONNE NATION, INDIVIDUALLY AND
AS ADMINISTRATOR OF THE ESTATE OF
RAY W. NATION, DECEASED

APPELLANT

v. APPEAL FROM SPENCER CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 95-CI-000040

TAYLORSVILLE-SPENCER COUNTY JOINT
PLANNING AND ZONING COMMISSION

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, GUIDUGLI AND McANULTY, JUDGES.

McANULTY, JUDGE: This is an appeal from a bench trial in which the court granted the Taylorsville-Spencer County Joint Planning and Zoning Commission a permanent injunction against Yvonne Nation (hereinafter, appellant) and Hurley McGill,¹ enjoining them or their heirs and assigns from operating a junk or salvage yard on approximately 3.5 acres located in Elk Creek in Spencer

¹ McGill was served in the court below, but did not answer or otherwise defend the action. The trial court held McGill in default. He is not a party to this appeal.

County. The property is zoned for commercial use, but not for the operation of a junk or salvage yard.²

George Hill owned the property in 1976, and had it rezoned to B-1 for the purpose of operating a "garage, welding, and repair shop for farm equipment and odd jobs." Within the next two years, he began to maintain the property as a salvage yard in addition to his welding and garage business. On July 5, 1984, he sold the property at auction to Hurley McGill, although the deed was in the name of Edith True who transferred title to Hurley McGill in December 1984. McGill could not pay off the purchase cost right away, so Hill arranged a lease with him, paid by the interest on McGill's debt, whereby Hill continued to use the garage and salvage yard for a period of about six months. Within this time, Ray Nation moved onto the property. On March 8, 1985, he began leasing the property from McGill with an option to buy. Ray Nation proceeded to bring wrecked cars onto the property, and after a few years he had established a sizable salvage yard. In 1986, the Taylorsville-Spencer County Joint

² The Taylorsville-Spencer County zoning regulations defined a junk yard as:

a lot, land, building, or structure or part thereof used primarily for the collection, storage, and/or sale of waste, paper, rags, scrap metal or discarded material or for the collection, dismantling, storage, salvaging of machinery or vehicles not in running condition and for the sale of parts therefrom.

and a salvage yard as:

Any place where 5 or more motor vehicles not in running condition, or the parts thereof are stored in the open and are not being restored to operation; or any land, building or structure used for the wrecking or storing of such cars or the parts thereof.

Planning and Zoning Commission began receiving complaints about the operation of the salvage yard, from neighbors and from Hurley McGill. The administrative official sent letters regarding the zoning violation to McGill and Nation. In May 1995, the Commission filed the present suit against appellant seeking a permanent injunction.

The activity on the property is an illegal nonconforming use. Illegal nonconforming uses or structures are established after adoption of and contrary to the zoning ordinance. Grannis v. Schroder, Ky. App., 978 S.W.2d 328, 331 (1997). In this case, the property was used as a junk or salvage yard after George Hill had it rezoned as commercial property. Illegal nonconforming uses may become valid under KRS 100.253(3), which states in pertinent part:

Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use.

Appellant conceded in the trial court that she and her husband, Ray Nation, who is now deceased, had maintained a junk or salvage yard on the premises described. However, she defended by alleging that the activities described in the complaint had been carried out on the property for well in excess of ten years and, even if formerly illegal, such use could be deemed a nonconforming use pursuant to KRS 100.253(3).

The trial court held that the junk yard was not in continuous existence for ten years, and even if it was, the

administrative official took "adverse action" during that time. Appellant alleges that both of the trial court's conclusions are clearly erroneous. We find no clear error in the trial court's conclusion that the junk yard was not maintained continuously. We also agree with the trial court that the administrative official took adverse action before the passage of ten years by notifying Nation that he was in violation of the zoning ordinance. Accordingly, we affirm.

The trial court determined that the junk yard was not in continuous existence as required by KRS 100.253(3). The court examined the evidence to determine whether there was a break in the use of the property as a junk yard. The trial court concluded from Hill's testimony that his junk yard operation ended when he disposed of virtually all the cars on the property following a flood, and prior to his sale of the property at auction in 1985. The trial court cited the minutes of the Planning and Zoning Board on March 20, 1986, which stated that "another junk yard is beginning at the old school house at Elk Creek by Ray Nation." (Emphasis supplied). The court also relied on aerial photographs of the property. One taken at some time in 1985 showed no cars on the property; ensuing photographs showed a gradual buildup of cars beginning in 1986. From this evidence, the court concluded that Nation's junk yard did not start up until late 1985 to 1986, and so it was not continuous with that of Hill. In this case, it appears that the trial court chose to rely on the objective evidence available since it was dealing with the passage of time and self-interest by those connected

with the property. The trial court's conclusion that the junk yard was not in continuous existence was based on evidence in the record, and so we find that it was not clearly erroneous.

Appellant next alleges that the administrative official did not take any "adverse action" during the period in which her husband operated the junk yard. She alleges that the administrative official was required to utilize those actions the legislature established in Chapter 100--criminal citations (KRS 100.991) and civil actions such as the one that is the basis for this appeal (KRS 100.337). The trial court instead concluded that the administrative official's "act" in issuing a Notice of Noncompliance or Violation is an adverse action within the meaning of the statute. We agree.

Illegal nonconforming uses can be ordered removed or otherwise made conforming. Grannis v. Schroder, Ky. App., 978 S.W.2d 328, 331 (1997) (citing Deerfield Co. v. Stanley, Ky., 441 S.W.2d 119 (1969)). An illegal nonconforming use may be stopped by the city any time it chooses to do so. Bar-Del, Inc. v. Oz, Inc., Ky. App., 850 S.W.2d 855, 856 n.1 (1993). Furthermore, the Kentucky Supreme Court has held that the spirit and intent of zoning is to eventually eliminate nonconforming uses. Holloway Ready Mix Co. v. Monfort, Ky., 474 S.W.2d 80, 83-84 (1968). With those principles in mind, we agree with the trial court that the administrative official is not required to bring a legal action. We find it was sufficient for the administrative official to notify those responsible that the property violated the zoning ordinance or regulation, and request that the violation be

corrected. Under KRS 100.257, the recipient of the notice may appeal the administrative official's decision that there is a violation of the zoning ordinance.

In this case, the administrative official sent Nation several letters informing him that the junk yard was not in compliance with the zoning ordinance - one of which, dated March 6, 1990, is included in the record. The letters requested that he correct the violation, and also that he appear at meetings of the Zoning and Planning Commission. At the meetings, there were discussions with Nation and his attorney in an attempt to gain the Nations' voluntary compliance with the zoning regulations. The commission was hindered from acting further, however, by the fact that title to the property was being litigated by McGill and Nation. Considering all of the circumstances of this case, we believe that under KRS 100.253(3) there were adverse actions by the administrative official during the ten years after the salvage yard was begun by Nation. The trial court correctly concluded that the junk yard in question did not qualify as a valid nonconforming use. The injunction to end the illegal nonconforming use was proper.

ALL CONCUR.

BRIEF FOR APPELLANT:

James H. Byrdwell
Shelbyville, Kentucky

BRIEF FOR APPELLEE:

John D. Dale, Jr.
Taylorsville, Kentucky