MISSOURI COURT OF APPEALS
WESTERN DISTRICT

RICK L. STANTON,

Appellant,

v.

CITY OF SKIDMORE, MISSOURI,

Respondent.

DOCKET NUMBER WD83441

Date: January 12, 2021

Appeal from:
Nodaway County Circuit Court
The Honorable Corey K. Herron, Judge

Appellate Judges:
Division Three: Edward R. Ardini, Jr. Presiding Judge, Alok Ahuja and Gary D. Witt, Judges

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Attorneys:
Rick L. Stanton, Skidmore, appellant pro se
Jean A. Maneke, KCMO for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

RICK L. STANTON, Appellant,
v.
CITY OF SKIDMORE, MISSOURI, Respondent.

WD83441 Nodaway County

Before Division Three Judges: Edward R. Ardini, Jr. Presiding Judge, Alok Ahuja and Gary D. Witt, Judges

Appellant Rickie Stanton owns property in the City of Skidmore, on which he operates a salvage and wholesale business dealing in scrap metal and reclaimed lumber. In December 2018, the City notified Stanton that he was violating the City's nuisance ordinance by storing prohibited vehicles and lumber on his property, and by allowing excessive vegetation to grow on the property. At Stanton's request the City Council conducted a hearing to reconsider the nuisance citation. The City Council found that Stanton was in violation of the nuisance order, and ordered him to abate the nuisance or face a fine and a possible action for injunctive relief.

Stanton filed a petition for declaratory judgment in the circuit court, in which he alleged that the city's nuisance ordinance was invalid and unconstitutional, that the ordinance could not be applied against his pre-existing use of his property, and that the City had abandoned an alleyway adjoining his property. The City counterclaimed, seeking declarations that Stanton had violated the nuisance ordinance and a City parking ordinance.

The circuit court granted the City summary judgment on Stanton's claims, and on the City's counterclaims. Stanton appeals.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

Division Three holds:

Stanton did not preserve his arguments that the City's passage of the nuisance ordinance violated several of the procedural requirements of § 79.130, RSMo, because he did not specifically plead the alleged statutory violations in his petition, and did not assert such violations in opposition to the City's motion for summary judgment.

Stanton's claim that the City Council denied him due process, by both initiating the nuisance citation against him, and then by serving as the appeals

tribunal, is meritless. So long as judicial review is provided, it does not violate due process for a municipality to both initiate proceedings against an individual, and adjudicate the alleged violations.

Stanton cannot rely on the "pre-existing non-conforming use" doctrine to avoid application of the nuisance ordinance to his property. Pre-existing non-conforming uses of property may be exempt from new *zoning* ordinances. But the nuisance ordinance at issue here is not a zoning ordinance; it is instead an exercise of the city's police power to promote the general health and welfare of the public.

Finally, Stanton argues that summary judgment must be reversed on the City's counterclaim that he had violated the City's parking ordinance, because the contents of the parking ordinance were not proven through competent evidence. We agree. Unlike state statutes, courts cannot take judicial notice of city ordinances. The content of such ordinances is a factual matter which must be proven by competent evidence. The City failed to do so here. Because the terms of the City's parking ordinance were not proven with competent evidence, the circuit court erred in granting the City summary judgment on its claim that Stanton was in violation of the parking ordinance.

Opinion by: Alok Ahuja, Judge January 12, 2021

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