Takings: After Notice and Opportunity to Contest, Coupled With Legitimate Public Safety Concerns, Demolition Complies With Fifth Amendment

Michael Duffy v. Kent County Levy Court, No. 14-1668 (3d Cir. Nov. 14, 2014).

Where County officials provided a property owner with prior notice of an unsafe structure and an opportunity to challenge that finding, the subsequent demolition of the structure and imposition of a lien to cover costs was constitutionally sound, despite plaintiff's claims of ADA-cognizable impairment.

In May 2008 a storm hit Kent County, Delaware and damaged Michael Duffy's property. The Division of Inspections and Enforcement for Kent County deemed the structures unsafe and ordered their demolition if they were not repaired. Duffy and the County negotiated for several months about the repairs, and Duffy was ultimately granted a demolition permit to raze the structures. Duffy failed to follow through. After providing Duffy with notice, the County undertook the demolition. It then placed a $1400 lien against Duffy's property to cover the costs of razing the structure.

Duffy filed two suits against the County. In the first he alleged he was disabled by Parkinson's disease and that the County discriminated against him under the ADA. The District Court dismissed this case because Duffy "failed to produce sufficient evidence to create a material issue of fact as to whether he suffers from a disability within the meaning of the ADA." In the second case, he alleged that the County effected an unconstitutional taking of his property under the Fifth Amendment and that the demolition constituted an unreasonable seizure under the Fourth Amendment. The District Court granted the County's motion to dismiss since the razing was necessary for public safety and because Duffy had proper notice. Duffy appealed.

HELD: The Third Circuit affirmed the District Court in both cases.

DISCUSSION: The court outlined the familiar standards required of Duffy to prove a prima facie case under the ADA:"(1) that []he is a qualified individual with a disability; (2) that the defendants are subject to [the ADA]; and (3) that []he was denied the opportunity to participate in or benefit from defendants' services, programs, or activities, or was otherwise discriminated against by defendants, by reason of [his] disability." The problem for Duffy lay in the fact that the County assisted him because of his claimed disability. Duffy told the County he was disabled and sought help, after which the County took time to meet with him to explain the demolition process, discuss permit requirements, and go through potential deadline extensions. The County also assigned a specific staff member to help Duffy. It also provided him with time extensions when requested. He was denied one request – for a trash dumpster at the property – because the County, as it explained at the time, "never" provides dumpsters at the government's expense to private residents. Duffy failed to prove that this rejection was based on his disability. The Circuit Court affirmed the lower court denial of Duffy's ADA claim.

On the Fifth Amendment claim, the Third Circuit affirmed that the County's actions did not amount to a taking because the demolition was performed pursuant to traditional police powers. The property had been a significant safety hazard and Duffy failed to show that the lien against the property foreclosed all economically viable use. The Fourth Amendment analysis was similar for the Third Circuit. It noted whether a seizure violates the Constitution depends on the reasonableness of the action – a balance between governmental and private interests. Here, the seizure was deemed reasonable because the property posed a danger to the public, Duffy

was provided with notice, and he was given the opportunity to challenge the demolition before it took place.

http://www2.ca3.uscourts.gov/opinarch/141668np.pdf (last accessed Nov. 20, 2014)