IN THE

Supreme Court of Virginia

RECORD NO. 171030

PRINCE WILLIAM
BOARD OF COUNTY SUPERVISORS, *et al.*,

Appellants,

v.

HENRY ARCHIE, JR.,

Appellee.

REPLY BRIEF OF APPELLANTS

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I. ARCHIE'S USE OF THE 13065 MINNIEVILLE ROAD AS AN AUTOMOBILE JUNKYARD WAS A TRESPASS ONTO PROPERTY HE DID NOT OWN OR HAVE PERMISSION TO USE.

Archie's key argument is that his use of 13065 Minnieville Road as an automobile junkyard has been continuous since prior to the enactment of the Zoning Ordinance; however, Archie's continuous use of property was not legal and therefore not an actual use of the property. Finally, his reliance on Prince William County Code Section 32-601.11 to justify his trespass is misplaced because that section does not permit an individual to trespass onto another's property in order to continue a nonconforming use.

Under Prince William County Code Section 32-601.11 "the nonconforming status of any nonconforming use . . . shall adhere solely to the use of the land, and not to the owner, tenant, or other holder of any legal title to the property or the right to make use thereof." Archie uses this section in the County Code and argues that his "use" on 13065 Minnieville Road was continuous and therefore, he has a lawful nonconforming use. Archie's definition of use would permit individuals to trespass onto another's property in order to continue a lawful nonconforming use. In fact, Archie's use was not legal because both Mr. and Mrs. Williams as well as Land Management Groupe, Inc. ("LMG") obtained permanent injunctions

against Archie to stop the storing of junk vehicles and parts on 13065 Minnieville Road, which Archie ignored. (JA at 193-203). Therefore, his use of 13065 Minnieville Road was not an actual use but a trespass and an illegal occupation of property which Archie did not own.

Archie's trespass and illegal use of 13065 Minnieville Road as an automobile junkyard makes this situation analogous to the illegal concepts mentioned in Board of Supervisors of Washington County v. Booher, 232 Va. 478 (1987) and Dick Kelly v. City of Norfolk, 243 Va. 373, 381-82 (1992). The rule established in Booher and Dick Kelly was that in order for a landowner to establish a valid lawful nonconforming use, the use must begin lawfully and must not be prohibited by the zoning ordinance. Dick Kelly at 381-82; Booher at 481-82. Booher and Dick Kelly are prime examples where an individual was not allowed to benefit from his illegal behavior. Similarly, Archie should not be able to benefit from his illegal behavior with a finding that 13065 Minnieville Road has a lawful conforming use of an automobile junkyard. The finding of a lawful nonconforming use of an automobile junkyard on 13065 Minnieville Road would encourage behavior like Archie's illegal use.

II. THE NONCONFORMING USE WAS DISCONTINUED BY LMG REGARDLESS OF WHETHER ARCHIE CONTINUED THE USE OR NOT.

Archie's response to Assignment of Error II is that the use has been continuous and therefore, Archie never discontinued the use. However, this ignores the Trial Court's ruling. The Trial Court relied on Prince William County Code 32-601.21(1) which provides, "[i]f any nonconforming use is discontinued for a period of two years, it shall lose its nonconforming status, and any further use shall conform to the provisions of this chapter." The Trial Court found that the intent to discontinue by LMG lasted from November 1989, when LMG filed a lawsuit for a permanent injunction against Archie to August 1991 when LMG agreed to an amount on damages. (JA at 215). The Trial Court focused on LMG's discontinuance and not Archie's use. However, the Trial Court erred because LMG's discontinuance began when they purchased the property in 1987 and did not place any junk vehicles or parts at any time during its entire period of ownership of 13065 Minnieville Road from 1987-1992. (JA at 88, 160-161). Therefore, the question is not whether Archie discontinued the use but rather LMG's discontinuance of the use and LMG did discontinue or cease the use for more than two years as required by Prince William County Code Section 32-601.21(1).

CONCLUSION

Archie's argument that his use was continuous excludes the fact that it was illegal and a trespass of property that Archie did not own. The decision entered by the Prince William County Circuit Court concluding that Archie had a lawful nonconforming use should be reversed and Judgment entered in favor of the Prince William County Board of County Supervisors.

Respectfully Submitted,

Prince William Board of County Supervisors

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CERTIFICATE OF SERVICE

I hereby certify that Rule 5:26 of the Supreme Court of Virginia has been complied with. An electronic version has also been delivered to opposing counsel via email at jhickman@comptonduling.com and hsteele@comptonduling.com on this 6th day of March 2018.

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