IN THE COURT OF APPEALS OF IOWA

No. 0-303 / 09-0074
Filed June 16, 2010

CITY OF DES MOINES, IOWA,
Appellee,

vs.

NANCY E. SUBY-BOHN,
Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge.

A property owner appeals from the district court ruling in favor of the City in its action to enforce the municipal housing code. **AFFIRMED.**

Christopher Kragnes of Kragnes & Associates, P.C., Des Moines, for appellant.

Nancy Suby-Bohn, Des Moines, appellant pro se.

Vicky Long-Hill and Gary Goudelock, Assistant City Attorneys, Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Mansfield, JJ.

SACKETT, C.J.

Nancy Suby-Bohn, a property owner, appeals from the district court ruling in favor of the City of Des Moines in its action to enforce the municipal housing code and to enjoin her from allowing occupancy of her residential rental property until she obtains an inspection certificate. She contends the court erred in not finding the city violated several provisions of the Iowa Code by not allowing the property owners to pull[1] the required building permits, unnecessarily retarding the use of air admittance valves, and not allowing the property owners to pursue variances in order to comply with housing code violations. She also contends the court erred in awarding "a penalty fee" the city "did not have all the authority to fine." She further contends the court erred in not determining a provision of the municipal code was "a violation of organic of [sic] fundamental right when the code does not have provision for applicant's fundamental rights," because the city did not inspect the property within thirty days of Suby-Bohn's application for a rental certificate. We affirm.

I. Background.

Nancy Suby-Bohn and Michael R. Bohn[2] bought the property at issue in 2001. At the time the property had a valid rental certificate that was to expire in

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[1] We assume this means she was not able to obtain the required permits.

[2] The judgment rendered in the district court was against both Suby-Bohn and Michael Bohn. Suby-Bohn, who represented herself at trial, is the only party who appealed. Although the appellate docket lists Suby-Bohn as pro se, it also lists an attorney for Suby-Bohn, and that attorney filed the brief, although it does not appear to be the work of an attorney. "The law does not judge by two standards, one of lawyers and another for non-lawyers." *In re Estate of DeTar*, 572 N.W.2d 178, 180 (Iowa Ct. App. 1997). If a non-lawyer chooses to represent herself, she does so at her own risk. *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa Ct. App. 1995).

2002. Suby-Bohn and Bohn made extensive renovations to the home, but were unable to pull the required permits because they did not occupy the home. As early as 2002 Suby-Bohn tried to get city inspectors to look at the renovations, but because there were no building permits issued, no inspections were done. In 2007 a neighborhood inspector for the city found the house was occupied and he inspected it. He issued a violation notice to the owners, Suby-Bohn and Bohn, detailing numerous violations, primarily permit issues, and giving them thirty days to correct the violations. When the city received no response, it referred the matter to the housing appeals board.

The housing appeals board is a citizens' board used when rental property is not in compliance with city requirements. The board decides whether to grant owners an extension or to refer the matter to the city attorney. Prior to the board meeting in February of 2008, the city tried to reinspect the property but was unable to enter the house for the inspection. On February 18, 2008, the city sent Suby-Bohn and Bohn a notice of the board's decision, which imposed a fine of $3685, calculated at five dollars per day per violation, starting from the 2007 reinspection deadline. Based on the board's decision, the city filed the current action to collect the fine and to enjoin the occupancy of the home until it has a valid inspection certificate.

Suby-Bohn and Bohn represented themselves at trial. By the time the matter came before the district court for trial, most of the violations had been corrected and "the only real issue . . . was the plumbing permit." The home has "S" traps under the sinks, but the city requires "P" traps. There was some

evidence at trial that the International Plumbing Code allows S traps. The Uniform Plumbing Code, which the city has adopted, requires P traps. The court concluded:

> The court is sympathetic to the defendants' position. The defendants have worked hard and done what they believe is right in rehabbing and saving a property in a depressed area of the city. Unfortunately, they did not follow the proper procedures pursuant to the city of Des Moines' building codes. The defendants have been frustrated by the inability to resolve this issue with the city. Many city employees have made efforts to assist and guide the defendants but they have no ability to disregard the building and rental codes enacted by the city. The defendants are required to have a rental certificate or the property must be vacated. The defendants argue that they want a variance to allow them to keep the plumbing that is installed. That issue is not before this court. There are procedures for seeking a variance and the defendants must follow that process.
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> The City of Des Moines has properly enacted building and rental codes. The city has the authority to adopt the building codes it deems most appropriate to carry out its function to improve the peace, safety, health, welfare, comfort, and convenience of its residents. The defendants believe the plumbing installed in this home is safe; however, it is in violation of the city's plumbing code. This is an unfortunate situation, but the court must conclude that the relief requested by the city should be granted.

The court enjoined the occupancy of the home until Suby-Bohn and Bohn obtain a valid rental certificate. It ordered the property vacated unless it was first repaired to comply with applicable codes. It further assessed costs of the action and the fines and penalties as a judgment in rem against the property and as an in personam judgment against Suby-Bohn and Bohn. This appeal followed.

II. Scope of Review.

This action was captioned as an equity action. With the exception of a ruling on one objection, it was tried as an equity action. Our review is de novo. Iowa R. App. P. 6.907. To the extent the court interpreted a statute, our review is

for correction of errors at law. *See Beganovic v. Muxfeldt*, 775 N.W.2d 313, 317 (Iowa 2009).

III. Merits.

Before we consider the merits of Suby-Bohn's claims, we must consider the city's contention her claims are either not preserved for our review or are waived for failure to follow the rules of appellate procedure.

Iowa Rule of Appellate Procedure 6.903(2)(*g*)(1) requires "[a] statement addressing how the issue was preserved for appellate review, with references to the places in the record where the issue was raised and decided." Suby-Bohn's error preservation statement briefly states her first issue: "The district court erred in determining the City of Des Moines was not violating Iowa Laws 364.3, 103A.8, and 17A.9a." We find no other error preservation statements in Suby-Bohn's brief.

Her first claim is:

> The district court erred in determining the City of Des Moines was not violating Iowa Laws 364.3, 103A.8(6), and 17A.9A when not allowing the appellants the ability to pull the required permits for the . . . property they owned; unnecessarily retarded the use of AAV's; and did not allow the appellant to discuss the possibility of applying for needed variances in order to comply with the cited violations.

The district court, citing Iowa Code sections 364.1 and 364.17 (2007); concluded the city had the power and authority to adopt housing codes and enforcement procedures. It also concluded the city properly enacted building and rental codes, which include provisions concerning the necessity of building permits and the requirement that a licensed contractor make application for the permit if the home is not "owner occupied." The court further concluded the issue

of variances was not before it. We find no reference in the court's decision to any of the code sections listed in Suby-Bohn's first claim. It does not appear she filed any posttrial motion seeking a specific ruling on alleged violations of those code provisions.

> It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal. The reason for this principle relates to the essential symmetry required of our legal system. It is not a sensible exercise of appellate review to analyze facts of an issue without the benefit of a full record or lower court determination. When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.

Meier v. Senecaut, 641 N.W.2d 532, 537 (Iowa 2002) (citations and internal quotations omitted). Our supreme court has "repeatedly said that a [motion to amend or enlarge] is necessary to preserve error when the district court fails to resolve an issue, claim, or other legal theory properly submitted for adjudication. *Id.* at 538 (citation and internal quotation omitted).

We conclude Suby-Bohn did not preserve error on her first claim. Even if error had been preserved, we would conclude the district court did not err in determining the city "has properly enacted building and rental codes."

Suby-Bohn's second claim[3] is:

> The district court erred in awarding the City of Des Moines Housing Inspection Department a penalty fee they did not have all the authority to fine.

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[3] This claim is not listed in the "statement of the issues," but is separately numbered in the argument section. The second issue listed in the statement of the issues is a duplicate of the first issue. We presume this is a clerical error.

We do not find in the record before us where this claim was raised in the district court trial. The court's ruling does not address this claim. We conclude Suby-Bohn did not preserve error on her second claim.

Suby-Bohn's third claim is:

> The district court erred in determining the Sec 60-55 of the Municipal Code was not a violation of organic of fundamental right when the code does not have provision for applicant's fundamental rights when the applicant applies for a rental certificate at least thirty days before the tenant moves in, but the city cannot or does not get the needed inspection done.

In her argument, Suby-Bohn asserts the municipal code does not provide equal protection when the owner requests a rental inspection but the city does not inspect the property within the required thirty days. Although the record is clear that Suby-Bohn believes it was unfair for the city not to inspect the property after she filed an application for a rental certificate, we do not find an equal protection claim was raised before the district court. The court's ruling does not address any constitutional claim of equal protection or violation of a fundamental right. We conclude she has not preserved error on this claim.

IV. Conclusion.

From our review of the record, we do not find the claims on appeal were raised in or decided by the district court. Suby-Bohn did not file a posttrial motion to amend or enlarge in order to obtain a ruling on any of these claims. None of the claims now raised were preserved for our review. We affirm the judgment of the district court.

AFFIRMED.