

IN THE COURT OF APPEALS OF TENNESSEE

**FILED**  
**December 24, 1996**  
**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

TOWN OF JONESBOROUGH	:	WASHINGTON CIRCUIT
	:	CA No. 03A01-9608-CV-00245
Plaintiff-Appellee	:	
	:	
vs.	:	HON. THOMAS J. SEELEY, JR.
	:	JUDGE
	:	
J. T. McPHERSON	:	
	:	
Defendant-Appellant	:	AFFIRMED AND REMANDED

TIMOTHY S. BELISLE, WITH ANDERSON, FUGATE, GIVENS, COUNTS & BELISLE, OF JOHNSON CITY, TENNESSEE, FOR APPELLANT

JOHN RAMBO, WITH HERRIN, BOOZE & RAMBO, OF JOHNSON CITY, TENNESSEE, FOR APPELLEE

MEMORANDUM OPINION

Sanders, Sp.J.

The Defendant has appealed from a judgment ordering him to comply with a city ordinance which requires "all...junkyards shall be enclosed within close fitting fences."

In 1992, the Town of Jonesborough annexed a parcel of land on which the Defendant-Appellant, J. T. McPherson operated a junkyard. In August, 1994, the building inspector for the Town of Jonesborough informed Mr. McPherson by letter that he was in

violation of a Jonesborough ordinance which required his business to be completely surrounded by a solid fence. The building inspector suggested Mr. McPherson should obtain a building permit and construct a fence within 180 days.

The ordinance, under Title 8, Health and Sanitation, Chapter 1, Food, Drugs, Diseases, etc. Section 8-111, Junkyards, provides:

"8-111. Junkyards. All junkyards within the corporate limits shall be operated and maintained subject to the following regulations:

"(1) All junk stored or kept in such yards shall be so kept that it will not catch and hold water in which mosquitoes may breed and so that it will not constitute a place or places in which rats, mice, or other vermin may be harbored, reared, or propagated.

"(2) All such junkyards shall be enclosed within close fitting plank or metal solid fences touching the ground on the bottom and being not less than six (6) feet in height, such fence to be built so that it will be impossible for stray cats and/or stray dogs to have access to such junkyards.

"(3) Such yards shall be so maintained as to be in a sanitary condition and so as not to be a menace to the public health or safety. [Code of 1982]"

Mr. McPherson refused to comply with the provisions of the ordinance and that precipitated this litigation.

The record before us does not contain a copy of the warrant or complaint filed by the City against Mr. McPherson but it appears from the record that a misdemeanor warrant was issued charging Mr. McPherson in city court with violation of the ordinance by refusing to erect the fence required by the ordinance. The decision of the city court is not pertinent to this appeal since the case was appealed to the circuit court where it was heard de novo.

Following the trial of the case in the circuit court, the court, as pertinent, entered the following order:

"After consideration of the pleadings and records of the Court and the arguments and stipulations of counsel, the Court finds as follows:

"The Town of Jonesborough does have state authorized powers to regulate the conduct of business within its municipal boundaries to include junkyards. The Court takes judicial notice of the health, sanitation and safety related problems which are associated with junkyards.

"The Court further finds the Town of Jonesborough has the authority under its state granted police powers to enforce Jonesborough Municipal Code Section 8-111, which requires a six foot or higher fence to be erected around junkyards in the municipality. The Court finds this ordinance is not unreasonable, arbitrary or capricious and further upholds its application to the junkyard owned by the Defendant on State Route 354 in Jonesborough, Tennessee.

"The Court finds the Defendant has not complied with Jonesborough Municipal Code Section 8-111 in that it [sic] has failed to erect a fence as required in the ordinance..

"It is therefore, ORDERED, ADJUDGED and DECREED that Defendant, J. T. McPherson, has sixty (60) days to comply with this Court's Final Order to erect a fence around his junkyard."

The Defendant has appealed, saying the court was in error. We cannot agree.

No verbatim transcript of the proceeding in the trial court has been filed pursuant to Rule 24(b), TRAP. A statement of the proceedings, pursuant to Rule 24(c), TRAP, has been filed by

the Appellant. It does not show that testimony per se was offered, but shows what the contentions of the parties were. As pertinent, it states what the Defendant's insistence was at the time, as follows: "Counsel for Defendant argued that the ordinance, rather than being a simple municipal ordinance, was, in fact, a zoning ordinance, regardless of what the Town chose to call it. This being the case, the grandfather provisions of the zoning statutes of the State of Tennessee, and the zoning ordinances of the Town of Jonesborough, would provide Mr. McPherson protection from the imposition of the fence requirement." This is the same contention Appellant makes on appeal.

In the case of **Hagaman et al. v. Slaughter**, 49 Tenn.App. 338, 354 S.W.2d 818, 820 (1961), in interpreting an ordinance of the City of Bristol which is identical with the Jonesborough ordinance here at issue, this court said:

A casual reading of the ordinance here involved demonstrates that its aims and purposes are directly concerned with the public health and welfare without regard to the unsightly appearance of junk yards (sic). Under the rule recognized by the case cited [**City of Norris v. Bradford**, 204 Tenn. 319, 321 S.W.2d 543] and numerous others which could be cited, we must, therefore, hold the ordinance reasonable and a valid exercise of the police power.

We hold the decision of the **Hagaman** court is controlling in the case at bar, and affirm in accordance with Court of Appeals Rule 10(a).<sup>1</sup>

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<sup>1</sup>. AFFIRMANCE WITHOUT OPINION.--The Court, with the concurrence of all judges participating in the case, may affirm the action of the trial court by order without rendering a formal opinion when an opinion would have no precedential value and one or more of the following circumstances exist and are dispositive of the appeal:

(1) the Court concurs in the facts as found or as found by necessary implication by the trial court.

(2) there is material evidence to support the verdict of the jury.

The judgment of the trial court is affirmed. The cost of this appeal is taxed to the Appellant and the case is remanded to the trial court for the enforcement of its judgment.

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Clifford E. Sanders, Sp.J.

CONCUR:

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Houston M. Goddard, P.J.

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Herschel P. Franks, J.

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(3) no reversible error of law appears.  
Such cases may be affirmed as follows: "Affirmed in accordance with Court of Appeals Rule 10(a)."