

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CHARLES DAVIS,	:	APPEAL NO. C-080464
Plaintiff-Appellant,	:	TRIAL NO. A-0804967
vs.	:	<i>JUDGMENT ENTRY.</i>
CITY OF CINCINNATI,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Charles Davis appeals from the trial court’s denial of his motion for a preliminary injunction against defendant-appellee, the city of Cincinnati. Davis sought to enjoin the city from razing a house that he owns and formerly lived in on Draper Street.

In municipal-court proceedings in the spring and summer of 2007, the city demonstrated that the property was so deteriorated that it was not fit for human habitation, presented dangers to the public, and was not in compliance with the Cincinnati Building Code. The building had no electrical service and lacked hot and cold running water. Its roof had deteriorated. Davis was unable to bring the property into compliance

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

with local requirements. The municipal court found that the house was a nuisance and should be demolished. Davis did not seek review of these determinations.

One year later, however, Davis filed a verified complaint in the common pleas court seeking to enjoin the demolition. He also moved for a preliminary injunction against the city. To prevail on the motion, Davis had to show by clear and convincing evidence that (1) there was a substantial likelihood that he would prevail on the merits; (2) he would suffer irreparable harm if the injunction was not granted; (3) no third parties would be unjustifiably harmed if the injunction was granted, and (4) the public interest would be served by the injunction.²

The trial court conducted a two-day hearing on the motion, including taking testimony from Davis and from two city building inspectors who had personal knowledge of the prior proceedings and of the notice of those proceedings provided to Davis. At the conclusion of the hearing, the trial court denied Davis's motion for a preliminary injunction. It found that Davis had received adequate notice of the 2007 municipal-court proceedings. The trial court also determined that Davis had not made a reasonable showing of a substantial likelihood of success on the merits.

In three interrelated assignments of error, Davis now contends that the trial court erred in denying his motion for a preliminary injunction by failing to give sufficient weight to the city's actions in removing him from the property, by improperly weighing the city's actions in the prior municipal-court proceedings, and by giving undue consideration to the likelihood of his success at trial. We review a decision to deny a motion for a preliminary injunction only to determine if the trial court abused its discretion.³ In applying this

² See *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267, 747 N.E.2d 268; see, also, *S. Ohio Bank v. S. Ohio Savings Assn.* (1976), 51 Ohio App.2d 67, 69-70, 366 N.E.2d 296.

³ See *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 1995-Ohio-301, 653 N.E.2d 646, paragraph three of the syllabus; see, also, *Aero Fulfillment Servs., Inc. v. Tartar*, 1st Dist. No. C-060071, 2007-Ohio-174, ¶11.

standard, a reviewing court “is not free to substitute its judgment for that of the trial judge.”⁴

We have reviewed the record before us, including the testimony of inspector David Lockhorn that he had provided to Davis the required notice of the prior proceedings. Since the trial court’s determination that Davis had received adequate notice of the prior proceedings and its finding that he was not likely to succeed on the merits of his complaint both exhibited a sound reasoning process to support the court’s decision, we overrule the assignments of error.⁵

Therefore, the judgment of the trial court denying the preliminary injunction is affirmed. And the stay of the demolition of the house at 1126 Draper Street, granted by this court on June 18, 2008, is lifted.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 10, 2009
per order of the Court _____.
Presiding Judge

⁴ *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169, 559 N.E.2d 1301.

⁵ See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.