SUPREME COURT OF YUKON

Citation: *City of Whitehorse* v. *Dickey,* 2011 YKSC 26

Date: 20110311
Docket S.C. No.: 10-AP011
Registry: Whitehorse

BETWEEN:

CITY OF WHITEHORSE

AND:

LLOYD WILLIAM DICKEY

Before: Madam Justice M. C. Erb

Appearances:
Lori Lavoie — Counsel for the City of Whitehorse
Lloyd Dickey — Appearing on his own behalf

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] ERB J. (Oral): This appeal is from a decision of the Territorial Court of Yukon dated September 14, 2010, in which a bylaw infraction charge against Lloyd Dickey was dismissed.

[2] The charge is that Mr. Dickey was in contravention of Maintenance Bylaw 9(6) by storing a tractor-trailer on residentially zoned property within the Whitehorse city limits, specifically at Porter Creek, a community or subdivision of the City.

[3] Mr. Dickey has conceded the legal point after having had legal advice, and counsel for the City asked for a simple ruling on the correctness of the Territorial Court

decision. Section 9(6) makes it an offence for an owner or occupant of land in a residential area to:

> ... [store], repair, cleaning ... [collect] or [serving] of mechanical equipment such as bulldozers, graders, backhauls, payloaders, cranes, tractors, semi-trailers or a combination thereof, or other ... heavy equipment.

[4] The background to the charge is that the City issued a Notice of Warning to Mr. Dickey to remove his tractor-trailer from his property at 15 Maple Street in Whitehorse on August 20, 2009. Apparently, Mr. Dickey complied for about three weeks and then returned the tractor-trailer to 15 Maple. He was then charged pursuant to the bylaw. He now advises the Court that the tractor-trailer has not been on the property for many months and it is being stored elsewhere.

[5] At the trial, the City called two witnesses: Constable Pruden, the City's Bylaw Services Manager, and one of Mr. Dickey's neighbours. Mr. Dickey did not testify and he did not call any witnesses. Further, he did not cross-examine either of the City's witnesses. There appears to be no real dispute about the facts as heard in the Territorial Court.

[6] The events leading up to the charge are these: The constable, after receiving complaints, attended at 15 Maple where a tractor-trailer was parked on the property in front of a garage or shop and that investigations disclosed that Mr. Dickey was an occupant of the residence. The constable confirmed that Mr. Dickey was also the registered owner of the tractor-trailer and that the property is zoned residential alternative. Mr. Dickey was given one week's notice to remove the tractor-trailer. In November, after a further complaint, the tractor was back on the property and had been

there for about two weeks. The charges followed.

[7] After the constable gave his evidence at the trial, the Court questioned him about whether the tractor-trailer's licence was a commercial one and was advised that it was not. The problem at the heart of the complaint was described by Douglas Rutherford, who resides directly across the street from Mr. Dickey. He said 15 Maple had been "a mess for over a year," in which numerous commercial vehicles have been parked at various times on the lawn in the driveway. He described Maple Street as otherwise a nice street in a reasonably quiet residential neighbourhood. He said several of Mr. Dickey's neighbours had complaints about the yard at 15 Maple. On occasion, he has counted up to 20 vehicles parked in front of Mr. Dickey's residence, many of them "obvious junkers." He also stated there are often auto parts and garbage around spilling onto other people's property.

[8] After the City concluded its case, the Court invited Mr. Dickey to present his sworn evidence. He declined to give evidence or to make any submissions. The Court raised its question about whether the tractor was used for a commercial purpose. Mr. Dickey confirmed that it was not used for any commercial purpose; rather, he used it to haul his RV, which was stored at Haines Junction. The Justice of the Peace refused counsel's request to cross-examine Mr. Dickey on his unsworn statement about his use of the tractor-trailer.

[9] In his reasons for judgment, Justice of the Peace Cameron appears to have accepted the evidence that the tractor was stored at 15 Maple. He went on to interpret the bylaw and found that, because the vehicle was not used for a commercial purpose,

Mr. Dickey was not prohibited from storing it at his residence. He then dismissed the charge against Mr. Dickey.

[10] For the purpose of this appeal, where the learned trial judge was interpreting the applicable law, his decision can be reviewed on a standard of correctness. Where he was making findings of fact or bringing his understanding of the law to bear upon those facts, his decision can only be reviewed for probable and overriding area, as the Supreme Court held in *Housen* v. *Nikolaisen*, [2002], 211 D.L.R. (4th) 577. The interpretation of a bylaw calls for a standard of correctness, the standard which I apply here.

[11] The issues on this appeal are: Whether it was proper to allow Mr. Dickey to give unsworn evidence and then deny the City an opportunity to cross-examine him; Whether the use of the tractor-trailer was a proper limit on the application of the bylaw.

[12] The evidence upon which the Territorial Court relied, in particular, that the tractor-trailer was not used for a commercial purpose, was drawn from its own examination of the constable. The Court then raised this with Mr. Dickey and he gave his response without having been sworn as a witness. His response is not evidence. If it was used by the Court in its consideration of the evidence, that was not proper. The real issue here, however, is the Court's interpretation of the bylaw.

[13] Counsel for the City argues that s. 9.1.1 of the Whitehorse Zoning Bylaw 2006-01, establishes the purpose of residential alternative zoning such as at 15 Maple, that is:

> To provide [an area] for mobile, manufactured or site built single

> detached housing of a modest nature on smaller lots in an urban setting.

[14] Counsel further argues that s. 9(6) of the Maintenance Bylaw is clear and unequivocal. There is nothing in the bylaw which can be interpreted to mean that only pieces of heavy equipment used for a commercial purpose are prohibited from being stored in residential alternative zoned properties. The bylaw not only references mechanical equipment, it goes further to specifically cite what is the focus of the bylaw; included on that list is tractors. There is nothing in the bylaw which qualifies the meaning of mechanical equipment or restricts its prohibition to commercial use vehicles and equipment.

[15] The bylaw's intent being the focus of this appeal, it is this Court's finding that its purpose is not only to restrict what is on properties, but also to maintain property as to cleanliness, snow and ice removal, general maintenance, repair of fences, and the like. The bylaw puts its requirements into its own context. It is clear that the bylaw is directed at maintaining pleasant living areas and not simply restricting such property from being used for commercial purposes for which the zoning would be inconsistent.

[16] I find that the bylaw does disclose its own intent with its references, not only to what can repose on the property, but the beautification and cleanliness aspects as well. I find the interpretation of the bylaw limiting its application to commercial purpose mechanical equipment is not correct.

[17] On the evidence properly before this Court, it is clear and uncontroverted that Mr. Dickey had stored a tractor-trailer at 15 Maple between November 20, 2009, and

February 2010. The appeal is allowed. The Territorial Court decision finding Mr. Dickey not guilty is set aside and a conviction will be entered.

[18] Counsel for the City has asked that any applicable penalty at this time be suspended. I grant that request.

ERB J.