

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL GOULD,

Plaintiff,

v.

Case Number: 02-10314-BC
Honorable David M. Lawson

CITY OF SAGINAW,

Defendant.

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE’S REPORT
AND RECOMMENDATION, GRANTING DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT, AND DISMISSING CASE**

The plaintiff, acting *pro se*, has filed an action against defendant City of Saginaw alleging that city employees entered onto his land and removed personal property in violation of his due process and Fourth Amendment rights. The case was referred to Magistrate Judge Charles E. Binder, who has filed a Report and Recommendation recommending that the plaintiff’s motion to amend his complaint be denied and the defendant’s motion for summary judgment be granted. In response, the plaintiff filed a “motion for oral interpretation of magistrate judge’s ruling,” which the Court will construe as an objection to the recommendation. The Court, therefore, will conduct a *de novo* review of the motion papers, the Report and Recommendation, and the plaintiff’s objections thereto.

After reviewing the pleadings, the Court finds that the plaintiff does not contest the magistrate judge’s recommendation on his motion to amend his complaint; therefore, that portion of the report will be adopted. The Court also finds that the magistrate judge correctly determined that the plaintiff’s due process rights were not violated because he received constitutionally adequate notice of the city ordinance violation, and the plaintiff’s Fourth Amendment rights were not violated

because he failed to demonstrate that he had an actual, subjective expectation of privacy in the property searched by city employees. Accordingly, the Court will adopt the magistrate judge's report, grant the defendants' motion, and dismiss the case.

I.

The plaintiff has not objected to the summation of the relevant facts provided by the magistrate judge, which the Court adopts and reiterates as follows:

On July 11, 2000, a code enforcement officer employed by the City of Saginaw noticed a foam mattress lying on the ground in an open carport located at 1921 Harris Street in Saginaw. The property at 1921 Harris Street is a residential lot approximately 120 feet deep and 60 feet wide and is located near the center of a block made up of six-similarly-sized parcels of land. *See* Map attached to R&R as Exhibit 1 (Map). At that time in the summer of 2000, a vacant house was also located on the Harris Street property next to the carport, although both structures have since been demolished and the properties are now vacant lots. The code enforcement officer determined that the foam mattress lying on the ground constituted a violation of the city's Environmental Improvement Code, Saginaw General Code, art. V § 502, which prohibits, among other things, "[t]he presence of trash, abandoned property and building materials" and declares these items "to be a hazard to public health, sanitation, safety and welfare, and a public nuisance." The city employee took a photograph of the foam mattress, prepared a "notice of violation," and posted the notice on the property. A copy of the violation notice was also mailed via certified mail to the plaintiff, the record owner of the property, at the plaintiff's personal residence located at 1928 Jeffers Street, which is located diagonally in back of the Harris Street property so that the back corners of the two properties meet at a single point. *See* Map.

The notice of violation informed the plaintiff that “property/trash/etc. [was] improperly stored” on his property in violation of a Saginaw City ordinance. The code enforcement officer checked the box on the notice marked “miscellaneous debris,” and in the “comment” section of the notice, the officer wrote the following: “Please remove foam mattress from open garage – and property.” Def.’s Mot. S.J. Ex. 4. The notice also contained the following paragraph:

All described property must be removed within ten (10) days from the date of this Notice, or a hearing requested in writing, within that time at Environmental Improvement Office to show cause why it should not be removed. If the property is not removed, nor a hearing requested within the allotted time, it shall be deemed abandoned property and removed and disposed of by order of the City of Saginaw, and the costs of such removal and disposal assessed to these premises.

Ibid. The cost of removal was estimated to be \$150.00. *Ibid.*

The certified letter addressed to the plaintiff containing the violation notice was refused and returned by the postal service to the City of Saginaw. The plaintiff did not request a hearing. On August 4, 2000, a city employee returned to the property and spent approximately fifteen minutes removing the foam mattress from the carport. The employee took pictures before and after the work was done, and made notes of the dates and times. *See* Def.’s Mot. S.J. Ex. 6, 7. The plaintiff was charged a special assessment of \$42.25 for the work, which has been paid.

On December 23, 2002, the plaintiff filed an action against the two City of Saginaw employees alleging violations of his constitutional rights. On January 9, 2003, prior to any answer by the defendants, the plaintiff filed an amended complaint, which names only the City of Saginaw as a defendant, and alleges that his right to due process was violated because he was never notified

verbally or by mail of any complaint concerning the Harris Street property prior to the clean-up work, and that his Fourth Amendment rights were violated by the city employee's entry into the carport to remove the foam mattress without a warrant.

In its motion for summary judgment, the defendant argues that the plaintiff was afforded notice and an opportunity to be heard before the property was removed, and the plaintiff had no reasonable expectation of privacy in an open carport, and, as a result, the city employees were not required to obtain a judicial warrant prior to entering the property and removing the foam mattress from the carport.

The plaintiff argues in his answer to the motion that the notice was not valid because the plaintiff "never received notice personally" and alleges that notice by mail is insufficient. The plaintiff also contends that he has a legitimate expectation of privacy in the carport on Harris Street because he is the lawful owner of the property, he stores personal items there, the property is adjacent to his personal residence, and the property is posted with a "no trespassing sign."

In his Report and Recommendation, the magistrate judge construed the plaintiff's claim for lack of due process as a claim arising under the Fourteenth Amendment and suggested that actual, "personal" notice is not required to satisfy the right to procedural due process. The magistrate judge also suggested that because the plaintiff did not live in the house adjacent to the carport or take any steps to protect his personal property located in the carport, but rather left his property for an extended period of time in an open carport where it was exposed to the weather, animals, neighborhood children, vagrants, and passers-by, the plaintiff had failed to demonstrate that he had an actual, subjective expectation of privacy in the carport. R&R at 12-13. The magistrate judge also suggested that the property on Harris Street cannot be considered to be within the curtilage of the

plaintiff's personal residence because unlike the plaintiff's prior lawsuit against the City of Saginaw employees where it was found that the employees violated the plaintiff's Fourth Amendment rights when they dismantled the plaintiff's fence and removed personal property from the backyard of his residence without a warrant, *see Gould v. Symons*, No 01-10026, 2002 WL 2031563, (E.D. Mich. 2002), the property here was over 120 feet from the plaintiff's residence and was separated by a fence that encloses the plaintiff's backyard of his personal residence from the surrounding property. Therefore, the magistrate judge recommended that the defendant is entitled to summary judgment on the plaintiff's due process and Fourth Amendment claims.

In his objections to the report, the plaintiff argues that according to the magistrate judge's reasoning, a property owner can only have an expectation of privacy if he "barricades his own home against intrusion." The plaintiff also argues that the property on which his personal residence is located and the Harris Street property are "common and adjacent" and are "maintained as one piece of property." Therefore, the plaintiff contends that he did have an expectation of privacy in the carport and that the city employee violated his rights by not securing a search warrant prior to entering his property to remove the foam mattress.

II.

The facts of this case are not in dispute. Summary judgment may be granted when the pleadings, affidavits and documentary evidence demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Napier v. Madison County, Ky.*, 238 F.3d 739, 741-42 (6th Cir. 2001). For the nonmoving party to prevail, he "must show sufficient evidence to create a genuine issue of material fact." *Id.* at 742 (citations omitted).

The Court agrees with the magistrate judge that the plaintiff received constitutionally adequate notice that he violated a city ordinance and of his right to request a hearing when the City of Saginaw employee both posted the notice on the property at issue and mailed the notice by certified mail to the plaintiff's home address. **Service by mail is a constitutionally adequate method of notice. See *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983) (“Notice by mail . . . is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.”) (emphasis in original). Moreover, the fact that the plaintiff “may not have received the certified mail notice does not negate the constitutional adequacy” of the City of Saginaw’s “attempt to accomplish actual notice.” *United States v. Clark* 84 F.3d 378, 381 (10th Cir. 1996). The defendant is entitled to summary judgment on the plaintiff’s due process claim.**

The Court also agrees with the magistrate judge that the plaintiff’s Fourth Amendment rights were not violated because the plaintiff has failed to come forward with evidence that he had an expectation of privacy in the area where his personal property was seized. In order to complain about the seizure of property as violating the Fourth Amendment, an individual must demonstrate that he or she had a legitimate expectation of privacy in the area searched. *Katz v. United States*, 389 U.S. 347 (1967). “A legitimate expectation of privacy incorporates two elements: first, whether the [individual] exhibited an actual (subjective) expectation of privacy, and, second, whether the [individual’s] subjective expectation is one that society is prepared to recognize as reasonable.” *United States v. Knox*, 839 F.2d 285, 293 (6th Cir. 1988) (citations and quotations omitted). As the magistrate judge pointed out, the plaintiff did not

have an actual expectation of privacy because he left his personal property in the carport in the open where it was exposed to the public. Moreover, society would not find an assertion of a right to privacy in an open carport next to a vacant house located in a residential area that is clearly visible to all and accessible by all to be reasonable. *See* R&R at 13. Finally, the city employee was justified in seizing and disposing of trash that appeared to be abandoned in plain sight in an area readily accessible by the public. The foam mattress lying on the ground in an open carport clearly fits the definition of “trash” or “abandoned property” that is subject to removal as a violation of the city ordinance. *See* Saginaw General Code, art V. § 503(b) (defining “abandoned property” as “deteriorated, wrecked or derelict property in unusable condition having no value other than nominal scrap or junk value, if any, and which has been left unprotected from the elements”). Accordingly, the defendant is also entitled to summary judgment on the plaintiff’s Fourth Amendment claim.

The plaintiff’s objection to the report appears to be based on his belief that the Harris Street property is part of the curtilage of his residence located on Jeffers Street and as such the property is entitled to greater protection and security. However, the curtilage area around a private residence is narrowly defined and unless the property “harbors those intimate activities associated with domestic life and the privacies of the home,” *United States v. Dunn*, 480 U.S. 294, 301 (1987), it will not receive curtilage-like protection. *See United States v. Elkins*, 300 F.3d 638, 653 (6th Cir. 2002) (holding that areas that adjoin a commercial building but are accessible to the public do not receive curtilage-like protection from a search). In *Dow Chemical Co. v. U.S. By and Through Burford*, 749 F.2d 307, 314 (6th Cir. 1984), the Sixth Circuit stated the following regarding the “doctrine of curtilage”:

The doctrine of curtilage is grounded in the peculiarly strong concepts of intimacy, personal autonomy and privacy associated with the home. The home is fundamentally a sanctuary, where personal concepts of self and family are forged, where relationships are nurtured and where people normally feel free to express themselves in intimate ways. The potent individual privacy interests that inhere in living within a home expand into the areas that enclose the home as well. The backyard and area immediately surrounding the home are really extensions of the dwelling itself. This is not true simply in a mechanical sense because the areas are geographically proximate. It is true because people have both actual and reasonable expectations that many of the private experiences of home life often occur outside the house. Personal interactions, daily routines and intimate relationships revolve around the entire home place. There are compelling reasons, then, for applying Fourth Amendment protection to the entire dwelling area.

Here, although the Harris Street property is located diagonally behind the plaintiff's personal residence on Jeffers Street, the property is separated by a fence and does not form part of the "backyard" or other immediate area surrounding the home as defined in *Dow Chemical* above. Moreover, the plaintiff has not offered any evidence that the "intimate activities associated with domestic life and the privacies of the home," *see Dunn*, 480 U.S. at 301, occur at the Harris Street property. Finally, the fact that the plaintiff has a no-trespassing sign and maintains the Harris Street property along with the property on which his residence is located, does not grant the property curtilage status warranting Fourth

Amendment protection. See *Elkins*, 300 F.3d at 654 (“[T]he presence of a no-trespassing sign cannot confer curtilage status on an area that otherwise lacks it.”).

III.

The plaintiff has failed to come forward with evidence that raises a genuine factual issue that his due process rights or rights under the Fourth Amendment were violated. The defendant is entitled to a judgment as a matter of law.

Accordingly, it is **ORDERED** that the plaintiff’s motion for an oral interpretation of the magistrate judge’s ruling, construed as an objection to the Report and Recommendation of the magistrate judge [dkt # 14], is **OVERRULED**, and the recommendation of the magistrate judge [dkt # 13]is **ADOPTED** for the reasons set forth herein.

It is further **ORDERED** that the defendant’s motion for summary judgment [dkt # 7] is **GRANTED**.

It is further **ORDERED** that the plaintiff’s amended complaint is **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the plaintiff’s motion to amend [dkt # 8] is **DENIED**.

^{/s/}

DAVID M. LAWSON
United States District Judge

Dated: January 20, 2004

Copies sent to: Michael Gould
Thomas H. Fancher, Esquire
Magistrate Judge Charles E. Binder