

STATE OF MICHIGAN
COURT OF APPEALS

C. MICHAEL DOHERTY/ALL PARTIES
SIMILARLY SITUATED,

UNPUBLISHED
November 15, 2012

Plaintiff-Appellant,

v

CITY OF EAST LANSING,

No. 307918
Ingham Circuit Court
LC No. 10-001543-CZ

Defendant-Appellee,
and

ROBERT DUTCHER, JAMES GRAHAM,
ANNETTE IRWIN, and JOHN DOES 1-10,

Defendants.

Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In this case involving the alleged violation of the Fourth Amendment,¹ C. Michael Doherty appeals as of right from a circuit court order granting summary disposition² in favor of the City of East Lansing (“the City”), Robert Dutcher, James Graham, and Annette Irwin. We affirm.

Doherty owns and operates several rental properties in the City of East Lansing, two of which are at issue in this case. The two properties form a duplex located at 1503 and 1505 Synder Road (“the Property”). Doherty has never personally resided on the Property, but rents the Property to tenants and acts as the landlord.

This controversy began in the fall of 2008 when two of the City’s employees, Dutcher and Graham, investigated the Property for potential over-occupancy. Dutcher reported that he and Graham “observed that there were four names on each mailbox” (one for each unit). The

¹ US Const, Am IV.

² MCR 2.116(C)(10).

mailboxes are freestanding and located on the street. Dutcher did not expressly report that he opened the mailboxes, and testified during his deposition that he does not remember if he did. Doherty, however, testified that his tenants wrote their names on the inside of the mailbox on the lid. As a result of the investigation, the City concluded that Doherty was intentionally over-occupying both units of the duplex, and issued Doherty approximately 85 civil infractions. The district court issued a consent judgment in which Doherty admitted responsibility for 30 maximum occupancy violations and agreed to pay the City \$7,800 in fines and costs. Doherty then filed suit against the City and its employees and alleged that they committed an unconstitutional search by looking inside of the Property's mailboxes during the City's investigation.

The lower court granted summary disposition³ in favor of the City, Dutcher, Graham, and Irwin and found that Doherty lacked standing to sue because he did not have a legitimate expectation of privacy in the inside lids of the mailboxes. The court reasoned that any subjective expectation of privacy held by Doherty is "not one that society is willing to accept." Rather, "if there were Fourth Amendment protection for the names in the mailboxes," the court continued, "it would not be [Doherty's] own constitutional rights being violated, but instead his tenants." The court additionally noted that Doherty's tenants put their names "in view of anyone who came to open their mailbox," and further concluded that the tenants "do not have a legitimate expectation of privacy."

Doherty asserts that the trial court erred when it found that he lacks standing to contest the alleged search of his tenants' mailboxes. We disagree. We review a trial court's grant of summary disposition de novo.⁴ "In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties."⁵ Summary disposition is proper if it is determined that "the defendant is entitled to judgment as a matter of law."⁶

Our state and federal constitutions protect against "unreasonable searches and seizures."⁷ "In determining whether a person has a legitimate expectation of privacy so as to confer standing to challenge a search and seizure as violative of the Fourth Amendment, a two-part inquiry is

³ The trial court granted summary disposition pursuant to MCR 2.116(C)(10). The court indicated that the City, Dutcher, Graham and Irwin had not specified which subsections of the court rule that they were relying on. Review of the record reveals that the City, Dutcher, Graham and Irwin relied on MCR 2.116(C)(5) for the standing issue, and subsection (C)(10) for the challenge to the constitutionality of the search. The trial court's application of MCR 2.116(C)(10) only does not warrant reversal. See *Klooster v Charlevoix*, 488 Mich 289, 310; 795 NW2d 578 (2011).

⁴ *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009).

⁵ *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

⁶ *Id.*

⁷ US Const, Am IV; Const 1963, art 1, § 11.

employed.”⁸ First, the individual must establish that “under the totality of the circumstances, there existed a legitimate personal expectation of privacy in the area or object searched.”⁹ Second, it must be proved that the legitimate personal expectation of privacy was “one that society accepts as reasonable.”¹⁰ While property ownership is relevant in determining whether an individual has a personal expectation of privacy, it is not determinative.¹¹ Other relevant factors include:

possession and/or control of the area searched or item seized; historical use of the property or item; ability to regulate access; the totality of the circumstances surrounding the search; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of the expectation of privacy considering the specific facts of the case.¹²

Here, Doherty contends that he has a personal expectation of privacy in his tenants’ mailboxes and further asserts that the fines and penalties he was subjected to “demonstrated a direct proprietary interest in the [P]roperty.” Assuming arguendo that the actions constituted a search, while the evidence supports that Doherty had an ownership interest in the Property, such an interest alone does not establish that a personal expectation of privacy exists. Additionally, Doherty has never resided on the Property, nor has he intentionally received mail at the Property. Moreover, Doherty stated that he does not believe he has a right to open the Property’s mailboxes, has never gone into the mailboxes to get mail, and would rely on his tenants to give him any of his mail that was delivered to them. Thus, the trial court properly found that that Doherty lacks standing to sue.¹³

Because resolution of the above issue is dispositive, we need not address Doherty’s remaining issues on appeal.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly

⁸ *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996).

⁹ *Id.*

¹⁰ *Id.* at 504-505.

¹¹ *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008).

¹² *Id.* (citation and quotations omitted).

¹³ *Lombardo*, 216 Mich App at 504-505.