IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CP-00590-COA

STEVE LACROIX **APPELLANT**

v.

DEBRA NEWSOM **APPELLEE**

DATE OF JUDGMENT:	06/02/2020
TRIAL JUDGE:	HON. ROBERT Q. WHITWELL
COURT FROM WHICH APPEALED:	MARSHALL COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	STEVE LACROIX (PRO SE)
ATTORNEY FOR APPELLEE:	WILLIAM F. SCHNELLER JR.
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
DISPOSITION:	AFFIRMED - 07/20/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE WILSON, P.J., LAWRENCE AND McCARTY, JJ.

WILSON, P.J., FOR THE COURT:

¶1. Steve LaCroix and Debra Newsom are first cousins who live in the same subdivision in rural Marshall County. LaCroix sued Newsom for allegedly operating a "commercial puppy/dog kennel" in violation of a county zoning ordinance. LaCroix asserted nuisance and negligence claims and sought injunctive relief and compensatory and punitive damages. Following a bench trial in chancery court, the chancellor found, among other things, that LaCroix had failed to prove that the dogs were a nuisance or had caused him any injury. Accordingly, the court denied all relief sought by LaCroix. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

¶2. Newsom and her sister-in-law Judy Brown previously operated a dog kennel and

breeding business out of their home in Shelby County, Tennessee. However, Shelby County ordered them to cease operations because the business violated local ordinances. Newsom and Brown then decided to move to Mississippi to continue their business.

¶3. LaCroix lives on River Ridge Circle in Marshall County. In 2008, LaCroix sold a separate lot he owned on River Ridge Circle to Newsom and Brown, and Newsom and Brown built a new home on the lot. LaCroix and Newsom are first cousins. LaCroix testified that he is related to Brown "by marriage."

¶4. River Ridge Circle is a U-shaped street. LaCroix's home is on the opposite side of the "U" from Newsom's home. Following the street, the distance between the two homes is approximately six-tenths of a mile. As the crow flies, Newsom's home is approximately 368 yards from the end of LaCroix's driveway. LaCroix's home has a long driveway and is "pretty far back off the road." A significant wooded area separates the two homes, and neither home is visible from the other.

¶5. After buying her lot from LaCroix, Newsom obtained a permit to build a house and "shop" on the lot. The permit included the following handwritten notation: "Shop is not for any Business Use or Living Purpose." Under the Marshall County Zoning Ordinance, River Ridge Circle is zoned residential, and a "special exception" is required to operate a business in a residential area. Newsom testified that Marshall County Supervisor Keith Taylor told her that she could operate her dog kennel/breeding business on her property, but she never obtained a special exception or any other formal approval from the Board of Supervisors. Newsom operated her business on her property for several years without incident. However,

in 2018, LaCroix and other neighbors complained about the noise of barking dogs.

¶6. In September 2018, LaCroix drafted a petition asking the county to enforce its zoning laws and shutdown Newsom's "puppy mill" and "dog kennel." Approximately thirty-five area residents signed the petition, and LaCroix took it to Ken Jones, the county zoning administrator. Jones investigated the complaint but determined that no further action should be taken. After Jones declined to take action, LaCroix filed the instant lawsuit in the Marshall County Chancery Court.

¶7. After LaCroix filed suit, Jones encouraged Newsom to apply for a special exception under the zoning ordinance. The County Planning Commission granted Newsom's application, and the Board of Supervisors affirmed the Commission's decision. LaCroix appealed the Board's decision to the Marshall County Circuit Court. On September 11, 2019, the circuit court reversed the Board's decision, finding that the grant of a special exception for a dog breeding business was "arbitrary and capricious." The court noted that "in approving the special exception, the Board . . . imposed the condition that 'the dogs be kept inside to alleviate the noise issue.'" The court found, however, that "[i]t would be at the least odd and at most inhumane to require a dog breeder to keep all dogs indoors at all times." The circuit court's ruling was not appealed, and the Board eventually ordered Newsom "to cease and desist any and all activities regarding the operation of a commercial dog kennel on [her] property."

¶8. After the circuit court ruled, LaCroix filed a third amended complaint in this chancery court action. LaCroix again asked the court to enjoin Newsom from continuing her dog

breeding/kennel operation and to award compensatory and punitive damages. A bench trial was held in May 2020.

¶9. Curtis and Lynn Pennington, who live approximately 100 yards from Newsom's house, testified that Newsom's dogs barked loudly and that Newsom had done nothing to reduce the noise despite their repeated complaints. However, Lynn also acknowledged that her neighbor on the other side of her property kept three or more dogs in a pen in his yard. She admitted that the barking that "bothered" her "could be [those] dogs, too."

¶10. Judy Brown testified that when she and Newsom moved to Marshall County, a woman at the county zoning office told Newsom that the zoning laws prohibited her from operating her business on River Ridge Circle. Brown testified that in 2018 she had moved out of the home she shared with Newsom because she "couldn't get any rest because of the dogs barking." However, Brown also admitted that she and Newsom had a falling out around that time. Brown sued Newsom, alleging that Newsom owed her money related to their dog breeding/kennel business.[1] When Brown moved out of the home she shared with Newsom, she moved into a mobile home on LaCroix's property. Brown testified LaCroix keeps four dogs on his property and that she keeps two additional dogs at her mobile home. Other neighbors own additional dogs and goats.

¶11. LaCroix testified that the Penningtons had complained to him about Newsom's dogs and the noise they made. According to LaCroix, the Penningtons asked him to file a complaint with the county zoning department, and he agreed. LaCroix later discussed the

[1] Newsom testified that she also sued Brown.

issue with Ken Jones. LaCroix told Jones that the dogs were "a bigger issue for [his] wife than . . . for [him] because of [his] hearing" difficulties.[2] However, LaCroix said that he could "hear the dogs" if he was "outside and . . . not distracted by other things."

¶12. Ken Jones testified that when he visited Newsom's "garage," it was set up as a kennel. Newsom was keeping about twenty-five dogs at the time. Jones testified that the kennel "met the . . . requirements of a kennel," e.g., the dog pens were all the proper size. Jones acknowledged that the dogs barked when he first arrived, but he testified that "[w]ithin five minutes, it was quiet." Jones also testified that he spent "roughly four hours one morning" "close to [LaCroix's] house" "and didn't hear [the dogs] at all." Jones testified that he had received no complaints regarding Newsom's dogs prior to 2018. He testified that he did not know whether Newsom was continuing to operate a business in violation of the zoning ordinance because a person can have "a lot of dogs" without "running a business."

¶13. Newsom testified that LaCroix knew that she planned to operate a kennel on her property when he sold her the lot. According to Newsom, LaCroix told her that he "wouldn't have any problems with [the kennel]." Newsom testified that LaCroix introduced her to Marshall County Supervisor Keith Taylor and that LaCroix told Taylor that Newsom planned to build a dog kennel.[3] According to Newsom, Taylor said, "[Y]ou will have no problem as long as you don't have flashing lights." Newsom stated that she did not have any problems with her business until 2018, when she and Judy Brown had a dispute that ended up in

[2] LaCroix's wife did not testify.

[3] LaCroix denied that he knew that Newsom intended to operate a kennel or that he ever consented to her operating a kennel.

litigation in justice court. According to Newsom, LaCroix supported Brown in the dispute and then began making complaints about Newsom's dog kennel. Newsom testified that her dogs did not make much noise. She stated that she could not hear her dogs at night even though her bedroom window is "right beside [her] kennel," so she did not believe that LaCroix could hear the dogs "368 yards away" on his own property. Newsom testified that following the circuit court's ruling, she had "downsize[d]," that she was no longer "running a business," and that she was only "going to be a hobby breeder."[4]

¶14. The chancellor ruled from the bench at the conclusion of the trial. He found that Newsom was no longer in violation of the zoning ordinance because she had ceased operating a kennel or breeding business and was only a "hobby breeder." More important, the chancellor also found that LaCroix had failed to prove that the dogs were a nuisance or that he had suffered any damages. Therefore, the chancellor ruled that LaCroix was not entitled to injunctive relief or damages.

DISCUSSION

¶15. This Court "will not disturb the factual findings of a chancellor when supported by substantial evidence unless we can say with reasonable certainty that the chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard." *Biglane v. Under the Hill Corp.*, 949 So. 2d 9, 13-14 (¶17) (Miss. 2007) (brackets omitted) (quoting *Cummings v. Benderman*, 681 So. 2d 97, 100 (Miss. 1996)). We review issues of law de novo. *Id.*

[4] Newsom acknowledged that she would continue to sell puppies occasionally as a "hobby breeder." She testified that she had one puppy, a Shorkie, for sale at the time of trial.

I. LaCroix failed to prove a nuisance or damages.

¶16. Although LaCroix raises a number of issues on appeal, one issue is dispositive: whether there is substantial evidence to support the chancellor's finding that LaCroix failed to prove that Newsom's dogs were a nuisance or caused him any damages. "A private nuisance is a nontrespassory invasion of another's interest in the use and enjoyment of his property." *Id.* at 14 (¶18) (quoting *Leaf River Forest Prods. Inc. v. Ferguson*, 662 So. 2d 648, 662 (Miss. 1995), *abrogated on other grounds by Adams v. U.S. Homecrafters Inc.*, 744 So. 2d 736, 741-43 (¶¶17-21) (Miss. 1999)). The interference with the plaintiff's use and enjoyment of his land must be "material"—that is, the plaintiff must show that his "enjoyment of life and property is rendered materially uncomfortable and annoying." *Id.* at 14-15 (¶¶24-25) (quoting *Alfred Jacobshagen Co. v. Dockery*, 243 Miss. 511, 517, 139 So. 2d 632, 634 (1962)). In addition, proof that the plaintiff has suffered "[a]ctual loss or damage" is an essential element of a claim for negligence. *Carpenter v. Nobile*, 620 So. 2d 961, 964 (Miss. 1993).

¶17. LaCroix presented little evidence that the dogs materially interfered with his use and enjoyment of his property or caused him any other injury. LaCroix asserted that the dogs were a "nuisance," but he acknowledged that the dogs were a "a bigger issue for [his] wife than . . . for [him] because of [his] hearing" issues. LaCroix testified only that he could "hear the dogs" if he was "outside and . . . not distracted by other things." Moreover, LaCroix's property is 368 yards away from Newsom's house, the two homes are separated by a wooded area, and both Jones and Newsom testified that the dogs made relatively little noise and could

not be heard from LaCroix's home.

¶18. This Court "does not reevaluate the evidence, retest the credibility of witnesses, nor otherwise act as a second fact-finder. . . . If there is substantial evidence in the record to support the chancellor's findings of fact, no matter what contrary evidence there may also be, we will uphold the chancellor." *Bower v. Bower*, 758 So. 2d 405, 412 (¶31) (Miss. 2000). In this case, the chancellor considered the conflicting evidence and found that Newsom's evidence was more credible. In his ruling, the chancellor found that it was "very hard to believe that dogs could be heard by Mr. LaCroix from [a distance of 368 yards] if they are barking at all." Because the chancellor's finding is not clearly or manifestly erroneous, there is no basis for this Court to set it aside on appeal. This issue is dispositive and requires us to affirm the chancellor's ruling denying injunctive relief and damages.

II. LaCroix is not entitled to injunctive relief based solely on the violation of an ordinance.

¶19. "Permanent injunctive relief may be granted only to protect and prevent the violation of some substantive legal right. A permanent injunction is a remedy potentially available only after a plaintiff can make a showing that some independent legal right is being infringed—if the plaintiff's rights have not been violated, he is not entitled to any relief, injunctive or otherwise." *Waite v. Adkisson*, 282 So. 3d 744, 750 (¶17) (Miss. Ct. App. 2019) (quotation marks, footnote, and citation omitted). A court may grant an injunction against an activity that is a nuisance. *Lambert v. Matthews*, 757 So. 2d 1066, 1070 (¶17) (Miss. Ct. App. 2000). However, as noted above, LaCroix failed to prove that Newsom's dogs are a nuisance. Accordingly, his nuisance claim provides no basis for injunctive relief.

¶20. LaCroix relies heavily on his allegation that Newsom continues to violate the county zoning ordinance.[5] However, "[a] private individual cannot ordinarily maintain an action with respect to the enforcement of a zoning regulation, except where the use constitutes a nuisance per se[6] or the individual has suffered or is threatened with special damage, i.e., injury or threat of injury of a special or peculiar nature amounting to a private wrong affecting his personal or property rights." *Robinson v. Indianola Mun. Separate Sch. Dist.*, 467 So. 2d 911, 918 (Miss. 1985). Because the chancellor found that LaCroix failed to prove any actual or threatened injury or interference with the use or enjoyment of his property, and because the chancellor's finding is supported by substantial evidence, LaCroix cannot obtain an injunction based on the alleged violation of the county zoning ordinance.[7]

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[5] As noted above, the chancellor found that Newsom was no longer in violation of the ordinance. LaCroix challenges this finding on appeal. However, we need not address the issue because, as explained below, LaCroix is not entitled to an injunction even if Newsom remained in violation of the ordinance.

[6] "A 'nuisance per se' is an act, occupation, or structure that, by its very nature and of itself, is a nuisance at all times and under any circumstances, regardless of location or surroundings and regardless of the care with which it is conducted, and hence is not permissible or excusable under any circumstance. A 'nuisance per se' has also been defined as that which cannot be so conducted or maintained as to be lawfully carried on or permitted to exist." 58 Am. Jur. 2d *Nuisances* § 12, at 579-80 (2012) (footnotes omitted); *accord* 66 C.J.S. *Nuisances* § 5, at 616-17 (2021). A dog kennel obviously is not a nuisance per se given that dog kennels are permissible in a variety of circumstances and locations.

[7] LaCroix's reliance on the doctrine of "negligence per se" fails for similar reasons. "[A] finding of negligence per se is not equivalent to a finding of liability per se. Plaintiffs in negligence per se cases must still establish causation in fact, legal cause, *and damages*." *Williams ex rel. Raymond v. Wal-Mart Stores E., L.P.*, 99 So. 3d 112, 116 (¶15) (Miss. 2012) (other emphasis omitted) (quoting *Rains v. Bend of the River*, 124 S.W.3d 580, 589-90 (Tenn. Ct. App. 2003)). Therefore, the chancellor's finding that LaCroix failed to prove damages disposes of his negligence per se argument.

CONCLUSION

¶21. Substantial evidence supports the chancellor's finding that LaCroix failed to prove that Newsom's dogs interfered with his use and enjoyment of his property or caused him any other injury. Accordingly, LaCroix is not entitled to injunctive relief or damages, and the judgment of the chancery court is **AFFIRMED**.

BARNES, C.J., CARLTON, P.J., WESTBROOKS, McDONALD, LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR. GREENLEE, J., NOT PARTICIPATING.