NO. 12-20-00198-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

STEVE HUYNH, INDIVIDUALLY, YVONNE HUYNH, INDIVIDUALLY HUYNH POULTRY FARM, LLC D/B/A STEVE THI HUYNH POULTRY FARM D/B/A HUYNH POULTRY FARM, T & N POULTRY FARM, LLC, THINH BAO NGUYEN, INDIVIDUALLY, TIMMY HUYNH POULTRY FARM, TIMMY HUYNH, INDIVIDUALLY AND SANDERSON FARMS, INC., APPELLANTS	*§*	***APPEAL FROM THE 392ND***
	§	***JUDICIAL DISTRICT COURT***
V.		
FRANK BLANCHARD, ET AL AND RONNY SNOW, ET AL, APPELLEES	*§*	***HENDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

Steve Huynh, Individually, Yvonne Huynh, Individually, Huynh Poultry Farm, LLC d/b/a Steve Thi Huynh Poultry Farm d/b/a Huynh Poultry Farm, T & N Poultry Farm, LLC, Thinh Bao Nguyen, Individually, Timmy Huynh Poultry Farm, Timmy Huynh, Individually and Sanderson Farms, Inc. (collectively Appellants) appeal the trial court's issuance of a permanent injunction prohibiting them from operating a chicken farm. They present three issues on appeal. We affirm.

BACKGROUND

Frank Blanchard, Mersini Blanchard, Malakoff Properties, LLC, Ronny Snow, Angelia Snow, Tanya Berry, Kimberly Riley, John Miller, Amy Miller, Chad Martinez, and Emily Martinez (collectively Appellees) each own property in the Malakoff area of Henderson County,

Texas. Prior to 2016, they all enjoyed living in the country and the outdoor areas of their properties.

In 2015, Steve Huynh purchased 231.12 acres of land in Malakoff, with the intent of using the land as a chicken farm for Sanderson. Steve had owned and operated chicken barns for Sanderson since 2002. Previously, Steve owned or controlled the farm, but a different family member applied for and received government subsidies for the operation, which also occurred in this case. Sanderson approved Steve's son, Timmy Huynh, as a grower, even though he was a college student in California and had no prior experience. Steve completed the paperwork and signed Timmy's name. Sanderson also approved Thinh Nguyen, another relative, as a grower. Sanderson approved Steve's property as a barn site even though it knew a nuisance was likely. Steve then entered into "leases" with both Nguyen and Timmy so they could operate the chicken barns on the property. Timmy never paid rent and Nguyen never paid rent in his individual capacity.

Shortly after the chicken barns began operations, Appellees noticed a pungent odor emanating from the barns. Appellees claim the smell from the chicken barns prevents them from enjoying their properties and the outdoors. They complained numerous times to the Texas Commission on Environmental Quality (TCEQ). The TCEQ investigated the complaints and issued notices of violation (NOVs) to Steve, Yvonne Huynh, Huynh Poultry Farm, LLC, and T&N Poultry Farm, LLC.

When the odor failed to dissipate even after the TCEQ's involvement, Appellees filed suit. Two different suits were filed—one by the Blanchard group and one by the Snow group—that were consolidated. The Blanchard group claimed fraud, nuisance, trespass, and intentional interference with property rights. The Snow group asserted claims for nuisance and trespass. Both sets of Appellees sought monetary damages for diminution in property value and permanent injunctions. At the conclusion of trial, the jury found Appellants caused a temporary nuisance and attempted to award monetary damages for diminution of market value. Appellants moved for entry of a take nothing judgment or a judgment notwithstanding the verdict. Appellees moved for entry of a permanent injunction. Following a hearing, the trial court entered a judgment that Appellees be awarded no monetary damages but granting a permanent injunction. This appeal followed.

SUFFICIENCY OF THE EVIDENCE

In their second issue, Appellants contend the evidence is legally insufficient to support a nuisance finding. Specifically, Appellants urge the evidence is insufficient to support a finding of causation and interference rising to the level of a nuisance.

Standard of Review

When reviewing a finding of fact for legal sufficiency, we may set aside that finding of fact only if the evidence at trial would not enable a reasonable and fair-minded fact finder to make the finding. *See* ***City of Keller v. Wilson****,* 168 S.W.3d 802, 827 (Tex. 2005). In making this determination, we must credit favorable evidence if a reasonable fact finder could, and disregard contrary evidence unless a reasonable fact finder could not. *See* ***id****.* The fact finder is the sole judge of the credibility of the witnesses and the weight to be assigned to their testimony. *See* ***id****.* at 819. The fact finder is free to believe one witness and disbelieve another, and reviewing courts may not impose their own opinions to the contrary. *See* ***id****.* Further, a fact finder "may disregard even uncontradicted and unimpeached testimony from disinterested witnesses" where reasonable. *See* ***id****.* at 819–20. Accordingly, we must assume that the fact finder chose what testimony to disregard in a way that favors the verdict. *See* ***id****.* at 820. Moreover, where conflicting inferences can be drawn from the evidence, it is within the province of the fact finder to choose which inference to draw, so long as more than one inference can reasonably be drawn. *See* ***id****.* Therefore, we must assume the fact finder made all inferences in favor of the verdict, if a reasonable person could do so. *See* ***id****.*

Governing Law

A "nuisance" is a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. ***Schneider Nat'l Carriers, Inc. v. Bates****,* 147 S.W.3d 264, 269 (Tex. 2004). Courts have divided actionable nuisance into three classifications: (1) negligent invasion of another's interest; (2) intentional invasion of another's interest; or (3) other conduct, culpable because abnormal and out of place in its surroundings, that invades another's interests. *See* ***City of Tyler v. Likes****,* 962 S.W.2d 489, 503 (Tex. 1997). Foul odors, if sufficiently extreme, may constitute a nuisance. *See* ***Schneider****,* 147 S.W.3d at 269; *see also* ***Kane v. Cameron Int'l Corp****.,* 331 S.W.3d 145, 148 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (nuisance may arise when person's senses are physically assaulted).

Expert testimony is not required to prove causation "when a layperson's general experience and common understanding would enable the layperson to determine from the evidence, with reasonable probability, the causal relationship between the event and the condition." ***Mack Trucks, Inc. v. Tamez***, 206 S.W.3d 572, 583 (Tex. 2006). When a nuisance involves subjective criteria such as sound or smell, the analysis is fact dependent. ***Nat. Gas Pipeline Co. of Am. v. Justiss***, 397 S.W.3d 150, 155 (Tex. 2012). "The point at which an odor moves from unpleasant to insufferable . . . might be difficult to ascertain, but the practical judgment of an intelligent jury is equal to the task." ***Id.***

Analysis

Appellants urge there is no evidence of substantial interference with Appellees' use and enjoyment of their properties, and no evidence of objectively unreasonable discomfort or annoyance. Appellants also posit that the evidence does not show that they caused the alleged harm.

Appellants purchased the land in 2015 and Sanderson approved them as chicken growers. Appellants set up two LLCs for two farms on the same property, which allowed them to have sixteen barns on the property and grow 444,800 birds per flock, twice the number of birds "likely to cause a persistent nuisance odor" under the TCEQ guidelines. The two farms were a mere 300 feet apart.

Sanderson placed its first flock of chickens in eight barns in June 2016. All sixteen barns began operating in November 2016. The evidence showed that, for each cycle, Sanderson hatched a flock of chicks and delivered them to the barns. The chickens would then grow over approximately sixty days into broilers. The chickens were then caught and transported to Sanderson's Palestine plant for processing. A new flock was delivered one or two weeks later and the cycle repeated. Sanderson placed 27,800 chicks in each of the sixteen barns at a time.

The evidence showed that the chickens produced approximately ten million pounds, or five thousand tons, of manure each year. Furthermore, the flocks each had approximately a five percent mortality rate. The dead chickens were carried to composting sheds where they were placed in layers and covered by wet litter saturated with manure. Sanderson's division manager testified via deposition that dead chickens, like most dead animals, have a rotting odor. Dr. Albert Heber, an agricultural engineer, and Appellants' expert, testified that chicken manure is

"offensive" and "smells bad." The manure generated ammonia and hydrogen sulfide, both of which have strong odors.

On October 11, 2016, Ronny Snow called Sanderson's Palestine production office and complained about the smell emitted by the chicken barns. On October 18, a TCEQ investigator documented nuisance odors and determined that the "chicken houses" were the source. The report stated, "this is a violation of 30 Texas Administrative Code § 101.4," which prohibits the discharge of air contaminants in concentration and duration that it interferes with the normal use and enjoyment of property. It also cited to Section 382.085(b) of the Texas Health and Safety Code.[1] As a result, the investigator issued a NOV that recommended "Mr. Huynh shall submit a plan and/or documentation necessary to address the outstanding violation to prevent recurrence of same or similar incidents." Another TCEQ investigation was conducted on February 20, 2017, and the investigator concluded that a violation occurred. As a result, another NOV was issued. In June 2017, another TCEQ investigation documented "a chicken waste odor classified as offensive," and another NOV was issued. TCEQ documented sixty-two odor complaints before June 27, 2017. And TCEQ investigators found five violations; however, two violations were not issued NOVs. And in August 2019, TCEQ responded to yet another complaint and the investigator again found a violation. NOVs were issued for both farms.

In January 2017, Frank Blanchard spoke with Sanderson's division manager, Randall Boehme, about the barns. Boehme explained to Blanchard how the chicken barns operated and recommended that he keep his family indoors while the birds were caught for the "health and safety of [his] family." According to Blanchard, Boehme understood that the chicken farms created offensive odors and that "there was no way they could prevent the odors from coming onto [his] property."

Appellees recorded hundreds of odor events on their properties in odor logs, which were admitted into evidence at trial. The logs included dates, duration, and characteristics of the odors invading their properties. Appellees testified the risk of exposure to the odors continuously prevented them from planning and enjoying outdoor activities. They testified that the odors could appear at any moment, which would force them to abandon any outdoor activity and remain inside. However, the odors were intermittent because variations, such as weather

[1] Prohibits persons from causing, suffering, allowing, or permitting the emission of air contaminants. TEX. HEALTH & SAFETY CODE ANN. § 382.085(b) (West 2016).

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