NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2065

GORDON S. DAVIDSON

VERSUS

CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE

Judgment Rendered: June 8, 2012

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 585,180

Honorable R. Michael Caldwell, Judge Presiding

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Thomas D. Fazio
Baton Rouge, LA

Attorney for Plaintiff-Appellant,
Gordon S. Davidson

Cynthia C. Bohrer
Baton Rouge, LA

Attorney for Defendant-Appellee,
City of Baton Rouge/Parish of East Baton Rouge

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BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

Gordon Davidson appeals a judgment of the district court, affirming the decision of the administrative hearing officer finding him in violation of a city ordinance and overruling his peremptory exception of res judicata.

FACTS AND PROCEDURAL HISTORY

On September 8, 2009, the City of Baton Rouge/Parish of East Baton Rouge (the City) Code Enforcement Program sent a "Notice of Violation" to Davidson to notify him that he had been charged with a violation of Title 12, Section 405[1] of the Baton Rouge City/Parish Ordinances. The matter was heard on December 7, 2009, after which the administrative hearing officer found Davidson was in violation of the ordinance and warned him that if he did not clear up the property in due course, the City would clear it and place a lien on his property. The "Notice of Determination" stated that Davidson was found liable for grass and weeds greater than 24 inches and owed a fine in the amount of $117.00. Davidson appealed the administrative decision to the 19th Judicial District Court and raised the exception of res judicata for the first time.

The district court in its appellate capacity affirmed the decision of the administrative hearing officer and denied the exception of res judicata. It is from this judgment that Davidson appeals alleging that the district court erred in: (1) denying the exception of res judicata; and (2) affirming the decision of the administrative hearing officer that ordered Davidson to clear off his property, as the evidence presented at the hearing was not adequate to warrant the issuance of a mandatory injunction.

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[1] Title 12, Section 405 provides that every owner of immovable property located in the parish shall maintain the property in such a manner that the property shall not attract rodents, reptiles, mosquitoes, vermin and other pests. It shall be prima facie evidence of a violation if grass or weeds are allowed to reach a height of more than twenty-four (24) inches over the majority of the immovable property.

LAW AND ANALYSIS

On June 10, 2009, the East Baton Rouge Metro Council enacted Ordinance No. 14682,[2] which established an administrative procedure to enforce public and environmental health ordinances.[3] In Section 1:609.6 of the Code of Ordinances, hearing officers were given the authority to hear and decide alleged violations of environmental ordinances. This included Title 12, Section 405. Section 1:609.8 of the Code of Ordinances provides any person determined by the hearing officer to be in violation of an environmental ordinance has the right to appeal to the 19th Judicial District Court.

In Davidson's first assignment of error, he contends that a prior judgment rendered in district court has the effect of res judicata as to the present suit. According to the record, on March 10, 2009,[4] the City filed in district court under suit number 576,222 a "Petition for Preliminary and Permanent Injunction" against Davidson alleging that he was in violation of Title 12, Section 405 and Title 12, Section 351 of the Baton Rouge City/Parish Ordinances. The City requested that an injunction be granted ordering Davidson to cease the violations immediately. The matter came before the district court on August 24, 2009, after which the district court denied the motion for an injunction. Specifically, the district court found that the City did not prove irreparable harm. The judgment denying the injunction was signed on July 10, 2010.

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[2] The Louisiana Code of Evidence Art. 202 B(1)(c) provides that a court may take judicial notice of "ordinances enacted by any political subdivision of the State of Louisiana."

[3] La. R.S. 13:2575 provides municipalities with authority to enact ordinances relative to public health, housing, and environmental violations.

[4] The request for an injunction was filed prior to the enactment of ordinance 14682 and the establishment of the administrative procedure for violation of environmental ordinances on June 10, 2009.

Res judicata bars relitigation of a subject matter arising from the same transaction or occurrence of a previous suit. **Avenue Plaza, L.L.C. v. Falgoust**, 96-0173 (La. 7/2/96), 676 So.2d 1077, 1079; La. R.S. 13:4231. It promotes judicial efficiency and final resolution of disputes. **Terrebonne Fuel & Lube, Inc. v. Placid Refining Co.**, 95-0654, 95-0671(La. 1/16/96), 666 So.2d 624, 631. Louisiana Revised Statutes 13:4231 provides for res judicata as follows:

> Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:
>
> (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
>
> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
>
> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

The chief inquiry is whether the second action asserts a cause of action that arises out of the transaction or occurrence that was the subject matter of the first action. **Avenue Plaza, L.L.C.**, 676 So.2d at 1080. However, the Louisiana Supreme Court has also emphasized that all of the following elements must be satisfied in order for res judicata to preclude a second action: (1) the first judgment is valid and final; (2) the parties are the same; (3) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (4) the cause or causes of action asserted in the second suit arose out of the transaction or

occurrence that was the subject matter of the first litigation. **Burguieres v. Pollingue**, 2002-1385 (La. 2/25/03), 843 So.2d 1049, 1053.

The burden of proving the facts essential to sustaining the objection is on the party pleading the objection. **Union Planters Bank v. Commercial Capital Holding Corp.**, 2004-0871 (La. App. 1 Cir. 3/24/05), 907 So.2d 129, 130. If any doubt exists as to its application, the exception raising the objection of res judicata must be overruled and the second lawsuit maintained. **Denkmann Associates v. IP Timberlands Operating Co., Ltd.**, 96-2209 (La. App. 1 Cir. 2/20/98), 710 So.2d 1091, 1096, writ denied, 98-1398 (La. 7/2/98), 724 So.2d 738.

Davidson contends that the suit for injunction arises out of the same transaction or occurrence as the administrative matter and all the elements for the application of res judicata are satisfied. He argues that both causes of action asserted relate to the city ordinances regarding the maintenance of his property in such a manner that grass and weeds do not reach a height of more than 24 inches.

The City contends that the "Notice of Violation" arose out of a different "transaction or occurrence" than the request for injunctive relief and the requirements of La. R.S. 13:4231 have not been met. According to the City, the injunction proceeding dealt with violations that occurred between June 12, 2009, and August 21, 2009, whereas the administrative proceeding dealt with violations that occurred from September 8, 2009, until December 7, 2009. The district court, in its appellate capacity, determined that these were different occurrences because Davidson's grass had grown, and the alleged violation in the "Notice of Violation" was subsequent to the violation alleged in the City's request for an injunction. Therefore, it overruled Davidson's exception of res judicata. We agree that the "Notice

of Violation" and the request for injunctive relief arise out of different occurrences; therefore, res judicata does not preclude the present action. Davidson failed to meet his burden of proving the facts essential to sustain the objection of res judicata. This assignment of error is without merit.

In his second assignment of error, Davidson contends that the district court erred in affirming the decision of the administrative hearing officer because the evidence does not support the issuance of a mandatory injunction.

The administrative hearing officer found that the photographs established Davidson's property was in violation of Title 12, Section 405 of the city ordinances. Neither party disputes that the record establishes a violation of the ordinance at issue. Davidson argues, however, that the violation does not warrant the issuance of a mandatory injunction, because there was no showing of irreparable injury.

In the administrative adjudication there was no injunction requested or issued. The "Notice of Violation" notified Davidson that he had been charged with a violation of a city ordinance, and warned that if the City had to correct the condition of the property he would become responsible for the cost thereof, and it would be added to his property tax as a lien to be paid when property taxes are next due. The "Notice of Determination" required a payment of a fine, and the administrative hearing officer warned Davidson that if he did not clean up his property, the City would correct the condition and place a lien on the property. The "Notice of Determination" does not compel Davidson to do anything or bar him from acting. We do not interpret the City's request as for injunctive relief; therefore, no finding of irreparable injury was necessary.

Further, even if we had interpreted the action as an injunction, a plaintiff is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unlawful, as when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law. **Jurisich v. Jenkins**, 99-0076 (La. 10/19/99), 749 So.2d 597, 599. This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, the judgment of the district court denying the peremptory exception raising the objection of res judicata and affirming the decision of the administrative hearing officer is affirmed. All costs of this appeal are assessed to Gordon Davidson.

AFFIRMED.