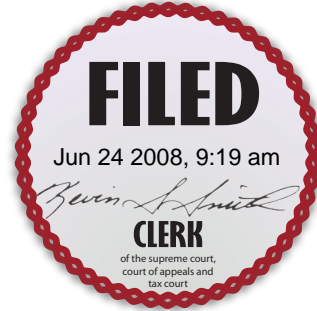


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

PAUL W. GAUDY,

Appellant-Defendant,

vs.

LAKE COUNTY, INDIANA BY THE LAKE  
COUNTY PLAN COMMISSION PLANNING  
AND BUILDING DEPARTMENT,

Appellee-Plaintiff.

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No. 45A05-0803-CV-124

APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Julie Cantrell, Judge  
The Honorable Michael N. Pagano, Magistrate  
Cause No. 45D09-0703-SC-2243

June 24, 2008

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Paul Gaudy appeals the trial court's denial of his motion for relief from judgment.

We affirm.

### **Issue**

Gaudy raises three issues, which we consolidate and restate as whether the trial court properly denied his motion for relief from judgment because it had subject matter jurisdiction over the complaint filed by the Planning and Building Department of the Lake County Plan Commission ("Plan Commission").

### **Facts**

In 1997, Gaudy obtained a permit to build onto an existing garage located on residential property he owned with his wife. Instead of adding onto the existing garage, Gaudy demolished it and constructed a pole barn exceeding the parameters of the building permit. In 2006, Gaudy and his wife divorced. Pursuant to the divorce decree, Gaudy's wife obtained title to the property, and he was permitted to continue to operate his business out of the garage.

On July 12, 2006, the Plan Commission filed a claim in the small claims division of the trial court alleging that Gaudy violated the Lake County Building Code by building a structure on his property without the necessary permit. On August 16, 2006, after a trial, the trial court entered judgment in favor of the Plan Commission with a fine imposed of \$6,000.<sup>1</sup>

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<sup>1</sup> The trial court calculated the fine at \$10 per day beginning in 1998.

On April 17, 2007, Gaudy filed a motion for relief from judgment. He argued that he was not the owner of the property and, in a supplemental pleading, that the pertinent ordinance does not apply to these facts. At the hearing, Gaudy argued that the Plan Commission did not have subject matter jurisdiction to enforce a violation of the ordinance. On December 20, 2007, the trial court concluded that the issue was not one of subject matter jurisdiction but an alleged mistake of law and denied Gaudy's motion for relief from judgment. Gaudy now appeals.

### **Analysis**

On appeal Gaudy argues that the trial court did not have subject matter jurisdiction to entertain the Plan Commission's claim. The issue of subject matter jurisdiction is resolved by determining whether a claim falls within the general scope of authority conferred on a court by the Indiana Constitution or by statute. Madison Center, Inc. v. R.R.K., 853 N.E.2d 1286, 1288 (Ind. Ct. App. 2006), trans. denied. "Subject-matter jurisdiction cannot be waived and may be raised by the parties or the court at any time, including on appeal." Id. Because we accept the facts as alleged in the complaint as true, we are in as good a position as the trial court to determine subject matter jurisdiction. Id. Accordingly, we review the trial court's ruling de novo. Id.

As we have recognized, there are two types of jurisdiction:

In K.S. v. State, 849 N.E.2d 538 (Ind. 2006), our supreme court clarified that, in the judicial context, there are only two kinds of jurisdiction: subject matter jurisdiction, which is "the power to hear and determine cases of the general class to which any particular proceeding belongs[.]" and personal jurisdiction, which "requires that appropriate process be effected over the parties." Id. at 540. The court

noted that “[a]ttorneys and judges alike frequently characterize a claim of procedural error as one of jurisdictional dimension. The fact that a trial court may have erred along the course of adjudicating a dispute does not mean it lacked jurisdiction.” *Id.* at 541. The court further explained, “Real jurisdictional problems would be, say, a juvenile delinquency adjudication entered in a small claims court, or a judgment rendered without any service of process. Thus, characterizing other sorts of procedural defects as ‘jurisdictional’ misapprehends the concepts.” *Id.* at 542.

Robert Lynn Co., Inc. v. Town of Clarksville Bd. of Zoning Appeals, 867 N.E.2d 660, 672 (Ind. Ct. App. 2007), trans. denied.

In making his jurisdictional argument, Gaudy relies on Indiana Code Section 36-7-8-3, which provides:

(a) The legislative body of a county having a county department of buildings or joint city-county building department may, by ordinance, adopt building, heating, ventilating, air conditioning, electrical, plumbing, and sanitation standards for unincorporated areas of the county. These standards take effect only on the legislative body’s receipt of written approval from the fire prevention and building safety commission.

(b) An ordinance adopted under this section must be based on occupancy, and it applies to:

(1) the construction, alteration, equipment, use, occupancy, location, and maintenance of buildings, structures, and appurtenances that are on land or over water and are:

(A) erected after the ordinance takes effect; and

(B) if expressly provided by the ordinance, existing when the ordinance takes effect;

(2) conversions of buildings and structures, or parts of them, from one occupancy classification to another; and

(3) the movement or demolition of buildings, structures, and equipment for the operation of buildings and structures.

(c) The rules of the fire prevention and building safety commission are the minimum standards upon which ordinances adopted under this section must be based.

(d) An ordinance adopted under this section does not apply to private homes that are built by individuals and used for their own occupancy.

Gaudy contends that Indiana Code Section 36-7-8-3(d) deprives a trial court of subject matter jurisdiction when private homes are built by individuals and used for their own occupancy. He claims that because the Planning Commission does not assert that he did not build the garage or that he does not occupy the space, the application of this section “removes subject matter of the case from the Court.” Appellant’s Br. p. 13.

This statute, however, is not jurisdictional simply because it includes a circumstance in which certain local ordinances do not apply.<sup>2</sup> Whether an ordinance—regardless of whether it is characterized as a building ordinance or a zoning ordinance—created under this statute applies is a legal question determined by the facts of the case. It does not affect a trial court’s authority to entertain a certain class of cases generally. In

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<sup>2</sup> We have concluded that these subject matter jurisdiction principles are equally applicable to administrative proceedings. See Robert Lynn, 867 N.E.2d at 672; see also City of Charlestown Advisory Planning Comm’n v. KBJ, LLC, 879 N.E.2d 599, 602 (Ind. Ct. App. 2008) (distinguishing between subject matter jurisdiction and legal error for purposes of the Planning Commission approving a plat). Thus, to the extent Gaudy argues that the Plan Commission was without authority to require a permit, his claim fails.

this case, the issue was whether Gaudy's garage was properly permitted. Gaudy presents no authority that a trial court may not resolve such a claim. Accordingly, Gaudy has not established that the trial court lacked subject matter jurisdiction to rule on the Plan Commission's claim. The trial court properly denied Gaudy's motion for relief from judgment.

### **Conclusion**

Gaudy has not established that the trial court lacked subject matter jurisdiction to resolve the Plan Commission's claim. Accordingly, the trial court properly denied his motion for relief from judgment. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.