STATE OF MICHIGAN

COURT OF APPEALS

CITY OF WARREN,

Plaintiff-Appellee,

v

NANCY KEY PENG,

Defendant-Appellant.

UNPUBLISHED
December 16, 2004

No. 250044
Macomb Circuit Court
LC No. 03-000038-AR

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a circuit court order affirming a district court decision finding defendant responsible for two civil infractions. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant maintains a large pine tree at the corner of her front yard at the intersection of Marla and Palomino Streets in Warren. Plaintiff issued her a citation for violation of two city ordinances. Defendant contested the citations. Following a hearing, the district court found defendant responsible, and the circuit court affirmed.

Defendant first contends that the lower courts erred in finding her responsible for a violation of ordinance 4.09. Questions of law such as statutory interpretation are reviewed de novo on appeal. *Meredith Corp v Flint*, 256 Mich App 703, 711-712; 671 NW2d 101 (2003). "Where facts are undisputed, applying a statute to the facts is an issue of law for the court. This principle holds true where the case involves the application of undefined statutory words or phrases to undisputed facts." *Marcelle v Taubman*, 224 Mich App 215, 217; 568 NW2d 393 (1997) (citations omitted).

The rules governing the construction of statutes apply equally to municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). The primary goal of ordinance interpretation is to give effect to the intent of the legislative body that enacted the ordinance. *Warren's Station, Inc v City of Bronson*, 241 Mich App 384, 388; 615 NW2d 769 (2000). This Court should first look to the specific statutory language to determine the intent of the legislative body, which is presumed to intend the meaning that the statute plainly expresses. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). If the language is clear and unambiguous, the plain meaning of the

statute or ordinance reflects the legislative intent and judicial construction is not permitted. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135-136; 545 NW2d 642 (1996).

Ordinance 4.09 provides:

> Within any required front or corner side yard on any corner lot, no wall, fence, sign, hedge, shrub, or other obstruction to visibility shall be permitted between the heights of two and one-half (2½) feet and ten (10) feet above the existing street grade within the triangular area formed by the street property lines and a line connecting there at points twenty-five (25) feet from the intersection of the street lines or their extension.

The evidence showed that plaintiff's zoning inspector plotted the clear visibility triangle by utilizing the inside edges of the sidewalks as the two adjacent sides and determined that defendant's tree was within the area of the triangle. However, the right triangle described by the ordinance clearly specifies that the two adjacent sides are the street property lines, i.e., the property lines of defendant's lot where they terminate at the street. Because plaintiff utilized an improper method for plotting the triangle, it failed to prove that defendant's tree was inside the clear visibility triangle described by the ordinance. Therefore, the district court erred in finding defendant responsible for a violation of § 4.09, and the circuit court erred in affirming that finding.

Defendant next contends that the other ordinance at issue, § 38-9, is vague and overbroad. Defendant did not raise this issue in the district court and thus it has not been preserved for appeal. *People v Gezelman (On Rehearing)*, 202 Mich App 172, 174; 507 NW2d 744 (1993). Regardless of any plain error analysis, we decline to address this constitutional issue because we ultimately hold in defendant's favor on another basis.[1]

Defendant next contends that the district court's finding of responsibility was against the great weight of the evidence. There is no evidence that defendant raised this issue in the district court, so it has not been preserved for appeal. *DeGroot v Barber*, 198 Mich App 48, 54; 497 NW2d 530 (1993).[2] We consider this issue because defendant has shown plain error. *People v Sands*, 261 Mich App 158, 160; 680 NW2d 500 (2004).

The court's finding that defendant violated § 4.09 was clearly against the great weight of the evidence because, as noted above, plaintiff failed to prove that defendant's tree was located within the clear visibility triangle described by the ordinance.

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[1] This Court will not reach constitutional issues unless necessary to resolve a case. *Council of Orgs & Others for Ed About Parochiaid, Inc v Governor*, 455 Mich 557, 568; 566 NW2d 208 (1997).

[2] Defendant did raise the constitutional and great weight of the evidence arguments in the circuit court, arguably preserving the issues for our consideration. However, it is unnecessary to resolve any preservation issues in light of our ruling.

The court's finding that defendant violated § 38-9 was also against the great weight of the evidence. That ordinance provides in part that trees, shrubs, and other plants shall not be maintained "so close to any property line as to obstruct thereby the vision of travelers along the streets." Plaintiff's photographs showed that a driver whose vehicle is at the yield sign on Marla can still see the distance of about four houses down Palomino and a driver who pulls up a bit further has an even greater view down Palomino. Even plaintiff's zoning inspector admitted that one "can see down the roadway quite a ways."

Reversed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly