STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0854

Pauline Thomas,
Appellant,

vs.

City of Minneapolis Inspections Division,
Respondent.

Filed July 8, 2008
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CV-06-11614

Pauline Thomas, 3116 Portland Avenue South, Minneapolis, MN 55407 (pro se appellant)

Jay M. Heffern, Minneapolis City Attorney, Tracey L. Nelson, Assistant City Attorney, 333 South Seventh Street, Suite 300, Minneapolis, MN 55402 (for respondent)

Considered and decided by Willis, Presiding Judge; Connolly, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant Pauline Thomas challenges the district court's denial of her motion for a permanent injunction preventing the City of Minneapolis from towing several vehicles from her property. We affirm.

D E C I S I O N

Thomas argues that the district court abused its discretion by concluding that her fence is not an "enclosed structure" under the city's zoning ordinances, which ordinances allow a maximum of two vehicles to be parked on a residentially zoned lot, excluding vehicles parked within an enclosed structure.

The decision to grant or deny injunctive relief rests within the sound discretion of the district court, and we review that decision for an abuse of discretion. *Cherne Indus., Inc. v. Grounds & Assocs.*, 278 N.W.2d 81, 91 (Minn. 1979). We will sustain the district court's factual findings unless those findings are clearly erroneous. Minn. R. Civ. P. 52.01. But the interpretation of a zoning ordinance is a legal question. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). We review legal questions de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998).

Minneapolis, Minn., Code of Ordinances (the code) § 541.450 (2006), provides: "The total number of vehicles located on a zoning lot shall not exceed two (2) vehicles per dwelling unit, excluding those parked within an enclosed structure." The code does not provide a definition of "enclosed" or "enclosed structure" but does provide that "[a]ll

words and phrases not defined shall have their common meaning." Minneapolis, Minn., Code of Ordinances § 520.160 (2006). "Enclose" means "[t]o surround on all sides; close in." *The American Heritage Dictionary of the English Language* 606 (3d ed. 1992). Thomas argues that her cars fall under the exclusion for vehicles "parked within an enclosed structure" because she parks them inside a fence within her lot and, at the time her motion was pending, the code defined a fence as a "structure providing enclosure or screening." Minneapolis, Minn., Code of Ordinances § 520.160 (2006).[1] Based on this definition, it is plain that a fence *could* constitute an "enclosed structure" under the code, if that fence "surround[s] on all sides" or "close[s] in" the cars.

But here, the district court found that Thomas's fence did not provide enclosure because the cars were visible through a number of gaps in the fence and an open gate. Thomas has not demonstrated—or even asserted—that these findings are clearly erroneous. *See* Minn. R. Civ. P. 52.01 (providing that factual findings are upheld if not clearly erroneous). Based on these findings, we conclude that the district court did not abuse its discretion by denying Thomas's motion for a permanent injunction.

Next, citing rule 26 of the Minnesota Rules of Civil Procedure, Thomas argues that she was given an inadequate opportunity to prepare for trial because she did not see the city's photographs of her fence prior to trial and she was unable to "provid[e] her own additional photos, evidence, and witnesses to challenge the photos submitted to the court by the [city]."

[1] The code has since been amended to define a fence as "[a] structure providing a barrier or screening." Minneapolis, Minn., Code of Ordinances § 520.160 (2008).

In pertinent part, rule 26.01 provides that parties "may obtain discovery by one or more of the following methods: depositions by oral examination or written questions; written interrogatories; production of documents or things . . .; and requests for admission." Minn. R. Civ. P. 26.01. There is no indication that Thomas attempted to obtain discovery by any such means. At trial, the city proffered as evidence several photographs of the fence. Thomas was shown the photographs, and the district court asked her, "Do you have any objection?" Thomas replied, "No," and the photographs were then received into evidence. Similarly, the district court asked Thomas if she would be calling any witnesses to testify other than herself and Thomas responded, "No." Thomas was accorded full opportunity to object to the photographs, call additional witnesses, or offer evidence, but she did not do so.

Finally, Thomas raises several constitutional arguments for the first time on appeal. Generally, we consider "only those issues that the record shows were presented and considered by the [district] court." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). In zoning and planning cases, we have declined to consider constitutional claims that were not raised before the district court. *See Henning v. Village of Prior Lake*, 435 N.W.2d 627, 632 (Minn. App. 1989), *review denied* (Minn. Apr. 24, 1989).

Citing *State ex rel. Farrington v. Rigg*, Thomas argues that because she is a pro se litigant, all of her claims should be considered on appeal. 259 Minn. 483, 484, 107 N.W.2d 841, 841-42 (1961) (acknowledging the "great liberality extended to pro se pleadings"). But "this court has repeatedly emphasized that pro se litigants are generally

held to the same standards as attorneys." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). And pro se status "does not . . . relieve [a litigant] of the responsibility to assert her rights before the district court in order to preserve issues founded on those rights for appeal." *Beardsley v. Garcia*, 731 N.W.2d 843, 850 (Minn. App. 2007), *review granted* (Minn. Aug. 7, 2007).

Affirmed.