COURT OF APPEALS
DECISION
DATED AND FILED

August 9, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2097 **Cir. Ct. No. 2011CV1151**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CITY OF MADISON,

PLAINTIFF-RESPONDENT,

V.

RAY A. PETERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed*.

¶1 HIGGINBOTHAM, J. Ray Peterson appeals a judgment of the circuit court affirming a municipal court judgment finding him guilty of violating Madison General Ordinances (MGO) § 27.04(2)(a). Upon our review of the briefs, we summarily affirm the circuit court's order affirming the municipal court's judgment.

¶2 The City of Madison issued Peterson two citations for violating MGO § 27.04(2)(a) for renting two houses and allowing the tenants to occupy the houses without first making arrangements with the city water utility to install water meters, making water "available" to the tenants. The City of Madison Municipal Court found Peterson guilty on both citations and assessed fines and costs totaling $1,347 for five days of being in violation of the ordinance. Peterson appealed the judgment to the Dane County Circuit Court, which conducted a record review of the municipal court's decision. The circuit court issued a decision affirming the municipal court, but on slightly different grounds. Peterson appeals.

¶3 In its appellate brief, the City of Madison argues the number of days that Peterson was in violation of the ordinance should be increased from a total of five to seven days.

¶4 The circuit court's decision appropriately disposes of the issues discussed therein. In addition, the City of Madison did not cross-appeal the circuit court's order affirming the municipal court's finding of the total days Peterson was in violation of MGO § 27.04(2)(a), and, therefore, we have no jurisdiction over that issue. Accordingly, we adopt the circuit court's August 25, 2011 decision by reference and summarily affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4. (2009-10).

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 2

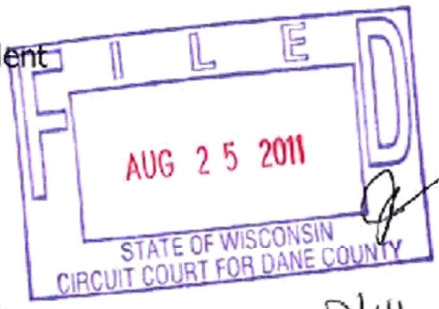
CITY OF MADISON

Plaintiff/Respondent

vs.

RAY PETERSON,

Defendant/Appellant



DECISION AND ORDER

Case No. 11CV1151

D/41

This is a review of a decision issued by Judge Koval of the Madison Municipal Court, finding defendant Ray Peterson (Peterson) guilty of violations of Madison General Ordinance section 27.04(2)(a). This appeal arises out of two separate municipal ordinance citations issued by the City of Madison (City). Judge Koval found Peterson guilty of violating the ordinance and ordered him to pay a forfeiture. Peterson appeals.

FACTS

The material facts in this case are undisputed. There are two separate municipal cases that were consolidated into the single proceeding before Judge Koval. The first concerns a house located at 1622 Blossom Lane in Madison. The second involves a house located at 2269 East Washington Avenue. Transcript of Municipal Hearing ("Tr.") at page 1. Both properties are owned by Peterson and operated as rental properties. *Id.*

The two cases follow the same basic fact pattern. Each involves a tenant moving into the rental property before water meters were installed by the water utility. Tr. at

8-1

1-2. In both cases, Peterson informed his tenants that it was their responsibility to contact the utility and request installation of the water meter. Tr. at 13; 27.

Heather Spaulding was the tenant at the 2269 East Washington Avenue house. Tr. at 33. Spaulding signed a lease to rent that property on August 25, 2010. Tr. at 34. Although the lease began on September 1, Spaulding sought and received permission from Peterson to move in the Friday prior to that, August 27. Tr. at 37. Spaulding called the water utility too late on August 27. Tr. at 38. Spaulding stayed the weekend in the property and called the utility again on Monday, August 30 and was able to get a meter installed that same day. Tr. at 39-40.

Joshua Cowles was the tenant at the 1622 Blossom Lane house. Tr. at 52. He signed his lease on Friday, October 29, 2010 and began to move in on Saturday, October 30. Tr. at 55-56. Cowles attempted to contact the water company on Friday, but was unable to reach them. Tr. at 57. He lived in the property over the weekend and obtained a water meter on Monday, November 1. Tr. at 57.

At the municipal court hearing, Judge Koval found that Peterson had violated the ordinance in both cases, including three days of violations on the East Washington property and two days of violations on the Blossom Lane property. Tr. at 75-6. He found that in both cases, the dwelling was "occupied" by the tenants because they were sleeping on the premises. Tr. at 76. Judge Koval imposed forfeitures of $400 per day on the Blossom Lane property and $100 per day on the East Washington property, for a total of $1,100 plus court costs. Tr. at 81-2.

DECISION

The facts relating to the dates that tenants moved in and the times that water meters were installed are not disputed in this case. The argument turns instead on the interpretation of the Madison Ordinance as applied to these facts.

Standard of Review

Peterson appeals the decision of the municipal court as allowed under Wis. Stat. § 800.14(5), which is a review of the municipal court decision on the record created by that court. He has not requested a new trial *de novo* under Wis. Stat. § 800.14(4).

Review of a municipal court decision by a circuit court under Wis. Stat. § 800.14(5) uses the same standard of review that is used by an appellate court to review a trial to the court under Wis. Stat. § 805.17(2). *Village of Williams Bay v. Metzl*, 124 Wis. 2d 356, 357 (Ct. App. 1985). Under § 800.14(5), the court is not permitted to examine the record *de novo* and substitute its own judgment for that of the circuit court. *Metzl*, 124 Wis. 2d at 359-61. Findings of fact should not be set aside unless they are clearly erroneous. *Id.*

However, the interpretation of a statute is a question of law, and this court owes no deference to the municipal court's resolution of issues of law. *Id.* at 360. "In construing or interpreting a statute, a reviewing court must give effect to the ordinary and accepted meaning of the statutory language." *Id.* at 360, *citing County of Walworth v. Spalding*, 111 Wis. 2d 19, 24 (1983). In determining the meaning of a single word of the statute, "it is necessary to examine the word in light of the entire statute." *Metzl*, 124 Wis. 2d at 360; *see also State ex rel. Kalal v. Circ. Court for Dane*

Cty., 2004 WI 58, ¶ 38, *citing Student Ass'n v. Baum*, 74 Wis. 2d 283, 294-95 (1976) ("[T]he cardinal rule in interpreting statutes is that the purpose of the whole act is to be sought and is favored over a construction which will defeat the manifest object of the act.")

Discussion

MGO 27.04 states:

> 27.04 MINIMUM STANDARDS FOR BASIC EQUIPMENT, LIGHTING, VENTILATION, HEATING, AND ELECTRICAL SERVICE.
> (1) The purpose of this subsection is to establish minimum standards for basic equipment, lighting, ventilation, and electrical services for all residential buildings and parts thereof and to obtain the public and private benefits accruing from the provision of such services. A suitable environment for safe and healthy living is encouraged by adequate water and sanitary facilities, proper storage and disposal of garbage and other refuse, safe means of egress, provision of light, air, heat, and electrical service.
> (2) No person shall occupy as owner or let to another for occupancy any space in a residential building for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following requirements:
> (a) Every dwelling unit shall contain a kitchen sink, a flush water closet, a lavatory basin and a bathtub or shower, **all in good working condition and properly connected to hot and cold water lines and to an approved water and sewer system.** The flush water closet and bathtub or shower shall be contained within a separate room. **Water pressure shall be available at all fixtures as specified in s. Comm 82.40**, Wis. Adm. Code. (Am. by Ord. 9299, 10-29-87; Ord. 13,124, 8-28-02)

(emphases added).

Peterson and the City argue that the resolution of the case turns on the definition of the word "available" in the last sentence of the ordinance. Peterson cites the Webster's dictionary definition of available, which is "readily obtainable" or "ready to be employed." From this definition, he argues that water or water pressure are

"available" within the meaning of the MGO 27.04(2)(a) when it is readily obtainable "as soon as it is ordered by one willing to pay for it." The City believes that a more common sense meaning of "available" is that water comes out when the fixture is turned on.

The parties focus on the meaning of the phrase "water pressure shall be available at all fixtures" but not the second part of the sentence, "as specified in s. Comm 82.40, Wis. Admin. Code." Considered in its totality, the sentence directs the landlord to comply with the requirements of § Comm. 82.40 when installing fixtures. Wis. Admin. Code § Comm. 82.40(7)(d) "Sizing of Water Supply Piping" requires that such fixtures "shall be designed to provide at least 8 psig flow pressure at the outlets of all fixture supplies." Read as a whole, the Madison ordinance establishes the minimum number and type of water fixtures that shall be available in a dwelling unit and then requires that those fixtures comply with the state administrative code for such fixtures.

The City argues that the availability language and subsection (7)(d) of the administrative code together require that the fixtures actually provide 8 psig of water pressure when turned on. But the administrative code is concerned with the design of water supply fixtures and piping to set a certain minimum capacity. The rule states "shall be designed to provide" and not "shall provide." Wis. Admin. Code § Comm. 82.40 is concerned with design of pipes and fixtures, and not concerned with regulating interactions between landlords, tenants, and the water utility.

The determinative language of the ordinance here is "properly connected to hot and cold water lines and to an approved water and sewer system." "Properly" is

defined by the ordinance as "deemed proper by the administrative officer under the regulations of this chapter or deemed proper by an authority designated by law or this chapter." MGO 27.03(2). "Approved" is defined similarly. *Id.* The ordinance does not define the other words in this sentence, so the words will be accorded their ordinary meaning and interpreted in light of the whole statute. *Metzl*, 124 Wis. 2d at 360.

MGO 27.02 states that the intent and purpose of the ordinance is to preserve and provide for the public health and general welfare, among other policy goals. MGO 27.04(1) establishes the purposes of the ordinance, and includes "a suitable environment for safe and healthy living is encouraged by adequate water and sanitary facilities." Subsection (2) goes on to forbid a landlord to allow any person to occupy any space in a residential building that fails to comply with the requirements of the ordinance.

If we read the ordinance as Peterson urges, it merely duplicates the state administrative code and does not actually advance the City's stated interest in preserving public health. Wis. Admin. Code § Comm. 82.40 specifies the design requirements of residential water systems. The Madison ordinance goes further, attempting to regulate landlord-tenant interactions to further the City's interest in public health and sanitation. An ordinance that merely duplicates the administrative code fails to further the interests of the City in health and sanitation, which require that tenants not occupy residential dwellings that have no access to clean, potable water and toilets that flush.

A better reading of the ordinance language "properly connected... to an approved water and sewer system" requires a landlord to ensure that all fixtures in a rental property are connected to a water source before the dwelling is occupied by a tenant. This reading accords with the whole ordinance, rather than defeating its manifest purpose. *Kalal*, 2004 WI 58 at ¶ 38. Peterson violated the ordinance when he failed to ensure water and sewer lines were properly connected before allowing the tenants to occupy the property.

Peterson also argues about whether the ordinance forbids him from charging the $50 fee for reconnecting a water meter to the tenant. The ordinance is silent with respect to the allocation of costs of providing water service to the tenant. It requires only that water lines be "properly connected" before occupancy commences, and this ruling is confined to that point.

The City also argues that the municipal court erred in calculating the number of days of violations. Judge Koval found five days of violation, but the City argues that the correct number is seven, including the partial days on which the water was connected. MGO 27.11 provides that "[e]ach day such violation continues shall be considered a separate offense." For the Blossom Lane property, Judge Koval counted October 30-31, but not November 1, the day the water was connected. Tr. at 76. For the East Washington property, Judge Koval counted August 27-29, but not August 30 when the water was connected. The sentence is based on mixed questions of law and fact as to whether a violation "continued" on the day in question, and Judge Koval's finding here was not clearly erroneous.

ORDER

The decision of the municipal court is affirmed. This is a final order subject to appeal.

Dated this 25th day of August, 2011.

Maryann Sumi, Judge
Circuit Court Branch 2

CC: City Attorney Lana Mades
Mr. Ray Peterson