COURT OF APPEALS
DECISION
DATED AND FILED

July 10, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1986 **Cir. Ct. No. 2010CV66**

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

JACKSON COUNTY,

PLAINTIFF-RESPONDENT,

V.

SHERRIE L. WOLLIN,

DEFENDANT-THIRD-PARTY PLAINTIFF-APPELLANT,

V.

TOWN OF IRVING,

THIRD-PARTY DEFENDANT.

APPEAL from an order of the circuit court for Jackson County: JOHN A. DAMON, Judge. *Affirmed*.

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

¶1 HIGGINBOTHAM, J. Jackson County brought a zoning enforcement action against Sherrie Wollin, alleging that Wollin violated the County's setback zoning ordinance by constructing a two-car garage that lies closer to a county highway than the ordinance permits. The circuit court granted summary judgment in favor of the County and issued an injunction requiring Wollin to remove the garage. Wollin argues on appeal that the circuit court erroneously exercised its discretion in ordering Wollin to remove the garage without first considering and weighing the applicable equitable factors set forth in ***Forest County v. Goode***, 219 Wis. 2d 654, 684, 579 N.W.2d 715 (1998). We disagree and conclude that Wollin failed to preserve the issue before the circuit court, fails to present a developed legal argument on appeal, and also fails to persuade us that the circuit court did not properly exercise its discretion in granting injunctive relief to the County. Accordingly, we affirm.

BACKGROUND

¶2 Wollin owns property located in the Town of Irving, Jackson County, that abuts a portion of a county highway that is curved. Wollin tore down an existing one-car garage that was attached to her house and replaced it with an attached two-car garage. The new garage is located fifty feet from the centerline of the county highway, in violation of the County's seventy-five-foot setback ordinance.

¶3 The following alleged facts are taken from Wollin's affidavit submitted as part of her summary judgment submissions. Wollin hired Mark Johnson to construct the new two-car garage. Johnson advised Wollin to contact Greg Totten, the town chairman, about obtaining a building permit. Johnson told Wollin that Totten was in charge of issuing building permits. Wollin contacted

Totten, and informed Totten of her construction plans. According to Wollin, Totten told Wollin that "all that she needed to do was pay the $50 permit fee [for building the new garage] and she was good to go."

¶4 Wollin paid the $50 fee and obtained a building permit. When she paid the fee, Wollin sent a note to Totten, asking him if there was anything else she should do before beginning construction. Totten assured Wollin that "everything was in order and she could start construction." According to Wollin, "Totten never instructed [Wollin] to contact the county regarding permits and told her specifically that contacting the Township and obtaining the permit from [the town] was all that was required" before she could begin construction. Wollin averred that the garage was constructed at a cost of $60,000.

¶5 Less than a year after the garage was built, the County informed Wollin that the garage was located within the seventy-five-foot setback for county highways, in violation of the County's setback ordinance, and that it must be removed. In response, Wollin applied for a variance from the Jackson County Board of Adjustment to allow the garage to encroach on the highway setback. Following a hearing, the board denied Wollin's request for a variance.

¶6 Wollin sought certiorari review of the board's decision. The certiorari action was remanded to the board for rehearing because there was an insufficient record for the court to review. Following another hearing, the board again denied Wollin's request for a variance. Wollin did not seek certiorari review of that decision in the circuit court. Wollin ultimately refused to remove the garage, which, according to her affidavit, would cost $60,000 to do.

¶7 The County filed this action to enforce its setback ordinance and to obtain an order requiring Wollin to remove her garage. The County moved for

summary judgment. Represented by counsel, Wollin filed a brief opposing summary judgment. Wollin did not dispute that her garage violated the setback requirement. However, Wollin listed the six equitable factors set forth in ***Goode*** for the court to consider in determining whether to require her to remove the garage. In her brief opposing summary judgment, Wollin stated in conclusory terms that the County should not be granted relief because the garage "was built in good faith and is bothering no one." Wollin did not elaborate on why the court should conclude that there are compelling equitable reasons for the court to deny the County's request for an order requiring Wollin to remove her garage.

¶8 Wollin did not request an evidentiary hearing or oral arguments before the court made its ruling. Wollin also did not ask the court at the hearing to consider the equitable factors listed in her brief. In an oral ruling, the court granted the County's motion for summary judgment and ordered Wollin to remove her garage. Wollin appeals.

DISCUSSION

¶9 Wollin argues on appeal that the circuit court erroneously exercised its discretion by failing to consider and weigh the equitable factors enumerated in ***Goode*** before granting the County injunctive relief. *See* ***Goode***, 219 Wis. 2d at 684. In response, the County contends that the court considered and weighed the equitable factors and thus properly exercised its discretion in granting injunctive relief, ordering Wollin to remove her garage.

¶10 Whether to grant injunctive relief is committed to the circuit court's exercise of discretion. ***State v. CGIP Lake Partners, LLP***, 2013 WI App 122, ¶19, 351 Wis. 2d 100, 839 N.W.2d 136. "A court properly exercises its discretion when it logically interprets the facts, applies the proper legal standard, and uses a

demonstrated rational process to reach a conclusion a reasonable judge could reach." ***Id.***

¶11 Once it is established that a county zoning ordinance has been violated, a circuit court is required to grant an injunction, except "in those rare cases, when [the court] concludes, after examining the totality of the circumstances, there are compelling equitable reasons why the court should deny the request for an injunction." ***Goode***, 219 Wis. 2d at 684. In other words, once a zoning violation is proven, there is "a rebuttable presumption that the court should grant an injunction," and that presumption is overcome only if the violator demonstrates that "there are compelling equitable reasons to deny injunctive relief." ***CGIP Lake Partners***, 351 Wis. 2d 100, ¶25.

¶12 The ***Goode*** court identified the following as factors a circuit court may consider in determining whether there are "compelling equitable reasons" for denying the requested injunctive relief:

> 1. The interest of the citizens of the jurisdiction that has established the zoning requirements in protecting the requirements;
>
> 2. The extent of the zoning violation;
>
> 3. Whether the parties to the action have acted in good faith;
>
> 4. Whether the violator of the zoning requirements has available any other equitable defenses, such as laches, estoppel or unclean hands;
>
> 5. The degree of hardship compliance with the zoning requirements will create; and
>
> 6. What role, if any, the government played in contributing to the violation.

See ***Goode***, 219 Wis. 2d at 684. "This list is not meant to be exhaustive but only to illustrate the importance of the circuit court's consideration of the substantial public interest in enforcing its … ordinances." ***Id.*** We turn to address Wollin's argument that the court failed to properly exercise its discretion because it did not consider and weigh these or related factors.

¶13 We conclude, based on the parties' briefs filed in the circuit court and on appeal and the court's oral ruling, that Wollin failed to preserve the issue in the circuit court, fails to develop a legal argument on appeal, and fails to persuade us that the court did not properly exercise its discretion in ordering Wollin to remove her garage.

¶14 We begin with the observation that Wollin's circuit court brief in opposition to the County's motion for summary judgment was inadequate to preserve the issue. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues not preserved in the circuit court generally will not be considered on appeal). The brief failed to explain why any particular fact in this case satisfies any particular factor of the test. Wollin merely listed the ***Goode*** factors that we have listed above, but failed to provide the court with any legal or factual analysis as to how Wollin believed the court should weigh them in order to justify denial of the County's request for injunctive relief. She simply stated in conclusory terms that "[t]he equities completely support" denying the County injunctive relief and that it is "in everyone's best interest to … let stand a garage which was built in good faith and is bothering no one."

¶15 Further, Wollin did not ask the court to hold an evidentiary hearing regarding the application of those factors, nor did she request an opportunity to argue those factors to the court. In sum, at no point, in any mode, did Wollin

actually present an argument, even a weak one, on whether there were compelling equitable reasons for the court to deny injunctive relief.

¶16 We could end our discussion there. *See* ***State v. Rogers***, 196 Wis. 2d 817, 829, 539 N.W.2d 897 (Ct. App. 1995) ("[T]he appellant [must] articulate each of its theories to the trial court to preserve its right to appeal."); ***Huebner***, 235 Wis. 2d 486, ¶12 (trial courts must be given a reasonable opportunity to correct or avoid an alleged error in the first place, eliminating the need for appeal).

¶17 However, we further conclude that Wollin does not fully develop her arguments on appeal. We acknowledge that her appellate briefs, unlike the entirety of her presentation to the circuit court, contain the beginning of an argument. However, it is only a beginning. Her argument on appeal consists of only a summary of the facts she avers in her affidavit, a list of the equitable factors in ***Goode***, and purely conclusory assertions as to how those factors weigh against ordering Wollin to remove her garage.

¶18 We ordinarily do not address undeveloped arguments, and Wollin fails to present a compelling case that we should diverge from that rule here. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we may decline to address arguments that are inadequately briefed). However, we opt to now briefly address her argument, as best we understand it.

¶19 A fair reading of the hearing transcript reveals that the circuit court considered and impliedly rejected the equitable factors that Wollin now means to assert weigh in favor of denying the County's request for injunctive relief. We acknowledge that the court did not specifically discuss the equities of the case or refer to the factors discussed in ***Goode***. However, Wollin is incorrect when she contends that the court did not consider any of the enumerated ***Goode*** factors.

¶20 At the summary judgment hearing, the circuit court read pertinent parts of Wollin's affidavit on the record, which formed the basis for Wollin's equities argument. Specifically, the court read Wollin's averment that Totten and Johnson represented to her that obtaining a building permit from the Town was the only requirement she needed to meet before constructing the garage. The court also read Wollin's averment that it cost her $60,000 to build the garage, and that it would cost another $60,000 to tear down the garage, and the court noted that it was Wollin's position that tearing down the garage "would be an extreme hardship for her."

¶21 After summarizing Wollin's averments, the court then stated that there was no dispute that the garage violated the County setback ordinance, that the County denied Wollin a variance, and that Wollin did not appeal that denial. The court acknowledged that Wollin claimed that, based on Totten's representations, she had no knowledge that she was required to do any more than obtain a building permit from the Town before constructing the garage. However, the court granted injunctive relief to the County.

¶22 A reasonable reading of the circuit court's oral decision shows that the court was clearly aware of, and considered, Wollin's good faith argument and her argument that compliance with the court's removal order would cause Wollin monetary hardship. We recognize that the court may not have explicitly touched on all of the ***Goode*** equitable factors. However, the heart of Wollin's equity argument, so far as we discern based on the very thin arguments she has suggested, was that she would suffer substantial economic hardship if she was ordered to remove the garage, and the court clearly acknowledged this, as well as the role that Wollin alleged the government played in creating the problem. Implicit in the court's order that Wollin remove her garage was the court's

determination that Wollin had not overcome the presumption that the County was entitled to injunctive relief because Wollin did not present compelling equitable reasons for denying such relief. *See* ***Goode***, 219 Wis. 2d at 684.

¶23 Further, we note that some of the equitable factors set forth in ***Goode*** appear to weigh against Wollin. For instance, the first factor, which is the interest of the citizens of Jackson County in protecting the zoning ordinance, weighs against Wollin. The interests of the County's citizens arguably are undermined by the ordinance violation, based on the board's determination that the garage interferes with the line of sight around the curve in the highway where Wollin's property sits, and therefore endangers motorists traveling along this part of the highway. As for the second factor, which is the extent of the violation, the violation is arguably significant because the garage is located fifty feet from the centerline of the county highway and thus violates the setback requirement by at least twenty-five feet. The fourth factor also appears to weigh against Wollin: she has not indicated or shown that any other equitable defenses, such as laches, estoppel, or unclean hands, are available to her.

¶24 In sum, the facts evident from the record do not appear to us to demonstrate any compelling equitable reasons for the court to deny the County injunctive relief.

¶25 For the foregoing reasons, we conclude that Wollin failed to preserve the argument now suggested on appeal, that she fails to present a developed legal argument on appeal, and that she fails to persuade us that the circuit court did not exercise proper discretion when it granted injunctive relief to the County and ordered Wollin to remove her garage. We affirm.

By the Court.—Order affirmed.

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