

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP957

Cir. Ct. No. 2013CV123

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JONATHAN RACINE,

PLAINTIFF-APPELLANT,

V.

TOWN OF CONOVER,

DEFENDANT-RESPONDENT,

JAMES J. TILT AND ANNE M. TILT,

INTERVENORS-RESPONDENTS.

APPEAL from an order of the circuit court for Vilas County:
NEAL A. NIELSEN III, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Jonathan Racine appeals an order affirming the Town of Conover's decision to renew a liquor license issued to James and Anne

Tilt, owners of the Sundown Tavern. Racine argues the Town erred by renewing the Tilts' license because the Tilts failed to show that they actively used the license for thirteen consecutive weeks during the previous licensure period, as required by a Town ordinance. In response, the Town and the Tilts argue the evidence supports the Town's finding of thirteen weeks of active use. They also argue Racine's appeal is moot because the license at issue has expired.

¶2 For the reasons explained below, we conclude Racine's appeal is not moot. We therefore review his arguments on the merits. Given our deferential standard of review, we conclude the Town properly renewed the Tilts' liquor license. Accordingly, we affirm.

BACKGROUND

¶3 The Tilts purchased the Sundown Tavern on March 6, 2013. After completing renovations, they opened the tavern for business on April 1. The Tilts subsequently applied for renewal of their Class B liquor license, which was set to expire on June 30.¹

¶4 A hearing on the Tilts' license renewal application was originally scheduled for June 6, 2013. However, before the hearing, Racine objected to renewal of the Tilts' license. Racine wanted to obtain a Class B liquor license to operate a tavern in the Town, but the Town had already issued all of its Class B liquor licenses to others. Racine hoped the Town would deny the Tilts' license

¹ Class B liquor licenses issued by the Town run from July 1 to June 30 of the following year. See CONOVER, WIS., CODE § 12.03(5)(1)(1).

renewal application, thereby freeing up a Class B liquor license for which he could apply.

¶5 In support of his objection to the Tilts' application, Racine cited Town of Conover Ordinance 12.03(5)(1)(1), which states:

As a minimum requirement, each holder of a Class A or Class B Liquor and Fermented Malt Beverage License shall place the same in active use for a period of not less than 20 hours per week for 13 consecutive weeks within each license period, said period being July 1 through June 30 of the subsequent year.

CONOVER, WIS., CODE § 12.03(5)(1)(1). "Active use" is defined as "beverage service to the public in the licensed premises during posted or advertised hours of operation." CONOVER, WIS., CODE § 12.03(5)(1)(2). Racine argued the Tilts could not meet the ordinance's active use requirement because, as of the June 6 hearing date, they would be able to prove at most ten weeks of active use.

¶6 After Racine filed his objection, the hearing on the Tilts' license renewal application was rescheduled to June 25, 2013.² Anne Tilt was the only witness to testify at the June 25 hearing. Tilt testified she and her husband knew when they purchased the Sundown Tavern that they would need to open for business no later than April 1 in order to meet their liquor license's active use requirement. As a result, they were "very, very careful" about the hours the tavern was open. Tilt submitted documentation showing the tavern was open on Monday, Tuesday, Wednesday, and Thursday during the week of April 1 to

² Racine asserts the Town "appeared to regard [Racine's] timing objection as being valid and rescheduled the hearing accordingly." He contends the Town intended to reschedule the hearing for a date after the Sundown Tavern had been open for thirteen weeks, but it "counted wrong[.]" These assertions are unsupported by record citations. We have not found anything in the appellate record indicating why the Town decided to reschedule the hearing.

April 6. For the next eleven weeks—from April 7 to June 22—the tavern was open on Wednesdays, Thursdays, Fridays, and Saturdays.

¶7 The June 25 hearing fell on Tuesday of the thirteenth week after the tavern opened. Tilt did not specifically testify whether the tavern had been, or would be, open during the week of the hearing. However, she submitted multiple advertisements stating the tavern would be open Wednesdays through Saturdays until June 30. She also testified as a general matter that the tavern’s “open days” are “Wednesday, Thursday, Friday, and Saturday.”

¶8 Following Tilt’s testimony, town board chairperson Steven Rhode stated:

What we have to decide as a Town Board basically is whether or not the business over at Sundown has met all of the requirements by the town ordinance.

First we have to make a determination of whether or not they had 20 hours per week for 13 consecutive weeks within each license period.

From what I see, they have met the first requirement.

Supervisor Karl Jennrich agreed with Rhode’s assessment, stating:

Yes. Again, I believe that the record has been built that [Tilt] has provided specific dates and hours. She provided us with a sheet, not only that shows the times that she was open, but the amount that was taken in. The sheet that she provided was consistent with the calendar that she wrote the hours on.

¶9 The town board ultimately voted to renew the Tilts’ liquor license for the licensure period from July 1, 2013, to June 30, 2014. Racine sought judicial review of the Town’s decision, and the circuit court affirmed. Racine now appeals.

DISCUSSION

I. Mootness

¶10 As a threshold matter, the Town and the Tilts argue Racine’s appeal is moot. Whether an issue is moot is a question of law that we review independently. *PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶25, 317 Wis. 2d 656, 766 N.W.2d 559. “An issue is moot when its resolution will have no practical effect on the underlying controversy.” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. “In other words, a moot question is one which circumstances have rendered purely academic.” *Id.* Appellate courts generally decline to consider moot issues.³ *Id.*

¶11 The Town and the Tilts argue Racine’s appeal is moot because, even if Racine prevails, his only remedy is invalidation of the Tilts’ liquor license for the licensure period from July 1, 2013, to June 30, 2014. That license has already expired. The Town and the Tilts argue a decision invalidating an expired liquor license can have no practical effect on the underlying controversy.

¶12 This argument is foreclosed by *Williams v. City of Lake Geneva*, 2002 WI App 95, 253 Wis. 2d 618, 643 N.W.2d 864. There, the City of Lake Geneva issued a liquor license to Spyro and Patricia Condos for the licensure period from July 1, 1999, to June 30, 2000. *Id.*, ¶2. The following year, the City renewed the Condos’ liquor license for the licensure period from July 1, 2000, to June 30, 2001. *Id.* In June 2000, Williams served a verified complaint on the City

³ There are several exceptions to the rule that appellate courts do not consider moot issues. See *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Because we conclude Racine’s appeal is not moot, we need not address these exceptions.

asserting the Condosers' liquor license was invalid. *Id.*, ¶3. The City agreed the 1999-2000 license was void because notice of the Condosers' application was not properly published, as required by WIS. STAT. § 125.04(3)(g) (1999-2000). *Id.*, ¶4. Nonetheless, the City concluded the void license expired on June 30, 2000, and a new, properly issued license went into effect on July 1, 2000. *Id.* The City asserted the 2000-01 license was a "new creature[.]" and the City had no authority to revoke it based on a violation pertaining to the old, 1999-2000 license. *Id.*, ¶5.

¶13 On appeal, this court reversed. *Id.*, ¶1. We explained a void license is "an absolute nullity" that has "no legal effect." *Id.*, ¶9. We further reasoned "a license based on *renewal* of an absolute nullity is itself an absolute nullity and 'affords no protection to the [licensee].'" *Id.*, ¶10 (quoted source omitted; brackets in *Williams*). Consequently, because the Condosers' 1999-2000 liquor license was void, they "could not apply for an appropriate liquor license via renewal of that void license." *Id.*, ¶14. The only way for them to obtain a valid license for the 2000-01 licensure period was to apply for a new license. *Id.* "In short, the 2000-2001 license, like the 1999-2000 license, was void by virtue of it being a 'renewal' of a void license." *Id.*

¶14 Under *Williams*, if we were to conclude the Tilts' 2013-14 liquor license was invalid, a subsequent renewal of that license would also be invalid. Thus, if the Tilts successfully renewed their license for the 2014-15 licensure period, a decision invalidating the 2013-14 license would have a practical effect on the underlying controversy, even though the 2013-14 license has expired.⁴ We

⁴ Admittedly, we do not know whether the Tilts' license was renewed for the 2014-15 licensure period. However, we question why the Tilts would have filed a respondents' brief in this appeal on July 2, 2014, if they had not successfully renewed their license.

(continued)

therefore conclude Racine's appeal is not moot, and we turn to the merits of his appellate arguments.

II. Certiorari review of the Town's decision

¶15 A municipality's decision to renew a liquor license is subject to certiorari review. *Nowell v. City of Wausau*, 2013 WI 88, ¶3, 351 Wis. 2d 1, 838 N.W.2d 852. "The scope of our review on certiorari is identical to the circuit court, and we therefore conduct our review of the [municipality's] decision independent of the circuit court's conclusions." *Steenberg v. Town of Oakfield*, 167 Wis. 2d 566, 571, 482 N.W.2d 326 (1992).

¶16 On certiorari review, we accord a presumption of correctness and validity to the municipality's decision. *Nowell*, 351 Wis. 2d 1, ¶24. Our review is limited to: (1) whether the municipality kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question. *Id.* The municipality's findings of fact will be upheld if any reasonable view of the evidence supports them. *Ottman v. Town of Primrose*, 2011 WI 18, ¶53, 332 Wis. 2d 3, 796 N.W.2d 411.

¶17 Racine argues the Town could not reasonably conclude, based on the evidence before it, that the Tilts actively used their liquor license for thirteen

More importantly, because the Town and the Tilts raised mootness as a defense, they had the burden to provide us with sufficient information to rule on the issue. They therefore had the burden to inform us whether the Tilts' license was renewed for the 2014-15 licensure period. Because the Town and the Tilts failed to provide any information on this topic, we assume the Tilts successfully renewed their license.

consecutive weeks before June 30, 2013. Racine asserts the evidence indisputably showed only twelve weeks of active use—from April 1 to June 22. The Town and the Tilts concede the Sundown Tavern had been open for only twelve weeks as of the June 25 hearing. However, they argue the Town could reasonably infer the tavern would also be open from Wednesday, June 26 through Saturday, June 29 during the final week of the licensure period.

¶18 We agree with the Town and the Tilts. The evidence showed the Sundown Tavern was open Monday through Thursday during the week of April 1, 2013, and Wednesdays through Saturdays during the next eleven weeks. Tilt testified the tavern’s “open days” are “Wednesday, Thursday, Friday, and Saturday.” The Tilts also submitted multiple advertisements stating the tavern would be open Wednesdays through Saturdays until June 30. Based on this evidence, the Town could reasonably infer the Sundown Tavern would be open as advertised during the final week of June 2013, just as it had been during the preceding weeks. We cannot say that no reasonable view of the evidence supports this inference. *See id.* (A municipality’s findings of fact are upheld if any reasonable view of the evidence supports them.); *Beverly Enters., Inc. v. LIRC*, 2002 WI App 23, ¶16, 250 Wis. 2d 246, 640 N.W.2d 518 (Factual findings include the drawing of one of several reasonable inferences from undisputed facts.).

¶19 Racine argues the Town did not actually draw the inference that the Sundown Tavern would be open during the final week of June 2013. He relies on town board chairperson Rhode’s statement during the June 25 hearing that the Tilts “have met” the active use requirement. Based on this statement, Racine argues the Town concluded the Tilts had already actively used their liquor license for thirteen weeks as of the June 25 hearing. He contends that finding is not

supported by the evidence, which clearly shows only twelve weeks of active use before the hearing date.

¶20 We conclude Rhode’s statement that the Tilts “have met” the active use requirement is ambiguous. Rhode could have meant, as Racine asserts, that the Tilts had already actively used their liquor license for thirteen weeks as of the June 25 hearing. However, it is equally likely Rhode simply meant that the Tilts had satisfied the active use requirement as of the hearing date by showing twelve weeks of actual use plus advertisements stating the tavern would be open during the thirteenth week. Because the Town’s decision is entitled to a presumption of correctness and validity, *see Nowell*, 351 Wis.2d 1, ¶24, we presume Rhode meant the latter.

¶21 Racine next suggests that, even if the Town properly inferred the Sundown Tavern would be open as advertised during the last week of June 2013, the Town made an error of law by concluding future performance could satisfy the ordinance’s active use requirement. However, Racine does not cite any legal authority supporting this assertion or develop any argument that the Town misinterpreted the ordinance. We need not address arguments that are undeveloped or unsupported by legal authority. *See State v. Pettit*, 171 Wis.2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶22 Moreover, on certiorari review, we defer to the Town’s interpretation of its own ordinance as long as it is reasonable, *see Ottman*, 332 Wis.2d 3, ¶60. The Town’s interpretation is unreasonable if it is contrary to law; if it is clearly contrary to the intent, history, or purpose of the ordinance; if it is without a rational basis; or if it directly contravenes the words of the ordinance. *See id.*, ¶62.

¶23 Town of Conover Ordinance 12.03(5)(1)(1) requires that a liquor license holder “place the same in active use for a period of not less than 20 hours per week for 13 consecutive weeks within each license period, said period being July 1 through June 30 of the subsequent year.” CONOVER, WIS., CODE § 12.03(5)(1)(1). The ordinance specifically states that the thirteen weeks of active use must occur before June 30, but it does not state they must occur before the Town holds a hearing on the licensee’s application to renew his or her license. Nothing in the ordinance prohibits the Town from considering active use that will occur between the hearing date and June 30. Thus, based on the plain language of the ordinance, the Town could reasonably conclude it was allowed to consider future performance when determining whether the Tilts had satisfied the active use requirement. Racine does not cite any evidence that this interpretation clearly contravenes the intent, history, or purpose of the ordinance. *See Ottman*, 332 Wis. 2d 3, ¶62. Because the Town’s interpretation of the ordinance is reasonable, we reject Racine’s argument that the Town erred by relying on active use that would occur during the last week of June 2013.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

