

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 1, 2005

Cornelia G. Clark
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. 2004AP1922

Cir. Ct. No. 2004CV136

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

K. ANDREAH BRIARMOON,

PLAINTIFF-APPELLANT,

V.

CITY OF JANESVILLE AND CHRISTINE WILSON,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Rock County: JOHN W. ROETHE, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. K. Andreah Briarmoon appeals from a judgment rejecting her challenge to a raze order issued by the City of Janesville. She also appeals from an order denying her motion for reconsideration. The dispositive

issue is whether the City's raze order was reasonable. *See* WIS. STAT. § 66.0413(1)(h) (2003-04).¹ We affirm.

¶2 Briarmoon contends that the City's raze order was unreasonable. Under WIS. STAT. § 66.0413(1)(b)1., the City may:

If a building is old, dilapidated or out of repair and consequently dangerous, unsafe, unsanitary or otherwise unfit for human habitation and unreasonable to repair, order the owner of the building to raze the building or, if the building can be made safe by reasonable repairs, order the owner to either make the building safe and sanitary or to raze the building, at the owner's option.

A person affected by an order to raze a building may bring a challenge in the circuit court, which will determine whether the order is reasonable. Sec. 66.0413(1)(h).

¶3 In a detailed oral decision, the circuit court found that Briarmoon's "carriage house" was old and had severe structural damage. The court found that there was a huge hole in the roof, that it had ripples and sags, and that raccoon families made nests in the building. The inside of the building was damp and rotting. The roof had soaked up a considerable amount of water, and the rafters were soggy. The south and west side of the building had water damage to the siding, some of which was missing. Windows were broken and the sash was rotted away. Floor joists were water soaked and rotting. A wall had no connection to the south wall foundation and had pulled away. The building was out of square. The back wall leaned. Electrical wiring was bare. The building had started to push and pull away from its foundation. The court also found that

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

the structure was not fit for human habitation, dangerous to people using the structure and to children who were tenants or neighbors. The court also found that the building could not be made safe by reasonable repairs because the repairs, which would cost approximately twenty-three times the building's value, were too costly compared to the value of the building. Where, as here, the circuit court's findings of fact are not clearly erroneous, we will uphold them. *See* WIS. STAT. § 805.17(2). The conclusion that flows from these findings is that the raze order was reasonable.

¶4 Briarmoon also contends that the raze order violates her constitutional rights, that the City was required to give her the option of repairing the shed, that the City was required to obtain a court order before ordering the shed razed, that the City was required to proceed under WIS. STAT. § 66.0413(k) with regard to the public nuisance procedure and that she is entitled to restitution, punitive damages and other remedies. Because Briarmoon did not raise these issues before the circuit court, we will not consider them. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (we will not usually review issues raised for the first time on appeal).

By the Court.—Judgment and order affirmed.

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

