COURT OF APPEALS
DECISION
DATED AND FILED

February 14, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2006AP931 **Cir. Ct. No. 2004CV125**

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

VILLAGE OF SHERWOOD,

PLAINTIFF-RESPONDENT,

V.

RONALD HAWKINSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Calumet County: DONALD A. POPPY, Judge. *Affirmed*.

Before Brown, Nettesheim and Anderson, JJ.

¶1 PER CURIAM. In July 2004, the Village of Sherwood filed a complaint against Ronald Hawkinson seeking injunctive relief relating to the presence of junked vehicles and noxious weeds on his property in violation of the Village's zoning, public nuisance and junk ordinances. After a trial, the court

found that Hawkinson had violated the ordinances, enjoined him from maintaining weeds and vehicles on his property, and required him to ameliorate the situation. We affirm because the circuit court's order was a proper exercise of its discretion in this equitable action to enjoin Hawkinson's unlawful use of his property.

¶2 Hawkinson argues that the circuit court erroneously denied him a jury trial.[1] Hawkinson claims that he was entitled to a jury trial because he raised affirmative defenses at law, and the order enjoining him has financial consequences. Hawkinson's analysis of the right to a jury trial is flawed. The Village's complaint sought injunctive relief, which is an action in equity. ***Town of Delafield v. Winkelman***, 2004 WI 17, ¶13, 269 Wis. 2d 109, 675 N.W.2d 470.

> It is well settled that the right to a jury trial does not extend to equitable actions, and that "a legal counterclaim in an equitable action does not necessarily entitle the counterclaimant to a jury trial." In ***Green Spring Farms*** [***v. Spring Green Farm Assocs.***, 172 Wis. 2d 28, 492 N.W.2d 392 (Ct. App. 1992)], we held that "where a counterclaimant is compelled to raise his or her claims by the doctrine of collateral estoppel, that compulsion does not result in the waiver of the counterclaimant's right to a jury trial."

Norwest Bank Wis. Eau Claire, N.A. v. Plourde, 185 Wis. 2d 377, 386, 518 N.W.2d 265 (Ct. App. 1994) (citations omitted). Hawkinson did not file any counterclaims, so the exception discussed above does not apply. The court did not err in holding a trial to the court.

[1] The appellant's brief lacks citations to the record in the argument section. This is a violation of the Rules of Appellate Procedure. WIS. STAT. RULE 809.19(1)(e) (2003-04). All future references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶3 Hawkinson argues that the court erred in reviewing the Village's trial brief[2] which included material the Village hoped to place into evidence during the court trial. The trial transcript reveals that once Hawkinson objected to the court reviewing the brief, the court stated that it had not looked at the brief and returned the brief to the Village's counsel. The record does not support Hawkinson's claim of error.

¶4 Hawkinson also complains about the court's questioning of witnesses and its handling of exhibits at the trial. With regard to the questioning of witnesses, Hawkinson did not object, and the issue is waived. "The burden is upon the party alleging error to establish by reference to the record that the error was specifically called" to the circuit court's attention. ***Allen v. Allen***, 78 Wis. 2d 263, 270, 254 N.W.2d 244 (1977). We do not consider issues raised for the first time on appeal. *See* ***Segall v. Hurwitz***, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983).

¶5 With regard to the exhibits, Hawkinson complains that the court reviewed the Village's exhibits before they were the subject of testimony. In response to Hawkinson's objection to this procedure, the court stated that although copies of the exhibits had been placed on the bench, the court had not looked at the copies of the exhibits. Furthermore, the court rightly pointed out because it was conducting the trial, the court had to review exhibits prior to determining their admissibility. We see no error in the court's handling of exhibits.

[2] The court requested trial briefs in advance of trial. The Village filed such a brief; Hawkinson did not.

¶6 Hawkinson complains that the court erred when it viewed photographs and identified noxious weeds on Hawkinson's property without the aid of expert testimony. The Village's ordinance deems "noxious weeds and other rank growth of vegetation" a public nuisance. VILLAGE OF SHERWOOD, WIS., ORDINANCE 94-52 § 3(f) (2002). The ordinance defines "rank growth" as vegetation exceeding twelve inches in height.

¶7 There was evidence at trial that rank growth was present on Hawkinson's property. Joshua Van Lieshout, the Village's coordinator and code administrator, testified that photographs he took of Hawkinson's property depicted vegetation in excess of twelve inches high in numerous locations on the property.[3] The credibility of the witnesses and the weight of the evidence was for the circuit court to determine as the fact finder. ***Micro-Managers, Inc. v. Gregory***, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988).

¶8 Hawkinson argues that the circuit court's final order did not jibe with the stipulation the parties reached midway though the trial. After the lunch break, the parties advised the court that they had agreed that within forty-five days Hawkinson would either move his junk (defined as car parts and trash) inside or remove it from the property, remove the weeds and repair the fence. If Hawkinson did not comply, the Village was authorized to take these steps itself and charge Hawkinson for its efforts. The parties agreed to have the court decide the fate of

[3] One of those photographs depicted a ruler next to the weeds. And, Van Lieshout testified that some of the weeds exceeded his height of sixty-four inches.

the box van sitting on a chassis and whether Hawkinson could keep the four vehicles he claimed were collector's vehicles.[4]

¶9 The court's final order noted that Hawkinson had not removed the box from the chassis and placed it on the ground so that it would qualify as an accessory building under the Village's ordinances. Therefore, the box was a nuisance and had to be removed. The court found that the unlicensed vehicles on the property had not been restored and were junk, and that Hawkinson had to identify for the Village which four vehicles were being restored as collector's vehicles on a schedule leading to registration and drivability within two years. Parts cars also had to be removed, and the parts stored inside a structure. The court required removal of all junk and debris, repair of the fence, and barred vegetation in excess of twenty inches. The court authorized the Village to enter Hawkinson's property to cure any failure to comply with the court's order.

¶10 Hawkinson contends that he is a vehicle collector under WIS. STAT. § 341.266. A collector is someone who owns "one or more special interest vehicles who collects, purchases, acquires, trades or disposes of special interest vehicles or parts thereof for the collector's own use in order to restore, preserve and maintain a special interest vehicle for historic interest." Sec. 341.266(1)(a). The statutes also govern storage of collector's vehicles:

> A collector may store unlicensed, operable or inoperable, vehicles and parts cars on the collector's property provided the vehicles and parts cars and the outdoor storage area are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view

[4] The four-collector-vehicle limit was imposed in a previous enforcement action brought by the Village against Hawkinson.

> by means of a fence, rapidly growing trees, shrubbery or other appropriate means.

Sec. 341.266(4).

¶11 The circuit court found that although Hawkinson keeps "several old vehicles and car parts on the property … there is no indication that he has done anything to preserve the vehicles, that he has allowed to accumulate on the property, which he has brought there." The court found that Hawkinson had not restored any of the vehicles, they "rest among piles of junk and clutter" with no protection from the elements, they are broken down and in poor condition, and there was no evidence that any vehicle was being preserved. The court deemed Hawkinson's property a junkyard.

¶12 The court's findings of fact are not clearly erroneous. *See* WIS. STAT. § 805.17(2). Although Hawkinson has acquired vehicles, he has not used them as required by the collector's statute.[5] Therefore, Hawkinson is not a vehicle collector.

¶13 Hawkinson argues that the court's order went beyond the issues the parties agreed to submit to the court relating to the box van and the four collector's vehicles. We see no error. The court was charged, in the exercise of its equitable powers, with entering an order to resolve the Village's complaint. In so exercising that discretion, *see* ***Pietrowski v. Dufrane***, 2001 WI App 175, ¶7, 247 Wis. 2d 232, 634 N.W.2d 109, the court refined the parties' stipulation regarding junk and weeds into a workable order resolving the case.

[5] We need not consider Hawkinson's argument that the Village's ordinances are in contravention of the collector's statute. The circuit court held that the collector's statute was not satisfied in this case.

¶14 Hawkinson challenges the circuit court's order relating to the box van. Hawkinson received a building permit from the Village in 2003 to add an accessory structure to his property. Hawkinson intended to remove the box from the chassis and use it as an accessory structure. However, Hawkinson never did that and, at the time of trial, the box was still affixed to the chassis, and the permit had expired. The court properly exercised its discretion in deeming the box van junk and requiring Hawkinson to remove the junk and box van from the property.

¶15 Hawkinson complains that the circuit court erroneously barred vegetation in excess of twenty inches and that under WIS. STAT. § 341.266, he is permitted to screen his collector's vehicles with vegetation. This argument overlooks the circuit court's conclusion, which we have upheld, that Hawkinson is not a collector under the statute. VILLAGE OF SHERWOOD, WIS., ORDINANCE 94-52 § 3(f) bars vegetation in excess of twelve inches. The court properly exercised its discretion in limiting the height of the vegetation on Hawkinson's property.

¶16 Sprinkled throughout the appellant's brief are broad complaints that Hawkinson's equal protection rights were violated in relation to his status as a collector. First, Hawkinson is not a collector. Second, these complaints are inadequately briefed and lack citation to authority, particularly case law. We need not address constitutional arguments that are "amorphous and insufficiently developed." ***Barakat v. DHSS***, 191 Wis. 2d. 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

By the Court.—Order affirmed.

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