COURT OF APPEALS
DECISION
DATED AND FILED

September 25, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-3252 **Cir. Ct. No. 02-CV-792**

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

CITY OF MADISON,

PLAINTIFF-RESPONDENT,

V.

JEFFREY CROSSFIELD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: DAVID T. FLANAGAN, Judge. *Affirmed.*

¶1 DEININGER, P.J.[1] Jeffrey Crossfield appeals a judgment upholding a decision of the City of Madison Municipal Court concluding that he violated a city zoning ordinance. Crossfield argues that: (1) the ordinance is in

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

conflict with the state motor vehicle code; (2) it is unconstitutionally vague; (3) the City should be estopped from enforcing it; and (4) he was denied due process when he failed to receive a hearing before the Zoning Board of Appeals. We reject these claims and affirm.

BACKGROUND

¶2 An inspector from the office of the City's zoning administrator issued Crossfield a citation charging him with a violation of Madison General Ordinance (MGO) § 28.11(3)(a)1, which provides:

> In the residence district, accessory off-street parking facilities provided for uses listed herein shall be solely for the parking of passenger automobiles (including passenger trucks) and bicycles of patrons, occupants or employees. Such vehicles are limited in size to less than one (1) ton capacity.

Crossfield was found guilty of the violation following a trial in the Madison Municipal Court.[2] He filed a timely appeal to the circuit court under WIS. STAT. § 800.14(4), opting for a de novo bench trial. Crossfield and the City stipulated to certain findings of fact on which the circuit court relied in its written decision.

¶3 Among the agreed upon facts are the following. Crossfield was the owner of an "Iveco" truck which was parked on a residential lot within the city of Madison. Crossfield's truck has an "actual weight, when empty" of approximately 7200 pounds. It was registered with the Wisconsin Department of Transportation at the time of the ordinance violation as having a "gross weight" of 8000 pounds. The manufacturer of the truck lists the "gross vehicle weight rating," as defined by

[2] The record contains no transcript of the municipal court trial.

WIS. STAT. § 340.01(19r), as approximately 14,000 pounds. The interior of the cargo portion of Crossfield's truck is roughly fourteen feet long, seven feet high, and over six feet wide.

¶4 The circuit court found Crossfield in violation of MGO § 28.11(3)(a)1 for parking the truck on a residential lot. Accordingly, the court entered a judgment imposing a $100 forfeiture and Crossfield appeals.

ANALYSIS

¶5 Where the parties stipulate to facts and the circuit court makes no independent factual findings, only legal issues remain and our review is therefore de novo. ***Lewis v. Physicians Ins. Co. of Wis.***, 2001 WI 60, ¶9, 243 Wis. 2d 648, 627 N.W.2d 484.

¶6 Crossfield first asserts that MGO § 28.11(3)(a)1 is an invalid enactment of municipal law. He notes that WIS. STAT. § 349.03(1) prohibits local authorities from enacting or enforcing any laws inconsistent with those set forth in WIS. STAT. chs. 340-348. Because chs. 340-348 contain definitions relating to vehicles, he contends that § 349.03(1) also prohibits any local authority from employing a vehicle-related definition that is not consistent with these chapters. Although his brief is not altogether clear on the point, the thrust of Crossfield's argument appears to be that because some of the terms used in MGO § 28.11(3)(a)1 (e.g., "passenger truck," "capacity," "ton") are not defined by the ordinance, courts must defer to the definitions provided within chs. 340-348.

¶7 We first note that Crossfield misstates the statute. WISCONSIN STAT. 349.03(1) provides:

> (1) Chapters 341 to 348 and 350 shall be uniform in operation throughout the state. *No local authority may enact or enforce any traffic regulation* unless such regulation:
>
> (a) Is not contrary to or inconsistent with chs. *341 to 348* and 350; or
>
> (b) Is expressly authorized by ss. 349.06 to 349.25 or some other provision of the statutes.

(Emphasis added.) Thus, WIS. STAT. ch. 340 and its definitions are not expressly mentioned in § 349.03(1). Moreover, MGO ch. 28 is a *zoning* regulation, not a *traffic* regulation.

¶8 The supreme court concluded in ***Henkel v. Phillips*****,** 82 Wis. 2d 27, 260 N.W.2d 653 (1978), that a University of Wisconsin Board of Regents regulation permitting the towing and impounding of vehicles illegally parked on the Madison campus did not contravene WIS. STAT. § 349.03(1) in part because regulating the towing and impounding of vehicles was not "promulgating 'traffic regulations' as the term is used in sec. 349.03." ***Id***. at 30. The court noted that "[t]raffic is defined in sec. 340.01(68) … to mean, '… vehicles and other conveyances, either singly or together, while using any *highway* for the purpose of travel.'" ***Id***. Here, as in ***Henkel***, Crossfield challenges a local regulation that has nothing to do with "vehicles … while using any highway for the purpose of travel." In short, the City's regulation of the types of vehicles that may be parked in a residential district does not contravene WIS. STAT. § 349.03(1).

¶9 Moreover, the City's regulation is "expressly authorized by … some other provision of the statutes." WIS. STAT. § 349.03(1)(b). WISCONSIN STAT. § 62.23(7)(a) authorizes the City to "regulate and restrict by ordinance … the location and use of … land for … residence" in order to promote the "health, safety, morals or the general welfare of the community." The regulation and

restriction under MGO § 28.11(3)(a)1 limiting the use of accessory off-street parking in residential districts to "passenger automobiles (including passenger trucks) and bicycles of patrons, occupants or employees" that are "less than one (1) ton in capacity" comes well within this statutory authority to enact zoning regulations. Crossfield points to no other Wisconsin statutes that would allow us to conclude that MGO § 28.11(3)(a)1 is invalid or contrary to law.

¶10 Next, Crossfield argues that MGO § 28.11(3)(a)1 is unconstitutionally vague. He further contends that such vagueness is "against the public good and order" because the circuit court defined "capacity" in such a way as to create an ordinance prohibiting Madison residents from parking some of the most common trucks and sport utility vehicles in residential districts. Such a prohibition would, in Crossfield's opinion, "leave the city in chaos."

¶11 Before addressing whether the ordinance is unconstitutionally vague, we must first ascertain whether Crossfield's vagueness challenge is properly before us. "[A] challenger whose conduct was clearly prohibited by the terms of a statute or ordinance does not have standing to challenge the vagueness of a statute or ordinance as hypothetically applied to the conduct of others." ***City of Milwaukee v. K.F.,*** 145 Wis. 2d 24, 34, 426 N.W.2d 329 (1988); *see also* ***State ex rel. Smith v. City of Oak Creek,*** 139 Wis. 2d 788, 802-03, 407 N.W.2d 901 (1987).

¶12 The residential area zoning restriction at issue permits the parking of passenger automobiles, passenger trucks and bicycles, provided they are of less than one ton in "capacity." We need not decide whether Crossfield's vehicle is a

"passenger truck," as he maintained in the trial court,[3] because even if it was one, the restriction would apply if his vehicle has a "capacity" of over one ton. Thus, our inquiry is whether Crossfield's truck comes clearly within the prohibition against parking vehicles having one ton or more of "capacity."[4]

¶13 "Capacity" is not defined in the Madison General Ordinances, but Crossfield agrees that the use of "capacity" in this context refers to a vehicle's "power or ability to hold, receive, or accommodate." WEBSTER'S UNABRIDGED THIRD NEW INTERNATIONAL DICTIONARY 330 (3d ed. 1993). He also agrees with the equation adopted by the circuit court to determine "capacity," which can be briefly stated as the maximum loaded weight of the vehicle minus the empty weight of the vehicle. Crossfield's only complaint is with the use of "gross vehicle weight rating," as defined in WIS. STAT. § 340.01(19r), as the measure of a vehicle's maximum loaded weight.[5]

---

[3] Crossfield argued to the circuit court that his vehicle was a "passenger" truck, but the circuit court did not reach the issue because it concluded that the truck had a "capacity" of greater than one ton and was therefore prohibited by the ordinance regardless of whether it was a "passenger" truck.

[4] Crossfield also objects to what he contends is ambiguity inherent in the word "ton." He contends that the "ton" reference in the ordinance was intended to correspond to an industry-wide colloquial use of the term that does not correlate with actual load-carrying ability. Crossfield provides no basis, however, other than his own "belief" and "understanding," for ascribing this intent to the Madison City Council. We may decline to consider arguments unsupported by legal authority and choose to do so here. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46 n.3, 292 N.W.2d 370 (Ct. App. 1980).

[5] "Gross vehicle weight rating" is defined as "the value specified by the vehicle manufacturer, including secondary or final stage manufacturer, as the loaded weight of a vehicle." WIS. STAT. § 340.01(19r).

(continued)

¶14 Crossfield asserts that he is a "secondary or final stage manufacturer" within the meaning of WIS. STAT. § 340.01(19r), and that he has modified his vehicle such that its maximum loaded weight is only 8000 pounds.[6] Using this number instead of the vehicle's "gross vehicle weight rating" of some 14,000 pounds results in a "capacity" of only 800 pounds, which is, of course, below the one-ton maximum limitation of the ordinance. Crossfield contends that the trial court should have used this "modified loaded weight" instead of "gross vehicle weight rating" as the measure of a vehicle's maximum loaded weight when determining its "capacity."

¶15 When interpreting an ordinance, the rules of statutory construction are used. *See* ***Schroeder v. Dane County Bd. of Adjustment,*** 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999). Thus, when we are asked to apply an

---

We note that Crossfield also complains that if the City or a court is going to use the "gross vehicle weight rating" as determined at the time of manufacture as the number from which the vehicle's empty weight is deducted, then the "empty weight" variable should also be the empty weight of the vehicle at the time of manufacture. Crossfield asserts that the cargo box attached to his vehicle at the time he stipulated to its empty weight of 7200 pounds is not the same cargo box that was on the vehicle at the time of its manufacture. In Crossfield's view, therefore, because the empty weight at the time of manufacture cannot be determined, the entire equation is invalid. We reject this argument because it assumes facts not in the record and ignores the fact that Crossfield stipulated to an "empty weight" of approximately 7200 pounds for purposes of this action.

[6] We reject Crossfield's contention that he is a "secondary or final stage manufacturer" within the meaning of WIS. STAT. § 340.01(19r). The term is not defined by Wisconsin statute, but a federal regulation, 49 C.F.R. § 568.3, defines a "final-stage manufacturer" as "a person who performs such manufacturing operations on an incomplete vehicle that it becomes a complete vehicle." The regulation further defines "completed vehicle" as "a vehicle that requires no further manufacturing operations to perform its intended function, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting." Crossfield does not allege that his vehicle was "incomplete" when he purchased it or that it required "further manufacturing operations to perform its intended function." He asserts only that he modified his already-functional vehicle to reduce its maximum loaded weight capability.

ordinance whose meaning is in dispute, we direct our efforts at determining what the legislative body intended the ordinance to mean. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 365, 560 N.W.2d 315 (Ct. App. 1997). If the language chosen unambiguously sets forth the legislative intent, we go no further. ***Id***. "However, if the language used in the [ordinance] is capable of more than one meaning, this court will determine legislative intent from the words of the [ordinance] in relation to its context, subject matter, scope, history, and the object which the [legislative body] intended to accomplish." ***Id***. at 365-66.

¶16 Unless a specific definition is provided by statute or ordinance, words in an ordinance should be given their ordinary and accepted meaning. *See* ***Sheboygan County Dep't of Health & Human Servs. v. Jodell G.***, 2001 WI App 18, ¶13, 240 Wis. 2d 516, 625 N.W.2d 307. Reference to a dictionary definition is allowed where no specific legal definition is available. ***Id***. "Capacity" is not defined in either MGO ch. 28 or in the Wisconsin Statutes. As we have noted, the ordinary and accepted meaning of "capacity" is the "power or ability to hold, receive, or accommodate." WEBSTER'S UNABRIDGED THIRD NEW INTERNATIONAL DICTIONARY 330 (3d ed. 1993). Thus, in the context of MGO § 28.11(3)(a)1, "capacity" refers to a vehicle's ability to carry a load of cargo.

¶17 This definition, however, does not assist us in determining whether the Madison City Council intended "capacity" to mean "capacity at the time of manufacture" or "capacity as modified since manufacture." Reasonably well informed persons might adopt either interpretation, and thus, to resolve the ambiguity, we turn to the "context, subject matter, scope, history, and the object which the [legislative body] intended to accomplish." ***Truttschel***, 208 Wis. 2d at 365-66.

¶18 As we have explained above, MGO § 28.11(3)(a)1 is a municipal zoning ordinance, enacted pursuant to authority granted by WIS. STAT. § 62.23(7)(a) for the purpose of "promoting health, safety, morals or the general welfare of the community." The stated purpose of this ordinance is, among other things,

> to promote the safety and general welfare of the community by … [m]inimizing adverse effects of off-street parking and off-street loading facilities on adjacent properties through the requirement of design and maintenance standards [and] [l]essening congestion and preventing the overtaxing of public streets by regulating the location and capacity of accessory off-street parking ….[7]

MGO § 28.11(1)(a), (b). The protection of property values as well as aesthetic considerations are objectives which fall within the exercise of the police power to promote the "general welfare of the community." ***State ex rel. Saveland Park Holding Corp. v. Wieland*****,** 269 Wis. 262, 270-71, 69 N.W.2d 217 (1955). The ordinance presumably seeks to regulate vehicle parking in residential neighborhoods primarily for aesthetic reasons, but perhaps for safety reasons as well. The legislative goal is plainly to limit the allowable vehicles to automobiles and smaller trucks.[8]

---

[7] *See also* MGO §§ 28.02(1) ("This ordinance is adopted for the following purposes: … [t]o promote the public health, safety, morals, comfort, convenience, prosperity, and general welfare of the City and environs.); 28.02(9), (12) & (17) ("The ordinance is adopted for the following purposes: … [t]o encourage the most appropriate use of land throughout the City … [t]o protect the character … of residential … areas within the City [and] … [t]o provide for the elimination of those uses of land … which are adversely affecting the character, development and taxable value of property in each district.").

[8] *See* Madison General Ordinance No. 10,537, Amending Section 28.11(3)(a), Regarding Parking of Small Truck on Residential Lots (Nov. 10, 1992). Prior to this amendment, the ordinance limited residential lot parking to "one truck limited to one (1) ton in capacity." ***Id***. The ordinance was amended, according to the editor's note, "to allow for parking of more than one (1) *small truck* on a residential lot." ***Id***. (emphasis added).

¶19 A truck's load-carrying capacity is a reasonable indicator of its size, and we conclude that the more reasonable interpretation of MGO § 28.11(3)(a)1 is one which will further the legislative goal of permitting only small trucks to be parked in residential neighborhoods. We therefore reject Crossfield's proposed interpretation that would utilize a truck's post-manufacture, "modified loaded weight" in determining its capacity for purposes of the ordinance. This approach would allow a vehicle designed by its manufacturer to have a very large carrying capacity, and thus having a very large silhouette, to be parked in a residential neighborhood so long as it was modified in some way to reduce its maximum loaded weight but not its visual appearance or dimensions.

¶20 Accordingly, we conclude that the capacity determination based on the "gross vehicle weight rating" of Crossfield's truck (i.e., "the value specified by the manufacturer," see footnote 5), as urged by the City and applied by the trial court, is the more reasonable interpretation of MGO § 28.11(3)(a)1. Additional support for this conclusion may be found in ***Town of East Troy v. Town & Country Waste Service, Inc.***, 159 Wis. 2d 694, 465 N.W.2d 510 (Ct. App. 1990). We concluded in ***Town of East Troy*** that the proper standard for determining whether a vehicle violated its manufacturer's rated weight-carrying capacity was the information embossed on the side of the tire by the manufacturer, rather than a case-by-case approach that would vary depending upon operating conditions, speed, duration of travel, and tire pressure. ***Id***. at 706-07. We reasoned that relying on the predetermined capacity provided "a commonsense meaning to the statute" in question and "a practical, readily ascertainable standard to which each vehicle owner must adhere." ***Id***. at 707.

¶21 As in ***Town of East Troy***, utilization of the manufacturer's "gross vehicle weight rating" promotes ease and consistency in the administration of

MGO § 28.11(3)(a)1, whereas Crossfield's case-by-case approach would not. Crossfield's interpretation would require City inspectors to subject each vehicle suspected of being in violation to individualized inspections to take into account factors such as a truck's tire pressure, number of wheels per axle, suspension modifications, and other creative alterations.

¶22 We thus affirm the circuit court's determination that the capacity of Crossfield's truck should be determined by comparing its weight when empty to its manufacturer's "gross vehicle weight rating" under WIS. STAT. § 340.01(19r). Because Crossfield's truck had a manufacturer's "gross vehicle weight rating" of 14,000 pounds, resulting in a "capacity" of over three tons (14,000 minus its 7200-pound stipulated empty weight), his conduct in parking the truck on a residential lot was "clearly proscribed" by MGO § 28.11(3)(a)1. Accordingly, Crossfield does not have standing to challenge the ordinance as constitutionally vague. *See* ***City of Milwaukee v. K.F.***, 145 Wis. 2d 24, 34, 426 N.W.2d 329 (1988).

¶23 Crossfield next asserts that a statute of limitation bars his prosecution for violating the ordinance because he has been parking his truck on his residential property for over ten years without interference from the City. The statute of limitation for prosecution of a municipal ordinance violation is two years. WIS. STAT. § 893.93(2)(b). The statute does not run from the first day of a continuing violation, however, but from the day such a violation ceases. The City issued Crossfield a citation on September 18, 2001, for a violation alleged to have occurred the day before, September 17, 2001. Thus, § 893.93(2)(b) does not bar this action.

¶24 Although he refers to the statute of limitation for ordinance prosecutions, Crossfield's argument appears to be premised more on a theory of

equitable estoppel. We reject the estoppel argument as well. Estoppel cannot be used to prevent the government from enforcing a statute or regulation "when the application of the doctrine interferes with the police power for the protection of the public health, safety or general welfare." ***DOR v. Moebius Printing Co.***, 89 Wis. 2d 610, 639, 279 N.W.2d 213 (1979). Because we conclude that MGO § 28.11(3)(a)1 protects the safety and general welfare of the community, the City may not be estopped from enforcing it against Crossfield, even if it did not attempt to do so for several years after Crossfield began violating the ordinance.

¶25 Finally, Crossfield argues that he was denied procedural due process when the Zoning Board of Appeals failed to grant him a hearing that would have stayed enforcement of the ordinance. He does not advance a constitutional challenge but contends that the board failed to follow its own procedural requirements for the appeal of a decision of the zoning administrator. When he made this argument in the circuit court, Crossfield asserted facts the City had no opportunity to refute. The circuit court nevertheless reviewed Crossfield's submissions and concluded that, even if the City had stipulated to the factual accuracy of the additional materials, they were insufficient to sustain Crossfield's claim that the board improperly denied his request for a hearing.[9]

¶26 Generally, a trial court's findings of fact will not be set aside unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). An appellate court, however, is "in just as good a position as the trial court to make factual inferences

[9] Both parties assert that the materials relating to Crossfield's hearing request are missing from the record on appeal. Some or all of the documents, however, appear to be included within the record of the proceedings conducted in the Madison Municipal Court that is included in the record on appeal.

based on documentary evidence and … need not defer to the trial court's findings." ***Cohn v. Town of Randall*****,** 2001 WI App 176, ¶7, 247 Wis. 2d 118, 633 N.W.2d 674. Regardless of the standard for our review, we agree with the trial court's conclusion on this issue.

¶27 The Madison General Ordinances provide that a person aggrieved by a decision of a zoning inspector may appeal to the Zoning Board of Appeals. MGO § 28.12(7)(a). The ordinance provides that an appeal "shall be taken within a reasonable time … by filing with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof." ***Id***. In addition, the appellant is required to pay a $200 filing fee. Upon initiating an appeal, all legal proceedings to enforce the decision are stayed pending resolution of the appeal. Section 28.12(7)(b).

¶28 Crossfield submitted a letter to the zoning administrator along with a check in the amount of $200. His letter stated:

> Let this letter inform you … that this is a formal appeal of your interpretation of Chapters 17, 18, 19, 27, 28, 29, 30 and 31 of the City of Madison Ordinances pertaining to your 'inspection' of our property at 917 Havey Rd. Furthermore, I retain the right to withdraw this appeal if I receive timely, precise, written responses to my questions that will help me understand your action.

At the top of his "Zoning Board of Appeals Appeal Application" form, Crossfield noted that he was "filing for an extension." His check contained the following notation in the "memo" section: "Can you hold this check for [illegible] answers to my questions concerning [illegible] action [illegible] for extension."

¶29 The zoning administrator granted Crossfield an extension of time to bring his property into compliance with the ordinance. Ultimately Crossfield's

check was returned to him marked "void," along with a letter stating that "instead of an appeal to the Zoning Board, I granted you an extension for compliance."

¶30 Crossfield's application form, letter, check, and the notations on them, could reasonably be interpreted by the zoning administrator as a request for an extension of time to comply with the ordinance. We agree with the circuit court that the payment submitted by Crossfield was at best a "conditional payment," and that by asking that his check be held, Crossfield did not actually tender the appeal fee. He thus did not properly commence an appeal under MGO § 28.12(7)(a), and his right to an appeal hearing was not violated.

CONCLUSION

¶31 For the reasons discussed above, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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