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DISTRICT II

October 2, 2024

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You are hereby notified that the Court has entered the following opinion and order:

2022AP1938

Delventure1, LLC v. Village of Slinger (L.C. #2022CV178)

Before Neubauer, Grogan and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Delventure1, LLC appeals from a circuit court order authorizing the Village of Slinger to raze a commercial building owned by Delventure1. The court determined that the Village's raze order was reasonable. Based upon our review of the briefs and record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

Delventure1 is the owner of a commercial building in the Village of Slinger. It purchased the building in 2012 for \$30,000. The building previously housed a creamery and had not been maintained for many years.

In May 2020, the Village received a complaint about the condition of Delventure1's building. It inspected the building and sent Delventure1 a letter expressing its concerns. Those concerns included: a collapsing roof at the north side of the building, areas with no roofing material or shingles coming off, rotted fascia boards, broken windows, block walls needing paint, missing siding and fascia, and missing or damaged gutters and downspouts.

Between June 2020 and February 2022, the Village routinely inspected Delventure1's building, issuing reports with alleged code violations. During that time, Delventure1 made various repairs. However, progress was slow and problems with the building's roof remained unresolved. The roof's poor condition led to water infiltration, damaging the roof's support structure as well as the building's walls, eaves, soffits, and foundation.

On February 23, 2022, the Village issued a raze order pursuant to WIS. STAT. § 66.0413. The order detailed multiple code violations and maintained that the costs of repairing the building would exceed 50 percent of its value.²

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² According to the Village, the estimated costs of repair ranged from \$87,978 and \$154,804. The building's estimated value, meanwhile, was \$20,293.98.

Delventure1 filed a complaint seeking to restrain the Village from enforcing the raze order. Delventure1 asserted that the order was unreasonable. The matter proceeded to a court trial.

At trial, the circuit court heard testimony from several witnesses, including Delventure1's owner Brian Delfosse and its appraiser Robert Quam. Ultimately, the court concluded that the raze order was reasonable. It therefore dismissed Delventure1's complaint and ordered the building razed. This appeal follows.

Pursuant to WIS. STAT. § 66.0413(1)(b)1, a municipality may issue a raze order “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[.]” Repairs are presumed unreasonable if their cost exceeds 50 percent of the building's estimated value, according to a statutory formula.³

A property owner affected by a raze order issued under WIS. STAT. § 66.0413(1)(b)1 may apply to the circuit court “for an order restraining the building inspector or other designated officer from razing the building[.]” See § 66.0413(1)(h). In such a case, “[t]he court shall determine whether the raze order is reasonable.” *Id.* If the court finds that the order is reasonable, it “shall dissolve the restraining order.” *Id.*

The reasonableness of a raze order presents a question of law. *Auto-Owners Ins. Co. v. City of Appleton*, 2017 WI App 62, ¶24, 378 Wis. 2d 155, 902 N.W.2d 532. Although we

³ That formula is “50 percent of the assessed value of the building divided by the ratio of the assessed value to the recommended value as last published by the department of revenue for the municipality within which the building is located[.]” WIS. STAT. § 66.0413(1)(c).

typically review such questions independently, “we give weight to the circuit court’s determination” because its determination is “intertwined with its factual findings supporting that conclusion[.]” *Id.*

On appeal, Delventure1 renews its assertion that the Village’s raze order was unreasonable.⁴ It submits that: (1) its building did not meet the criterion of being dangerous, unsafe, unsanitary, or otherwise unfit for human habitation; (2) the building’s estimated value was arbitrarily too low; and (3) the Village’s estimated costs of repair was too high. We are not persuaded by Delventure1’s arguments.

With respect to the building itself, Delventure1 presented no evidence to undermine the contention that the building was dangerous, unsafe, unsanitary, or otherwise unfit for human habitation.⁵ Indeed, Delventure1 showed just the opposite. Its owner, Delfosse, acknowledged that problems with the building’s roof remained unresolved. Moreover, its appraiser, Quam, testified that the building would not be habitable without additional costs even if the roof were repaired.

With respect to the building’s estimated value, there was nothing arbitrary about it. Again, Delventure1 purchased the building in 2012 for \$30,000. When the Village subsequently

⁴ Additionally, Delventure1 complains that the circuit court erred in: (1) analyzing the raze order under WIS. STAT. § 66.0413(1) instead of § 66.0413(2), which deals with public nuisances; and (2) failing to find that the Village was equitably estopped from pursuing the raze order. Because Delventure1 did not raise these complaints in the circuit court, we do not address them now. *See State v Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (issues not presented to the circuit court will not be considered for the first time on appeal).

⁵ As the party applying to the circuit court for a restraining order, it was Delventure1, not the Village, that bore the burden of proof. *See Wolfe v. Wolfe*, 2000 WI App 93, ¶15, 234 Wis. 2d 449, 610 N.W.2d 222.

assessed the property (both land and improvements) at \$83,600, Delventure1 complained and successfully lowered the number to \$50,000 based upon its purchase price. By 2021, with recent repairs made, the assessment had increased to \$52,900, representing \$33,300 for the land and \$19,600 for the improvements. Given this history—which Delventure1 actively participated in—it was not error for the circuit court to rely on the assessment when determining the building’s estimated value.⁶

Finally, with respect to the estimated costs of repair, we are satisfied that they exceeded 50 percent of the building’s estimated value, which triggered the presumption of unreasonableness under WIS. STAT. § 66.0413(1)(c). As noted by the Village, Delventure1 had the burden of proof and did not address the Village’s estimated costs of repairs. In any event, the estimates that Delventure1 did offer all exceeded 50 percent of the building’s estimated value, which was approximately \$10,147.⁷ Because of this, and because Delventure1 failed to demonstrate that this was a “rare case” where the statutory presumption should not apply, we conclude that its building was unreasonable to repair. *See Posnanski v. City of West Allis*, 61 Wis. 2d 461, 469, 213 N.W.2d 51 (1973) (noting that it would be a “rare case” where a property owner could show that operation of the statutory presumption lacked a rational basis and should not apply).

⁶ Again, the building’s estimated value was \$20,293.98. This number is calculated by taking the assessed value of the building at the time of the raze order (\$19,600) and dividing it by the average assessment ratio provided by the department of revenue (0.965803699). *See* WIS. STAT. § 66.0413(1)(c).

⁷ In its pleadings, Delventure1 estimated the costs of repairing the roof alone to be between \$55,000-\$60,000 if performed by a professional. Delfosse later testified that he found someone who could do the job for approximately \$40,000. He then added that he could do most of the work himself and just pay for materials, which amounted to \$15,515.01.

In the end, we agree with the circuit court's determination that the Village's raze order was reasonable. Accordingly, we affirm.⁸

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

⁸ To the extent we have not addressed an argument raised by Delventure1 on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).