COURT OF APPEALS
DECISION
DATED AND RELEASED

March 14, 1996

NOTICE

No. 95-2720-FT

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

CITY OF MARSHFIELD,

Plaintiff-Respondent,

v.

FRANK A. VIETSCHEGGER,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Wood County: EDWARD F. ZAPPEN, JR., Judge. *Affirmed*.

SUNDBY, J. Defendant presents a single issue: Does the record support a finding that he maintained "blighted premises" contrary to City of Marshfield Ordinance No. 10.05(13)? We[1] conclude that it does and affirm the judgment imposing a forfeiture.

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[1] This appeal is decided by one judge pursuant to § 752.31(2)(b), STATS. "We" and "our" refer to the court.

Section 10.05(13)(a) of the Marshfield Municipal Code provides that the following are public nuisances:

> Premises existing within the City which are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management, or due to the accumulation thereon of junk or other unsightly debris, structurally unsound fences, and other items which depreciate property values and jeopardize or are detrimental to the health, safety, morals or welfare of the people of the City.

On April 14, 1994, the City Building Services Supervisor, Roland Donath, inspected defendant's premises and issued him an order to "[r]emove all old vehicles, junk and miscellaneous debris from the premises" by June 15, 1994. Defendant did not comply and was summoned to appear before the circuit court on August 29, 1994. After a hearing, the court found defendant guilty and entered a judgment August 15, 1995, requiring defendant to pay $5.00 a day until the premises were cleaned up or until he erected a fence around the premises.

Defendant concedes that the testimony of Donath and the photo exhibits support the trial court's finding that his premises are a junkyard. The trial court stated: "You can call it whatever you want. It's a junk yard ...." The photographs, taken August 10, 1995, show dilapidated vehicles, an old air compressor, wood pallets, storage barrels, old tanks, stacks of old lumber, miscellaneous metal parts, and miscellaneous debris.

Defendant argues that this evidence is insufficient to show that the condition of his premises (1) depreciates the property values of surrounding property and (2) jeopardizes or is detrimental to the health, safety, morals or welfare of the people of the City.

Defendant contends that the City had to prove by "direct testimony" that defendant's property depreciated the value of other property. We read defendant to argue that expert testimony was required to show

depreciation in the property values of other property. He cites the rule that a trial court may take judicial notice of facts of "verifiable certainty." ***Fringer v. Venema***, 26 Wis.2d 366, 372-73, 132 N.W.2d 565, 569-70 (1965). We agree with defendant's statement of the general rule, but reject its application here. The evidentiary facts include that defendant has accumulated on his premises junk and other unsightly debris; that an adjacent neighbor is a daycare center; that the property across the street is zoned residential; and that defendant's property is not zoned for a junkyard or auto salvage yard.

In view of these facts, the trial court's finding that defendant's use of his premises depreciates the value of adjacent property is not clearly erroneous. *See* § 805.17(2), STATS. Nor is the court's finding that defendant's property is unsightly clearly erroneous. We conclude as a matter of law that unsightly property which depreciates property values is detrimental to the welfare of the people of the City.

By the Court.—Judgment affirmed.

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