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DISTRICT IV

May 27, 2014

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

2013AP1381 Gaylia A. Murphy v. Village of Fremont (L.C. # 2012CV456)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Gaylia Murphy and Edward Murphy appeal an order finding the Village of Fremont's raze orders reasonable and lifting the restraining order on the razing. 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(1) (2011-12).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The Murphys first argue that the Village did not properly follow the procedures for razing buildings that are considered to be a public nuisance under WIS. STAT. § 66.0413(2). This argument fails because the Village's raze orders were not based on that subsection. The orders state that, on the basis of inspections, the Village was finding the properties to be so out of repair as to be unfit for habitation or use; that they are a possible health or safety hazard to the public; and that it would be unreasonable to repair them. This language in the orders tracks the language in § 66.0413(1)(b)1., which does not involve the same procedures as a public nuisance razing under § 66.0413(2). Therefore, the Village was not required to follow the latter procedures.

The Murphys appear to argue that the Village was required to follow the public nuisance procedure because the inspector at one point described the buildings as public nuisances. However, the Murphys cite no legal authority that makes such comments by the inspector determinative of the statutory provision the Village must use. Even with such comments, we see no reason why the village was not free to use the non-nuisance procedure. Furthermore, it appears that the Murphys are making this argument about the inspector's comments for the first time on appeal, and normally we do not consider such arguments. ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), *superseded by statute on other grounds*.

The Murphys next argue that the circuit court erred because there was insufficient evidence that the buildings were unreasonable to repair. Repairs are presumed unreasonable if their cost would exceed half of the value of the building, as determined by the formula stated in WIS. STAT. § 66.0413(1)(c). Here, the building inspector testified that repairs would exceed that measure.

The Murphys argue that the court should have believed their expert instead of the inspector because the inspector was not credible. They appear to argue that he was not credible because he did not provide an itemized list of repair items or a total numerical value of the repairs required. This argument is not persuasive because, given the relatively low value of the buildings and the large number of repairs required, it was not necessary for the inspector to provide specific dollar amounts for his conclusion using the presumption of unreasonability to be credible.

Finally, we note that the ***Lamar Central Outdoor*** case cited by the Murphys was a per curiam decision, and therefore we remind counsel that it cannot properly be cited under WIS. STAT. RULE 809.23(3).

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals