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DISTRICT I/IV

June 27, 2017

To:

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

2016AP1451

City of Milwaukee v. J. Jesus Gamez (L.C. #2015CV10282)

Before Lundsten, Sherman and Blanchard, JJ.

Jesus Gamez appeals an order that declared his property a public nuisance and directed its sale. 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 (2015-16).¹ We affirm.

Gamez first argues that the circuit court erroneously exercised its discretion by denying a continuance. Gamez appeared at the hearing without counsel and requested a continuance to obtain counsel. The court found that Gamez understood he could hire an attorney, that he did so

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

in a related criminal case, and that Gamez intentionally appeared without counsel to try to delay this case.

Without attempting to address all the relevant considerations here, we conclude that this was not an erroneous exercise of discretion. Gamez argues that the court improperly considered information that it obtained from him, in violation of attorney-client privilege, about what his lawyer said about appearing at this hearing. However, it does not appear that the court relied on such information in making the findings we described above. And, those findings are a reasonable basis to deny the continuance.

Gamez next argues that the circuit court erred by allowing the admission of hearsay evidence, in the form of statements by a Gamez employee to an investigating officer about sales of controlled substances at Gamez's property. Gamez argues that admission of this evidence was improper because the court relied on hearsay evidence to establish that the statements were not hearsay because they were made by an agent of Gamez. *See* WIS. STAT. § 908.01(4)(b)4.

Gamez does not cite any legal authority holding that a court considering admission of evidence may not rely on hearsay evidence in making its decision. His position appears to be contrary to the rule of evidence stating that, in deciding the admissibility of evidence, the judge is bound by the rules of evidence only as to privileges and admissibility of certain medical test results. *See* WIS. STAT. § 901.04(1). In other words, the court is not bound by other rules of evidence, such as hearsay rules, in deciding the admissibility of evidence.

Furthermore, Gamez fails to reply to the City's argument that admission of this evidence was harmless. The City argues that even without statements from the employee, the evidence to establish nuisance was overwhelming. In fact, Gamez does not even specifically identify what

the inadmissible evidence was, other than to say that it implicated Gamez in the drug dealing. The City argues, without dispute, that it is not necessary to prove that Gamez was involved in order to find nuisance.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. Rule 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. Rule 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals