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**DISTRICT II**

March 7, 2018

*To*:

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Fond du Lac County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP346 Parker J. Deanovich v. City of Fond du Lac (L.C. #2014CV433)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).**

Parker J. Deanovich appeals an order dismissing his negligence claim against the City of Fond du Lac. He contends the City's building inspector failed to ascertain that health hazards from animal waste in a home declared unfit for human habitation were satisfactorily remediated. We conclude that Deanovich has not proved that the City caused any of his claimed damages.

Upon reviewing the briefs and the record, we conclude at conference the case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[1] We affirm.

The City's Property Maintenance Code requires that buildings and dwellings be maintained in a "clean and sanitary condition." Edward Gresser is a code enforcement officer with the City's building inspector's office. In April 2012, he declared a residential home unfit for human habitation due to accumulated indoor animal waste from the homeowner's thirty or so cats, dogs, and birds. A bank foreclosed on the residence and hired a professional remediation company to address the conditions.

In March 2013, Gresser reinspected the house and found it ninety percent improved. Chad Nagel, a real estate investor, purchased the house to "flip" it. Told to finish remediation, Nagel painted the entire house, including the basement floor, and installed new carpeting over the hardwood floors. Gresser inspected the home a third time in November 2013 after Nagel's improvements were done. Finding the house clean and sanitary and smelling only of fresh paint and new carpeting, Gresser declared it fit for human habitation. Nagel put the house up for sale.

Unaware of the home's history, Deanovich viewed the property several times with his mother and realtor and engaged a home inspector before purchasing it in February 2014. He lived there for about four months when, on a hot day, his mother noticed an odor upon entering the house. Deanovich, his parents, and other visitors to his home had not detected any smell before this. At his mother's urging, Deanovich moved out a few days later. He filed this negligence action against the City, alleging that the City, specifically Gresser, did not verify that

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

the property was properly remediated before removing the unfit-for-human-habitation designation.[2] The trial court dismissed Deanovich's claim against the City. He appeals.

A plaintiff alleging negligence must prove four elements: (1) A duty of care on the part of the defendant; (2) a breach of that duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury. ***Rockweit v. Senecal***, 197 Wis. 2d 409, 418, 541 N.W.2d 742 (1995). We limit our discussion to causation and damages.

Deanovich alleged in his complaint that his house poses a "significant health hazard" and that he has been "forced to vacate the property due to the intolerable odor and fumes." He argues that the damages resulted from Gresser negligently declaring the house "clean and sanitary" and fit for human habitation after only a cursory visual and olfactory inspection and without having confirmed what, if any, remediation steps and products were employed.

"Expert testimony is required to prove causation if the matter does not fall within the realm of ordinary experience and lay comprehension." ***Menick v. City of Menasha***, 200 Wis. 2d 737, 748, 547 N.W.2d 778 (Ct. App. 1996); *see also* WIS. STAT. § 907.02 (If specialized knowledge will assist trier of fact, witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto if testimony is based upon sufficient facts or data.).

Deanovich provided no admissible expert testimony to shore up his claims. His expert, Joel Berens, owns a business that does catastrophic damage remediation. Berens, who has had only a few hours of professional training in animal hoarding remediation, testified that he applied

[2] Deanovich also sued Nagel. They later settled.

hydrogen peroxide to patches of wood, which caused "fizzing," indicating the presence of "biological debris." He could not say if the matter was urine, feces, fungus, mold, or mildew, however, as he was not trained to do further testing; a microbiologist would need to opine as to the nature of the debris. Deanovich did not produce a microbiologist or other scientist.[3]

Berens further described how he himself might have remediated the animal waste problem but could not say that Gresser's inspections fell below an industry standard for inspectors. Berens thus tied no remedial duty to Gresser and his lack of background or expertise to say whether the home poses a health risk renders speculative his "expert" testimony that the home is hazardous in its current state.

The City's expert, Coyne Borree, owns a property damage restoration company. He readily agreed that Deanovich's improperly remediated house remained contaminated from animal waste. He could not opine, however, whether Gresser's inspections met industry standards because Borree—who is not an inspector—had no specialized knowledge of a code enforcement officer's or building inspector's professional duties or the standard for "clean and sanitary" under the City's code. Neither expert is medically trained.

Even the uncontradicted opinion of an expert is not binding on the trier of fact. ***Capitol Sand & Gravel Co. v. Waffenschmidt***, 71 Wis. 2d 227, 233-34, 237 N.W.2d 745 (1976). Whether to credit it and what weight to give it are judgments for the fact finder to make. ***City of Stoughton v. Thomasson Lumber Co.***, 2004 WI App 6, ¶18, 269 Wis. 2d 339, 675 N.W.2d 487

[3] Deanovich did see a physician and take his dog to a veterinarian to ensure there was no health impact from exposure to the fumes in the house but he provided no proof from them of any reason for health concerns.

(2003). The circuit court agreed with the City, as do we, that Deanovich did not prove that Gresser's inspections were substandard or prove a causal connection between them and a health hazard allegedly so serious as to make the house uninhabitable. By failing to file a reply brief, Deanovich concedes the City's position. *See* ***Charolais Breeding Ranches, Ltd., v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (arguments not refuted are deemed admitted). Without proof of causation, we need not reverse and remand for a determination of damages.

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.

*Sheila T. Reiff*
*Clerk of Court of Appeals*