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DISTRICT II

April 29, 2020

To:

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

2019AP718

Scenic Pit LLC v. Village of Richfield and Jim Healy
(L.C. #2015CV374)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

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).

The Village of Richfield appeals from an order of the circuit court granting summary judgment on the remaining issues in this case. The Village argues that our decision in *Scenic Pit LLC v. Village of Richfield (Scenic Pit I)*, 2017 WI App 49, 377 Wis. 2d 280, 900 N.W.2d 84, *review denied*, 2017 WI 94, 378 Wis. 2d 223, 904 N.W.2d 371, did not exempt clean fill landfills from “any and all local control, supervision and permitting,” including the right of the Village to have control over the permitting of the “driveway and culvert(s)” at the clean fill landfill subject

to this action. The circuit court, on remand from *Scenic Pit I*, 377 Wis. 2d 280, ¶30, concluded that “the Court of Appeals has made it abundantly clear the landfill in question is not subject to local approvals.” Based upon our review of the briefs and record, and the decisions in *Scenic Pit I* and *DeRosso Landfill Co. v. City of Oak Creek*, 200 Wis. 2d 642, 547 N.W.2d 770 (1996), we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21 (2017-18).¹ We summarily affirm.

Consistent with our holding in *Scenic Pit I*, where we stated that “Scenic need not comply with the Village’s zoning and construction stormwater and erosion requirements because the legislature has expressly withdrawn the Village’s power to act,” *Scenic Pit I*, 377 Wis. 2d 280, ¶7, the Village has no local permitting control over Scenic’s clean fill facility for the driveway and culverts, see WIS. STAT. §§ 289.33(3)(d); 289.43(8). Further, the circuit court found that “[n]othing in the plaintiff’s complaint or the defendant’s affirmative defenses references anything concerning a requirement that the landfill be operated in a nuisance free and aesthetic manner per [WIS. ADMIN. CODE §] NR 500.08.” The court concluded, recognizing our statement in *Scenic Pit I*, 377 Wis. 2d 280, ¶30 n.22, that “any issues over the operation of the landfill, including the issue of whether it can be operated in a nuisance free and aesthetic manner, is not before this Court.” We agree, but we express no opinion on whether the operation of the landfill pursuant to § NR 500.08 could be the subject of a future action. Accordingly, we affirm the order of the circuit court dismissing the Village’s action in this case.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Scenic also argues that the Village's entire appeal is frivolous and requests attorney fees and costs pursuant to WIS. STAT. RULE 809.25(3). We decline to find that the Village's arguments are made in bad faith or without any basis in law.

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 Scenic's motion for costs and attorney fees under WIS. STAT. RULE 809.25(3) is denied.

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

Sheila T. Reiff
Clerk of Court of Appeals