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DISTRICT II

November 15, 2023

To:

Hon. Andrew J. Christenson
Circuit Court Judge
Electronic Notice

William E. Fischer
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Patricia Dye
Steven Dye
P.O. Box 466
Kewaskum, WI 53040

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

2023AP59

Osceola Mobile Home Recreational Park Cooperative
v. Steven Dye and Patricia Dye (L.C. #2020CV342)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Steven and Patricia Dye appeal from a judgment pursuant to an order of the circuit court granting summary judgment to Osceola Mobile Home Recreational Park Cooperative (the "Co-op") in the Co-op's action for declaratory judgment, injunctive relief, and breach of contract. The Co-op, which owns a licensed manufactured home community, asserted that the structure the Dyes were building on a lot they lease from the Co-op did not conform to the Co-op's rules and bylaws and must therefore be removed. The Dyes argued that the Co-op waived any objections to their construction and was estopped from claiming they had committed any violations. 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 (2021-22).¹ For the reasons that follow, we affirm.

For the purposes of this appeal, the following facts are not disputed. The Dyes first leased a lot from the Co-op and purchased the mobile home existing thereon in 2017. The Co-op’s rules are incorporated into every lease, and they dictate that only mobile homes may be installed in the park.² In August 2018, the Dyes’ mobile home was severely damaged by tornados passing through the area. Several months later, in late November 2019, the Dyes obtained a permit from Fond du Lac County to pour a concrete slab within the original footprint of the home. The slab was to incorporate high wind anchors to hold their repaired mobile home. Shortly after receiving the permit, the Dyes submitted to the Co-op a “Request to Modify Shareholder Property” reflecting plans to add this slab under their dwelling, but the Co-op did not respond to this request.

In May 2019, the Dyes realized that their mobile home was beyond repair and would have to be demolished. They attended a special meeting with the Co-op board and members on June 22, 2019, during which their plan for building a new structure was unanimously approved. The minutes of this meeting reflect that the response to a question regarding “the makeup of the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² The Co-op’s license for its “manufactured home community” reflects that “26 Mobile Home Sites” were permitted in the park. Pursuant to WIS. STAT. § 101.91, part of a subchapter related to “manufactured homes and mobile homes,” one definition of a “[m]anufactured home” is a “mobile home.” The terms “manufactured home” and “mobile home” are used synonymously in this order.

new structure” was that “[t]wo units on wheels ... [would] be connected.”³ It was made clear that the new structure would have “the same size, frame and footprint as the original mobile home and addition” but that it would “not be a standard mobile home” because that was “not in the owner’s plan.”

In August 2019, the Dyes submitted another “Request to Modify Shareholder Property” form, again showing the concrete slab they desired, which the Co-op approved on September 1, 2019. The slab was poured shortly afterward, and in mid-September, the Dyes began construction of their new structure on-site with no complaints from the Co-op. Their son, who owns and manages a construction business, assisted Mr. Dye in building the home. The Dyes do not dispute that a licensed manufactured home builder did not build their new home, nor do they dispute that the home they built is “stick built.”⁴ They assert that various people from the Co-op, including multiple board members, observed the construction over the winter of 2019-20. Nevertheless, they say, it was not until their home was substantially complete—in May 2020—that they received a letter informing them that their construction was not in compliance with the plans approved by the Co-op and that the structure would have to be removed.

³ The meeting minutes were amended in June 2020 to add that “the units [making up the Dyes’ new home] would be built offsite and attached together at [their lot in the manufactured home community].” The Dyes dispute that there was any discussion about where the two units would be constructed at the June 2019 meeting.

⁴ A representative of the Town of Osceola noticed that “a new wood structure was being built on the ... lot” and informed the Dyes that they would need a building permit for the structure they were building on November 16, 2019, and they obtained the building permit on the same day. While manufactured homes do not require a permit from the Town, the Dyes’ “wood built” or “stick built” structure did require one.

The Dyes refused to remove the structure they had built. In October 2020, the Co-op filed suit against the Dyes, seeking a declaration that the Dyes’ construction is a non-conforming structure and an order requiring them to remove it from their lot. The circuit court granted the Co-op’s motion for summary judgment, stating that “[t]he issue is whether the structure built by the Dyes can be located in a manufactured home community.” The court determined that “[t]he Dyes’ new structure, a stick-built home, does not qualify as a manufactured home and cannot be located in a manufactured home community.” The court went on to cite state and federal laws regulating manufactured homes⁵ before rejecting the Dyes’ defenses of waiver and estoppel, citing *J.R. Watkins Co. v. Vangen*, 116 N.W.2d 641 (N.D. 1962), and concluding that the Co-op “cannot waive statutory and regulatory requirements for manufactured homes and cannot be equitably estopped from ensuring compliance with Wisconsin regulations that arise as a public statutory obligation.”

On appeal, the Dyes argue that the circuit court erred and that waiver and/or estoppel apply against the Co-op. We review a circuit court’s summary judgment decisions de novo, “applying the same method employed by the [circuit] court.” *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶2, 275 Wis. 2d 397, 685 N.W.2d 853. “[S]ummary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See *M & I First Nat’l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 496-97, 536 N.W.2d 175 (Ct. App.

⁵ Specifically, the court cited WIS. STAT. § 101.91(2)(am) (defining a manufactured home as a structure that “compl[ies] with the standards established under 42 USC 5401 to 5425”); WIS. STAT. §§ 101.9203-04 (relating to certificates of title for manufactured homes); 42 U.S.C. § 5402(6) (defining a “manufactured home” as a structure that, among other requirements, “is built on a permanent chassis” and is “transportable in one or more sections”); and WIS. ADMIN. CODE § SPS 305.32 (through Sept. 2023) (discussing licensing requirements for manufactured home manufacturers).

1995); WIS. STAT. § 802.08(2). Any reasonable doubt as to the existence of a genuine issue of material fact must be resolved against the moving party, *Energy Complexes, Inc. v. Eau Claire County*, 152 Wis. 2d 453, 462, 449 N.W.2d 35 (1989), and it is that party’s burden “to establish the absence of a genuine issue of material fact” that precludes summary judgment, *Bantz v. Montgomery Estates, Inc.*, 163 Wis. 2d 973, 984, 473 N.W.2d 506 (Ct. App. 1991).

The Co-op has met its burden to show that that judgment as a matter of law is appropriate. We conclude, as the circuit court did, that this case should be resolved by answering the question of whether the home built by the Dyes can be located in a manufactured home community. It cannot, because it is not a manufactured home. As set forth in WIS. STAT. § 101.91(2), a manufactured home is either a mobile home (a vehicle, according to § 101.91(2)(c)) or “[a] structure that is ... certified by the federal department of housing and urban development as complying with the standards established under [42 U.S.C. §§ 5401 to 25].” Those federal standards include the requirements that the structure is “transportable” and “built on a permanent chassis.” 42 U.S.C. § 5402(6). WISCONSIN ADMIN. CODE § SPS 305.32(1)(a) makes clear that a manufacturer of manufactured homes must hold a license issued by the Department of Safety and Professional Services. Despite characterizing it as a “mobile home” in their briefs, the Dyes concede that the home they built was “stick built,” not built on a permanent chassis. They also admit that it was not built by a licensed mobile home builder.

The Dyes’ defenses of waiver and estoppel fail as a matter of law. As stated by the circuit court, even if all the facts asserted with respect to these defenses are true—which we must assume on a motion for summary judgment—and the Co-op was fully aware of the type of structure that the Dyes were building but said nothing about it for months, implicitly approving the structure, the Co-op cannot waive or be estopped from ensuring compliance with applicable

statutory regulations. A private party may waive or be estopped from asserting only those statutory requirements that confer a private right or benefit on that party. *Ceria M. Travis Acad., Inc. v. Evers*, 2016 WI App 86, ¶23, 372 Wis. 2d 423, 887 N.W.2d 904; *J.R. Watkins Co.*, 116 N.W.2d at 650-51. The manufactured home requirements discussed above do not confer a private right or benefit on the Co-op; they are explicitly for the purpose of ensuring the “quality, durability, safety, and affordability of manufactured homes.” 42 U.S.C. § 5401(b)(1).

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals