COURT OF APPEALS
DECISION
DATED AND RELEASED

June 26, 1996

No. 96-0163-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

WALWORTH COUNTY,
a body corporate,

Plaintiff-Respondent,

v.

EDWARD JOHN SHUMAK
and JILL SHUMAK,

Defendants-Appellants.

APPEAL from an order of the circuit court for Walworth County: JOHN R. RACE, Judge. *Affirmed*.

SNYDER, J. Edward John Shumak and Jill Shumak appeal from a forfeiture order which resulted from maintaining exotic animals on their property in contravention of the applicable zoning ordinance. On appeal, the Shumaks contend that the trial court erred in its interpretation of what constitutes game animal management for purposes of the ordinance. The

Shumaks seek to be relieved of the forfeiture. We conclude that the trial court did not err in its interpretation of the statute. Accordingly, we affirm.

The Shumaks own a ten-acre parcel of land in Walworth County. The property was originally zoned as an A-1 Prime Agricultural Land District. Forest and game management is a permitted use in the A-1 classification. *See* WALWORTH COUNTY, WI., ZONING ORDINANCE § 3.3(A) (1993). Since moving to the property in 1973, the Shumaks acquired and boarded various farm animals as well as bears, cougars, a golden jungle cat, a jaguar, leopards, ligers, lions, panthers, servals and tigers. In 1994, they applied for and received a limited license from the Department of Natural Resources (DNR) to operate a game farm for bears and cougars.[1]

Walworth County brought suit against the Shumaks asserting that harboring exotic animals violated the permitted uses of property in an A-1 district. The Shumaks countered that the animals on their property were game animals, and an A-1 district permitted "Forest and Game Management." The trial court concluded that the exotic animals the Shumaks were caring for were not game animals, and consequently, the operation did not constitute a game farm. This appeal followed.[2]

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[1] Edward testified that for approximately five years in the 1980's the property was licensed as a deer farm and also as a game farm. He did not renew that license because of a conflict with the DNR.

[2] The Shumaks subsequently applied for and received a rezoning of their property to a C-1 Conservancy District. They then requested a conditional use permit for an animal shelter, which was granted. While the County argues that the appeal is now moot, we choose as a matter of judicial discretion to address the issues on the merits.

The issue in this case requires this court to construe the meaning of "Game Management" as found in the Walworth County zoning code. The construction and application of an ordinance to a particular set of facts is a question of law which we review de novo. ***Eastman v. City of Madison,*** 117 Wis.2d 106, 112, 342 N.W.2d 764, 767 (Ct. App. 1983). The rules for the construction of statutes and ordinances are the same. ***Sauk County v. Trager,*** 113 Wis.2d 48, 55, 334 N.W.2d 272, 275 (Ct. App. 1983), *aff'd*, 118 Wis.2d 204, 346 N.W.2d 756 (1984).

While game management is a permitted use in an A-1 district, the county zoning code is silent as to a definition of either "game" or "game management." Because the parameters of game management are not defined, the ordinance is ambiguous. When an ordinance is ambiguous, it must be interpreted to give effect to the legislative intent. ***Milwaukee County v. DILHR***, 80 Wis.2d 445, 451, 259 N.W.2d 118, 121 (1977).

However, the "Fish and Game" chapter of the Wisconsin Statutes includes definitions of these and related terms. *See* § 29.01, STATS. The common and approved usage of terms can be established through citation to a legal definition of a term. ***Milwaukee County,*** 80 Wis.2d at 450, 259 N.W.2d at 121.

Included in that chapter are three definitions which are instructive in our understanding of what constitutes "game." Section 29.01(5), STATS., defines "game" as including "all varieties of wild animals or birds." Following this, subsec. (6) defines the term "game animals" to include "deer, moose, elk, bear, rabbits, squirrels, fox and raccoon." This is followed by a subsection

which enumerates species of "game birds" as separate from game animals. Section 29.01(7). The listed species in each category include only types of animals and birds indigenous to Wisconsin.

> A third definitional subsection then becomes significant: "Nongame species" means *any species of wild animal not classified as a game fish, game animal, game bird or fur-bearing animal.*

Section 29.01(10), STATS. (emphasis added). The creation of this separate category conclusively disposes of the Shumaks' contention that game animals include *all* varieties of wild animals. That construction would render this definition extraneous. A construction that renders any portion of a statute superfluous should be avoided. ***State v. Smith,*** 103 Wis.2d 361, 365, 309 N.W.2d 7, 9 (Ct. App. 1981), *aff'd*, 106 Wis.2d 17, 315 N.W.2d 343 (1982). A related rule of statutory construction requires that provisions of a statute are to be construed harmoniously. *See* ***State v. Fouse***, 120 Wis.2d 471, 477, 355 N.W.2d 366, 369 (Ct. App. 1984). Section 29.01(5) and (10) could not be read in harmony had the legislature intended game animals to encompass all species of wild animals.

We conclude that the county ordinance which allows game management refers to the management of species of animals, birds and fish common to Wisconsin. Exotic animals, such as the Shumaks' tigers, lions and servals, are nongame species as defined by the relevant statute. Therefore, the Shumaks' claim that the exotic animals they care for are game animals is without merit.

The Shumaks also contend that the trial court erred in its finding that the activities they engage in while caring for their exotic animals are not "game management." Section 29.574(1), STATS., allows for the operation of a game farm "for the purpose of breeding, propagating, killing and selling ... game animals." The Shumaks claim that their operation constitutes management despite their admission that they do not hold animals for the purpose of breeding, that they do not sell animals and that their stated policy was to act as a "privately held animal rehabilitation facility."

It is unnecessary to interpret the definition of "management" because the animals in the Shumaks' possession are not game. Consequently, the question of whether the Shumaks managed the animals is moot. A matter is moot if a determination sought cannot have any practical effect. ***City of Racine v. J-T Enters. of Am.,*** 64 Wis.2d 691, 700, 221 N.W.2d 869, 874 (1974).

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.