

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-2312

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

POLK COUNTY, A MUNICIPAL CORPORATION,

PLAINTIFF-RESPONDENT,

V.

RICHARD J. MUELLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Polk County: ROBERT RASMUSSEN, Judge. *Affirmed.*

CANE, C.J. Richard Mueller appeals a judgment and an order finding him guilty of operating a salvage yard in violation of Polk County's Comprehensive Land Use Ordinance. The order required Mueller to pay a forfeiture of \$1,319 and gave him sixty days to bring his property into compliance with the ordinance. If Mueller complied with the County's ordinance by either

removing the vehicles or licensing and insuring them, the forfeiture would be reduced to \$209.

Mueller contends that: (1) the evidence is insufficient to support the court's finding that he was guilty of operating a salvage yard; and (2) the court had no authority to order him to license and insure any vehicles remaining on the property as a means of remedying the zoning violation. Because there is credible evidence to support the trial court's findings and the court's use of injunctive relief was appropriate, the judgment and order are affirmed.

When reviewing a challenge to the sufficiency of the evidence to support a verdict, this court will not reverse unless it is satisfied that there is no credible evidence to sustain the finding. Section 805.14(1), STATS. A trial court's finding of fact will not be reversed unless it is clearly erroneous, § 805.17(2), STATS., and when more than one inference can be drawn from the credible evidence, this court on appellate review must accept the inference drawn by the trial court. *Mentzel v. City of Oshkosh*, 146 Wis.2d 804, 808, 432 N.W.2d 609, 611 (Ct. App. 1988).

Here, the trial court found Mueller violated the ordinance prohibiting the operation of automobile wrecking junk yards and salvage yards without a license. That ordinance provides in relevant part:

12. Automobile Wrecking Junk Yards or Salvage Yards.

a. No person ... shall keep, conduct or maintain any ... yard or place of keeping, storing or piling in commercial quantities whether temporarily, irregularly or continually, or for the buying or selling at retail or wholesale or dealing in any old, used or second hand materials of any kind ... which from its worse condition renders it practically unfit for the purpose for which it was made and which is

commonly classed as junk or salvage material ... without first having obtained and paid for a license

The assistant zoning administrator testified that she observed on the property forty-one automobiles that were commonly known as junk or salvage vehicles. She also testified that Mueller admitted that he sold car parts from cars located on the premises. Mueller testified that he intended to trade car parts from these cars on his property. He also admitted that many of these automobiles were incapable of being operated on a public roadway. Although Mueller testified that these cars were for his personal use, most of them were unlicensed and uninsured. Based on this evidence, including the photographs of the automobiles on the property, the trial court could reasonably find that these cars were unfit for the purpose for which they were made or, in common terms, junk or salvage vehicles. Also, the number of these inoperable cars and their sale for parts was sufficient for the court to reasonably conclude that they were in commercial quantity. Because credible evidence supports the holding, this court will not disturb it on appeal. *See* § 805.14(1), STATS.; *Weiss v. United Fire & Cas. Co.*, 197 Wis.2d 365, 388, 541 N.W.2d 753, 761 (1995).

In its order, the circuit court allowed Mueller to remedy the zoning violation by either removing or licensing and insuring the vehicles. Mueller does not contest that the remedy fashioned was improper, but rather challenges the court's authority to order remedial actions. He observes that the penalty portion of the zoning ordinance provides only for a monetary forfeiture for each offense and, therefore, he argues any order requiring more than a forfeiture is without authority. In response, the County contends that the circuit court has authority to issue injunctive orders to enforce zoning ordinances. This court agrees with the County.

In *Forest County v. Goode*, 219 Wis.2d 655, 671, 579 N.W.2d 715, 723 (1998), the supreme court in affirming the court of appeals concluded that the use of injunctive relief for zoning violations is within the circuit court's discretion. In finding Mueller had violated the Polk County Land Use Ordinance, the circuit court properly exercised its discretion by fashioning a reasonable remedy for him to avoid paying the substantially greater forfeiture. Interestingly, if Mueller does not like the remedy, he can pay the greater forfeiture. However, by leaving the junk automobiles on the property, he would again face new charges of violating the County ordinance.

By the Court.—Judgment and order affirmed.

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

