

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 2007

**David R. Schanker
Clerk of Court of Appeals**

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* WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2006AP1447
2007AP26**

Cir. Ct. No. 2005FO2367

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

TOWN OF MOSEL,

PLAINTIFF-RESPONDENT,

v.

JAMES B. HODGELL, SR.,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Sheboygan County:
TERENCE T. BOURKE, Judge. *Affirmed.*

¶1 NETTESHEIM, J.¹ James B. Hodgell, Sr., pro se, appeals from orders finding him guilty of violating town ordinances that prohibit the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

accumulation of junked vehicles and situating mobile homes outside of a licensed trailer park. Hodgell does not assert any direct trial court error, but instead argues that the local ordinances must give way to the “greater law” of state statutes and to his individual right, as ordained by the common law, to live as he sees fit. His sketchy supporting arguments are unpersuasive. Seeing no basis for reversal, we affirm.

¶2 The essential facts are undisputed. In November 2005, the Sheboygan county Town of Mosel began an ordinance enforcement action against Hodgell charging him with six ordinance violations: (1) operating an unlicensed junkyard, (2) accumulating unlicensed or junked vehicles, (3) maintaining a public nuisance, (4) parking a house trailer outside a licensed trailer park, (5) occupying a house trailer in an A-1 agricultural zone, and (6) failing to seek proper building permits. The action came about after Town constable Ken Moehring, in the course of investigating reports of ordinance violations the previous April, saw a property with “quite a few cars” visible from the road. Moehring saw even more vehicles when he drove up the driveway to put a copy of the relevant Town ordinances on the door of the house. Fourteen were unlicensed. Three mobile homes, two with windows boarded up, also were on the property, their disrepair visible from the road.

¶3 Tim Schukantz and his parents own the property.² Schukantz testified that in 1996 he and Hodgell had agreed in writing that Hodgell could keep two mobile homes on the property unless the Town objected, in which case the trailers would have to be removed. Schukantz told Hodgell he “didn’t want so

² A separate action also was filed against Schukantz.

many cars there,” but “[t]hat’s as far as it went.” Schukantz denied that Hodgell lives on the property, saying Hodgell “lives anywhere. He’s [a] homeless person.”

¶4 Hodgell said he would begin moving the vehicles out, but the accumulation grew. By May 2006 there were over fifty unlicensed vehicles. Many of the vehicles had rusted bottoms, junk inside them and plant overgrowth around them. Hodgell acknowledged that a number were not in start-up condition, but said some were operable, although he declined to start them or to look for or produce the vehicle registrations he claimed to have. There also were scores of stacked tires and a twenty-five- or thirty-foot trailer heaped with rusted car parts and miscellaneous junk. The trailer, which appeared to be a house trailer frame, had no wheels or hookups and the car parts were not stacked for transport but were “just on there.”

¶5 Two of the mobile homes had no water or sewer hookups, and the windows were boarded up. The third appeared inhabited, however. A well-worn footpath led to it and a power cord provided electricity to inside appliances, including an operating refrigerator stocked with unspoiled fresh and frozen food. A bedroom held stacks of clothing, a made-up bed, two working televisions, a fan and a heater.

¶6 Town of Mosel ordinances forbid properties being used as junkyards or salvage yards without a permit; the accumulation of unlicensed junk vehicles; and locating mobile homes outside of an authorized trailer park, except by permit. Town chairman Nathan Athorp testified that significant accumulations of tires and car parts may be conducive to insects and other vermin inhabiting the piles. The ordinances do allow a property owner one operable but unlicensed vehicle. The A-1, or primary agriculture, zoning requires that mobile homes have a permit and

be occupied by the operator of the farm. The Schukantz property is not an authorized trailer park and the Town has issued no mobile home, junkyard or salvage yard permit. Athorp testified that, to his knowledge, Hodgell conducted no farming activities on the premises. Hodgell's 2004 driver's license lists the property's address as his legal residence.

¶7 A two-day bench trial was held on May 3 and 26, 2006.³ The court dismissed counts 1, 3, 5 and 6, but found Hodgell guilty of accumulating unlicensed or junked vehicles on the property and parking a house trailer outside a licensed trailer park. The court ordered Hodgell to either remove all inoperable vehicles and mobile homes from the premises by June 16 and July 1, 2006, respectively, with forfeitures for each day beyond the ordered date, or pay the Town funds received for the items' scrap value. In addition, the court enjoined Hodgell from bringing any more vehicles or mobile homes to the property or face a contempt action.

¶8 On June 16, Hodgell, once more pro se, filed an ex parte motion in the court of appeals for relief pending appeal. He requested a stay of the requirement that he remove the vehicles and equipment by that same date, contending that the trial court had not addressed the request he made to it for that relief. This court denied the motion.

¶9 On June 19, Hodgell moved the circuit court for an emergency stay of the order. It was denied the same day. Shortly thereafter, he renewed his

³ Hodgell represented himself on the first day and was represented by counsel on the second.

motion in the court of appeals—again ex parte—for an emergency stay of the circuit court’s order that he remove the vehicles and equipment by June 16. This motion also was denied and we cautioned Hodgell that continuing to proceed ex parte could lead to sanctions, possibly dismissal. On June 30, Hodgell delivered to the District II offices two motions for reconsideration of its June 28 order denying the stay pending appeal. The motions were denied as not permitted, and Hodgell was advised that no further submissions would be accepted.

¶10 Hodgell appeals.

DISCUSSION

¶11 The trial court found Hodgell guilty of violating §§ 5.01 and 5.08 of the Town of Mosel ordinances. They provide in relevant part:

5.01 Ordinance Prohibiting the Parking, Storage and Accumulation of Defective and Unlicensed Motor Vehicles.

(1) Purpose: The purpose of this ordinance is to protect and foster the health, safety and well being of persons in the Town for the protection of their property rights and to beautify the landscape and otherwise promote the public interest

....

(3) Accumulation Unlawful: It shall be unlawful to park, stand, store or accumulate disassembled or unoperable or junked or wrecked motor vehicles, or to park, store, allow to stand or accumulate more than one (1) unlicensed operable motor vehicle by any owner of land or occupant of any land in the Town, except for [certain circumstances not argued to apply here].

5.08 Regulating the Parking and Location of House Trailers, Licensing and Regulating Trailer Camps, Providing for the Taxation of Trailers and Providing a Penalty.

....

(2) Location Outside Camps:

(a) It shall be unlawful, except in a licensed trailer camp, as provided in this ordinance, for any person to park any trailer on any street, alley, highway, or town road or other public place, or on any tract of land within the Town of Mosel.

TOWN OF MOSEL, Wis., CODE §§ 5.01, 5.08 (1983). The interpretation of an ordinance is a question of law that we review independently. *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 6, 260 Wis. 2d 633, 660 N.W.2d 656. Hodgell makes no claim of trial court error, but instead attacks the ordinances themselves. He contends “the unlawful ordinances … are not universal code correct according to the Wisconsin Statutory Code” and that they “deny the protection of individual rights.”

¶12 We read Hodgell’s statutory claim to implicitly argue that the Town of Mosel ordinances clash with state statutes. We agree that when a statute and an ordinance conflict, the statute governs. *See Welter v. City of Milwaukee*, 214 Wis. 2d 485, 492, 571 N.W.2d 459 (Ct. App. 1997). But Hodgell fails to flesh out his argument any further by explaining the nature of the conflict or which statute is involved.⁴ We have nowhere to go with this amorphous, undeveloped argument and decline to address it further. *See Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

⁴ The only statute Hodgell mentions is WIS. STAT. § 101.91(5m) and (10), evidence of which he contends was “not recorded” in the record he tried to make in Schukantz’s “identical case.” Those sections define “manufactured home community” and “mobile home” and Hodgell does not explain their relevance to his argument. Matters relating to Schukantz’s case, tried after Hodgell’s, are not before us.

¶13 Hodgell also contends that the ordinances and resulting complaint violate his Fourth Amendment right against unlawful seizures and his individual rights under the Ninth Amendment to possess property that is outside mainstream interests and does not threaten the public interest or safety.⁵ This, too, fails.

¶14 An ordinance enjoys a presumption of constitutionality. *Bence v. City of Milwaukee*, 107 Wis. 2d 469, 480, 320 N.W.2d 199 (1982). A challenger bears “the frequently insurmountable task of demonstrating beyond a reasonable doubt that the ordinance possesses no rational basis to any legitimate municipal objective.” *Id.* (citation omitted). Courts will not interfere with a municipality’s exercise of police power “unless the illegality of the exercise is clear.” *Highway 100 Auto Wreckers, Inc. v. City of West Allis*, 6 Wis. 2d 637, 643, 96 N.W.2d 85 (1959). The sole purpose of a court review is to determine whether any rational basis supports the ordinance. *See Chicago & N.W. Ry. Co. v. La Follette*, 43 Wis. 2d 631, 647, 169 N.W.2d 441 (1969). The presumption of validity also extends to the ordinance’s interpretation by those responsible for its enforcement. *State ex rel. B’nai B’rith Found. v. Walworth County Bd. of Adjustment*, 59 Wis. 2d 296, 307, 208 N.W.2d 113 (1973).

¶15 The police power includes the authority to craft regulations designed to suppress what is offensive, disorderly, or unsanitary and to promote general prosperity by, for example, preserving property values. *State ex rel. Saveland Park Holding Corp. v. Wieland*, 269 Wis. 262, 267-68, 69 N.W.2d 217 (1955). Absent an overriding county ordinance, the Town has the authority to regulate the

⁵ Many of Hodgell’s trial court arguments were as amorphous and undeveloped as some of his appellate arguments. We give Hodgell the benefit of the doubt and assume that this issue was raised in the trial court. Therefore, we address this argument on the merits.

use and location of individual mobile homes under WIS. STAT. § 60.61(2)(a-g). *See Town of Clearfield v. Cushman*, 143 Wis. 2d 553, 559-60, 421 N.W.2d 865 (Ct. App. 1988), *rev'd on other grounds*, 150 Wis. 2d 10, 440 N.W.2d 777 (1989).

¶16 To determine whether the exercise of police power was proper, we ask, first, what the purposes of the ordinance are and, second, whether the ordinance is reasonably related to achieving those purposes. *Brandmiller v. Arreola*, 189 Wis. 2d 215, 231, 525 N.W.2d 353 (Ct. App. 1994). The stated purpose of the Town of Mosel ordinance banning numerous defective vehicles is “to protect and foster the health, safety and well being of persons in the Town for the protection of their property rights and to beautify the landscape and otherwise promote the public interest.” TOWN OF MOSEL, WIS., CODE §5.01.

¶17 Town chairman Athorp testified that an accumulation of tires and vehicle parts could foster vermin or insect infestation. The dilapidated mobile homes and many of the vehicles, in various states of disrepair, were visible from the road. Preservation of property values is a rational basis for an ordinance. *See Racine County v. Plourde*, 38 Wis. 2d 403, 412, 157 N.W.2d 591 (1968) (stating that aesthetic considerations may sufficiently justify a prohibited use in a zoning ordinance). We conclude that the ordinances at issue are reasonably and rationally related to achieving those purposes. *See Brandmiller*, 189 Wis. 2d at 231. It is not our function to debate the relative merits of the ordinances. *See Coffee-Rich, Inc. v. Dep't of Agric.*, 70 Wis. 2d 265, 269, 234 N.W.2d 270 (1975) (stating that a court does not sit as a superlegislature debating and deciding upon the relative merits of legislation). Having found a reasonable basis upon which the Town might have acted, we assume it had such a purpose in mind when it adopted the ordinances in question. *See id.* Our job ends there.

¶18 Hodgell does not challenge the trial court's findings in support of the charges on which he was convicted. The evidence amply supported the trial court's conclusions that Hodgell violated the ordinances against storing junked vehicles and the illegal parking of house trailers and was sufficient to conclude that Hodgell occupied one trailer. Because the ordinances bear a reasonable relationship to their stated goals, we affirm.

By the Court.—Orders affirmed.

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

