COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1178

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

ALLEN C. ORTH,

PETITIONER-RESPONDENT,

v.

WALWORTH COUNTY AND THE WALWORTH COUNTY BOARD OF ADJUSTMENT,

RESPONDENTS-APPELLANTS.

APPEAL from an order of the circuit court for Walworth County: MICHAEL S. GIBBS, Judge. *Affirmed.*

Before Brown, P.J., Anderson and Nettesheim, JJ.

¶1 PER CURIAM. Walworth County and the Walworth County Board of Adjustment (the Board) appeal from the order of the circuit court reversing the decision of the Board. Walworth County argues on appeal that the circuit court erred when it overturned the decision of the Board to deny a variance to

respondent Allen C. Orth. Because we conclude that the Board acted contrary to law, we affirm the decision of the circuit court.

¶2 Orth owns a parcel of land in the town of Linn in Walworth county. In 1997, Orth sought a variance to build a single-family home on this parcel. The town of Linn did not make a recommendation on this request because it did not believe a variance was required. The Board denied the variance request in February 1998. Orth then brought a writ of certiorari in the circuit court. By agreement of the parties, the case was briefly put on hold while Orth made a request for a zoning permit. In June 1998, Orth applied for a zoning permit to build a single-family home on this parcel. The application was denied the next day by the zoning officer because the parcel did not have fifty feet of frontage on a public road or other approved way. Orth filed a variance request with the Board. The request was denied. Both decisions then came before the circuit court on certiorari review.

¶3 Orth argued that the parcel was a parcel of record prior to the adoption of the Walworth County Zoning Code and therefore fell within the exception of § 7.4 of the Walworth County Shoreland Zoning Ordinance. This section provides in relevant part:

> 7.4 EXISTING VACANT SUBSTANDARD LOTS
>
> In any residential, conservation, or agricultural district, a one-family detached dwelling and its accessory structures may be erected on any vacant legal lot or parcel of record in the County Register of Deeds office before the effective date or amendment of this Ordinance, provided such lot or parcel meets all the following minimum requirements ….

¶4 Walworth County argued that § 7.4 applied only to substandard lots because of its title "EXISTING VACANT SUBSTANDARD LOTS." It asserted

that Orth's parcel was not an existing substandard lot as that term is defined in § 13.0 of the ordinance because it does not have fifty feet of frontage.[1]

¶5 The circuit court rejected this argument. The court found that because § 7.4 was plain and unambiguous, there was no need to look beyond the language of the section itself to its title. The court found that rules for the interpretation of statutes and ordinances are the same. *See* ***State v. Ozaukee County Bd. of Adjustment***, 152 Wis. 2d 552, 559, 449 N.W.2d 47 (Ct. App. 1989). The court further found that the titles to statute sections are not part of the statute. *See* WIS. STAT. § 990.001(6) (1997-98).[2] The court concluded that the Board had acted contrary to law.

¶6 The scope of this court's review by certiorari is limited to determining the following: (1) whether the board kept within its jurisdiction; (2) whether the board acted according to law; (3) whether the board's action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the board might reasonably make the order or interpretation in question. *See* ***Marris v. City of Cedarburg***, 176 Wis. 2d 14, 24, 498 N.W.2d 842 (1993). Consequently, when an appeal is taken from such a circuit court order, we review the decision of the agency, not the circuit court. *See* ***Richland Sch. Dist. v. DILHR***, 166 Wis. 2d 262, 273, 479 N.W.2d 579 (Ct. App. 1991), *aff'd*, 174 Wis. 2d 878, 498 N.W.2d 826 (1993). Although we do not

[1] Section 13.0 of the Walworth County Shoreland Zoning Ordinance defines a "LOT, SUBSTANDARD" in relevant part as: "A parcel of land having frontage on a public street, occupied, or intended to be occupied by a principal building or structure …."

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

defer to the opinion of the circuit court, that court's reasoning may assist us. *See* ***id.***

¶7 It is undisputed that Orth's parcel is in a conservation district and that the effective date of the ordinance was 1974. The circuit court found that Orth's parcel had been a separate legal parcel of record with its own legal description since the early 1960s, and therefore had been a "legal lot or parcel of record" before the effective date of the ordinance. The court also found that the parcel met all the minimum requirements stated in § 7.4. The court concluded that Orth's parcel fit within the framework established by § 7.4.

¶8 Walworth County does not appear to contest the facts.[3] Instead, it asserts that § 7.4 should be read with its heading and apply only to substandard lots. The language of § 7.4, however, is clear and unambiguous and does not refer to substandard lots. The ordinance states "any legal lot or parcel of record." Walworth County is, as the circuit court found, attempting to create ambiguity in the ordinance where none exists. Under the undisputed facts, Orth's parcel meets the requirements of § 7.4. Therefore, we agree with the circuit court's conclusion that the Board acted contrary to law when it affirmed the decision of the zoning officer.

[3] Walworth County also argues on appeal that the court found that Orth's parcel was a "legal lot." Walworth County goes on to assert that the only definition of lot includes a requirement of frontage. The court found, however, that Orth's parcel was a "legal lot or parcel of record." Walworth County does not appear to dispute that the parcel was a parcel of record.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.