COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-1357

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

OUTAGAMIE COUNTY,

PLAINTIFF-RESPONDENT,

V.

MARTIN J. MCGLONE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

¶1 HOOVER, P.J.[1] Martin McGlone appeals a judgment assessing a forfeiture and ordering compliance with Outagamie County's zoning ordinance following a finding that he violated the ordinance by having more than one

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

unlicensed or inoperable used automobile on his property. McGlone assigns three points of error. First, he claims that the trial court was "without jurisdiction to proceed beyond the bar of res judicata." Second, he claims the "[a]rbitrary and capricious mis-application of the ordinances violates statutory strictures and [his] substantive and procedural and private property rights." Third, McGlone asserts that false and misleading statements provide the foundation for the prosecution. This he characterizes as a fundamental defect causing the County to lose any claim to jurisdiction over him. Because McGlone's contentions find no support in the law, the judgment is affirmed.

Background

¶2 McGlone owned property zoned "general agricultural" in Outagamie County. He stored and refurbished hobby and collector vehicles on his property and had as many as thirty-two used automobiles that either failed to display current licenses or were inoperable.

¶3 Under OUTAGAMIE COUNTY, WIS., ZONING ORDINANCES § 17.32(4)(i) (1997), property zoned general agricultural could be used as an "Automobile salvage yards" only by obtaining a special exemption permit. "Automobile Salvage Yards" is defined as "Premises used for the storing, dismantling, crushing, shredding or disassembly of more than one used motor vehicles or their parts." ***Id***. § 17.04(2). The County interpreted these provisions as permitting only one unlicensed or inoperable used automobile on property zoned general agricultural without a special exemption permit. McGlone had not, however, applied for such a permit.

¶4 In 1997, zoning personnel inspected McGlone's property after receiving a complaint regarding an accumulation of vehicles that were either not

road-ready or unlicensed. The inspection revealed violations of the zoning code, and the County commenced an enforcement action. The action was ultimately dismissed because the County failed to appear at a motion hearing.

¶5 In 1998, while on adjacent property, deputy zoning administrator Steven Swanson viewed a number of vehicles on McGlone's property that he believed to be unlicensed or inoperable. Swanson applied for, obtained and executed a special inspection warrant. He observed thirty-two automobiles that were inoperable or did not display current licensing. The vehicles were either being stored or worked on. The County subsequently initiated this action seeking enforcement of the zoning code.

¶6 McGlone moved to dismiss the action on the grounds that the trial court lacked jurisdiction for a variety of reasons. The court denied his motion, and the case proceeded to trial. At trial, the parties put on their respective proofs, and the trial court found that McGlone had indeed violated the zoning ordinance, assessed a forfeiture and ordered that he comply with the ordinance. McGlone appeals.

ANALYSIS

¶7 McGlone initially asserts that because the 1997 action citing him for similar violations of the zoning code was dismissed, the circuit court lacked jurisdiction to hear this case because of res judicata. McGlone presents no authority for his assertion, nor is this court aware of any. Circuit courts have plenary jurisdiction over all civil and criminal matters. WISCONSIN CONST., art. VII. § 8 states: "Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state …." Moreover, the supreme court has held that "[n]o circuit court is without subject

matter jurisdiction to entertain actions of any nature whatsoever." ***Mueller v. Brunn***, 105 Wis. 2d 171, 176, 313 N.W.2d 790 (1982). The trial court had jurisdiction to proceed.

¶8 Moreover, res judicata does not apply here. "The term claim preclusion replaces res judicata …." ***NSP v. Bugher***, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995).[2] A reviewing court independently considers whether claim preclusion applies to an undisputed set of facts. *See* ***Amber J.F. v. Richard B.***, 205 Wis. 2d 510, 515, 557 N.W.2d 84 (Ct. App. 1996). Claim preclusion applies only when there is an identity between the parties or their privies in the prior and present lawsuits, an identity between the causes of action in the lawsuits and a final judgment on the merits in a court of competent jurisdiction. *See* ***id***. at 516. The causes of action here involve different violation periods and are therefore different. The current litigation charges violations occurring after the 1997 prosecution was dismissed. It would have been impossible for the County to bring this claim in the prior action. The County was therefore not precluded from maintaining the present action by dismissal of an earlier discrete prosecution under the ordinance.

¶9 McGlone next asserts that the County's enforcement of its ordinance violates state statutes. He first claims that WIS. STAT. §§ 341.266 and 218.205 prevent the County from enforcing its ordinance because they exempt "special interest vehicles" from state regulation of salvage yards.[3] He also argues that the

[2] Under claim preclusion, a final judgment is conclusive in all subsequent actions between the same parties as to all matters that were litigated or that might have been litigated in the former proceedings. *See* ***Amber J.F. v. Richard B.***, 205 Wis. 2d 510, 516, 557 N.W.2d 84 (Ct. App. 1996).

[3] WISCONSIN STAT. § 341.266 provides in part:

(continued)

County ordinance's definition of automobile salvage yard must conform to that set forth in the state statutes. He claims these statutes preempt the County's ordinance because WIS. STAT. § 349.03 prohibits the County from enacting or enforcing traffic regulations inconsistent with WIS. STAT. chs. 341 to 348.[4] Section 349.03 by its own terms limits a municipality's authority regarding traffic regulations only. A county's regulation of land use, however, is not a traffic regulation. Section 349.03 does not address a county's separate power under WIS. STAT. § 59.69 to regulate land use through zoning and thus does not apply here.

¶10 McGlone's assertion that the County arbitrarily and capriciously misapplied and interpreted its zoning ordinances also fails. He does not

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> (4) A collector may store unlicensed, operable or inoperable, vehicles and parts cars on the collector's property provided the vehicles and parts cars and the outdoor storage area are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery or other appropriate means.

WISCONSIN STAT. § 218.205 provides in part:

> No person may carry on or conduct the business of a motor vehicle salvage dealer unless licensed to do so by the department. Any person violating this section may be fined not less than $500 nor more than $5,000 or imprisoned for not more than 60 days or both.
>
> (2) This section shall not apply to:
>
> ….
>
> (d) Collectors of special interest vehicles who purchase or sell parts cars in compliance with s. 341.266.

[4] WISCONSIN STAT. § 349.03 provides in part:

> (1) Chapters 341 to 348 and 350 shall be uniform in operation throughout the state. No local authority may enact or enforce any traffic regulation unless such regulation:
>
> (a) Is not contrary to or inconsistent with chs. 341 to 348 and 350; or
>
> (b) Is expressly authorized by ss. 349.06 to 349.25 or some other provision of the statutes.

demonstrate why the act of interpreting the ordinance, or the interpretation itself, is arbitrary or capricious. Those charged with enforcing bodies of law commonly interpret those laws.[5] Additionally, the zoning department's focus on unlicensed and inoperable used vehicles reasonably interprets the ordinance's prohibition against use of general agricultural zoned premises for storing, dismantling or disassembling more than one vehicle.

¶11 McGlone seems to suggest that the County's ordinance is arbitrary and capricious because it applies to both commercial and noncommercial endeavors. A zoning ordinance is not arbitrary or capricious if it is reasonably related to a legitimate public purpose. *See* ***Schmidt v. City of Kenosha***, 214 Wis. 2d 527, 539, 571 N.W.2d 892 (Ct. App. 1997). The ordinance here restricts the storing, dismantling or disassembling of more than one automobile, uses that are generally inappropriate to an agricultural use. Additionally, the aesthetic and environmental hazards associated with inoperable and unlicensed vehicles do not distinguish between commercial and private endeavors. The ordinance is therefore reasonably related to legitimate public purposes.

¶12 Finally, McGlone argues that the County relied on false and misleading statements to commence and prosecute its action and that the court therefore did not have jurisdiction to proceed. He claims that the Special Inspection Warrant was falsely obtained because Swanson's affidavit supporting the application for the warrant contained the following false statements: (1) the

[5] *See, e.g.,* ***Knight v. LIRC***, 220 Wis.2d 137, 150, 582 N.W.2d 448 (Ct. App. 1998) (Wisconsin Fair Employment Act is administered and enforced by the Department of Industry, Labor and Human Relations, which interprets the Act in the course of its duties).

property was owned by Martin and Aaron McGlone;[6] (2) the previous action had been dismissed without prejudice;[7] and (3) McGlone had denied Swanson permission to enter and inspect the premises.[8] McGlone claims these are fatal flaws, without explaining why. He does not develop his bare conclusion that had the affidavit conformed to the testimony, a warrant would not have issued. The statements and facts that he deems false and misleading are either not self-evidently so, or, to achieve such characterizations, depend upon unreasonable inferences. McGlone offers no discussion as to how the trial court reached its conclusion that the warrant was valid or why the determination was erroneous. This court will not develop McGlone's arguments for him or address issues raised on appeal that are inadequately briefed. *See* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987); ***State v. Flynn***, 190 Wis. 2d 31, 58, 527 N.W.2d 343 (Ct. App. 1994).

¶13 Moreover, McGlone offers no authority for his fundamental proposition that the false statements in support of an inspection warrant, even if proven, deprived the circuit court of jurisdiction. The citations he presents, regarding defects in the service of process, are inapplicable to the proposition

[6] Aaron and Martin had jointly owned the property, but several months before Swanson made his affidavit, Aaron transferred his interest to Martin.

[7] Because claim preclusion does not apply, this statement has no significance.

[8] The record indicates that Swanson had not had any conversations with McGlone in 1998, but apparently had some in 1997. Swanson sent McGlone a letter in 1998 requesting permission to inspect, but McGlone did not respond.

advanced.[9] This court therefore declines to consider his arguments regarding the claimed illegality of the warrant.[10]

¶14 In conclusion, res judicata is inapplicable, and the County's ordinance permissibly regulates McGlone's use of his land. McGlone's failure to develop and support with legal authority his contention that the County's activities in obtaining the special inspection warrant deprived the court of jurisdiction prevent this court from deciding the issue. Accordingly, the judgment is affirmed.

By the Court.—Judgment affirmed.

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[9] In criminal cases, the remedy for a warrant issued on the basis of inadequate facts is suppression of the evidence resulting from the warrant, not dismissal of the action. *See*, *e.g.*, ***State v. Ward***, 222 Wis. 2d 311, 314, 588 N.W.2d 645 (Ct. App. 1998), *rev'd on other grounds*, 2000 WI 3 (Wis. Jan. 19, 2000). McGlone does not discuss this authority, much less attempt to distinguish it.

[10] McGlone claims that the facts contained in the return of the warrant are misleading and, had they been accurately reported, the County could not maintain this action. He asserts that Swanson should have included the models and years of the vehicles on the warrant's return to reflect that they were "collector, … hobbyist [or] off-road" vehicles. The inference he tacitly suggests this court draw is that the cars in question are collectibles, special interest or off-road. This inference is not necessarily compelled because McGlone does not identify the years and models. More importantly, under the terms of the ordinance, the character of the cars is immaterial.

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