COURT OF APPEALS
DECISION
DATED AND FILED

January 17, 2018

Diane M. Fremgen
Acting 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 No. 2016AP2501 **Cir. Ct. No. 2016CV99**

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

DE PERE LEDGEVIEW MUNICIPAL COURT,

PLAINTIFF-RESPONDENT,

V.

JOHN C. KNAUS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: JOHN ZAKOWSKI, Judge. *Affirmed*.

¶1 HRUZ, J.[1] John Knaus, pro se, appeals a judgment of the circuit court finding him in violation of a Town of Ledgeview ordinance. We affirm.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶2 In August 2015, the Town sent Knaus a letter advising him, among other things, that an old vehicle kept outside on his property did not comply with a Town ordinance.[2] The Town requested that Knaus propose how to rectify this purported violation. Knaus responded via letter that the vehicle was a "van lawn ornament," but he did not propose any remedy. After Knaus did not move the vehicle, the Town cited him with keeping an abandoned, junked or hazardous vehicle on his property, contrary to TOWN OF LEDGEVIEW, WIS., CODE § 121-5 (Sept. 1, 2014).[3]

¶3 The municipal court found Knaus guilty of violating the ordinance, after which Knaus requested a de novo trial before the circuit court. *See* WIS. STAT. § 800.14(4). Mark Roberts, the Town's code enforcement officer, and Knaus were the only two witnesses at the trial. Based on the testimony and exhibits admitted into evidence, the circuit court found the vehicle was a "junked motor vehicle" and determined that the Town satisfied its burden of showing Knaus violated the ordinance. Knaus now appeals.

¶4 We first pause to observe that Knaus's briefing contains many deficiencies. For example, Knaus's statement of the issues and argument sections are neither well organized nor succinct, and he fails to support his factual and legal assertions with citations to the record or to any legal authority. *See* WIS. STAT.

[2] The placement and condition of this vehicle has been a subject of dispute between the Town and Knaus since 2008. *See* ***Town of Ledgeview v. Knaus***, No. 2011AP979, unpublished slip op., ¶¶2-9 (WI App Mar. 20, 2012). According to the testimony in the circuit court in the present case, Knaus has been cited seven other times and has paid $6,800 in fines due to his keeping this vehicle on his property.

[3] All references to the Town of Ledgeview municipal code are to the September 1, 2014 version unless otherwise noted.

RULE 809.19(1)(d)-(e); *see also* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (appellate courts need not address arguments that are undeveloped or unsupported by legal authority). Knaus instead cites to his appendix, and he improperly includes several "exhibits" in his appendix that are not in the record on appeal. *See* ***Roy v. St. Lukes Med. Ctr.***, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (items outside the record shall not be considered). What is more, some of these documents pertain to matters between Knaus and the Town that are unrelated to the violation he now appeals, and Knaus's considerable discussion of those matters further obscures the relevant issues.

¶5 For these reasons, the municipal court (which is the plaintiff in this lawsuit) has moved to strike Knaus's brief-in-chief. Although Knaus's disregard of the appellate rules may be considerable, we are mindful that we may afford pro se litigants leeway in appellate matters. *See* ***Waushara Cty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Instead of striking Knaus's brief, we restrict our discussion to the issues relevant to whether the record evidence was sufficient to support the circuit court's determination that Knaus violated the Town's junked vehicle ordinance.[4]

¶6 We shall not set aside the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). When reviewing the sufficiency of the evidence, we view the facts in the light most favorable to sustaining the verdict. *See* ***Stunkel v. Price Elec. Co-op.***, 229 Wis. 2d 664, 668, 599 N.W.2d

[4] To whatever extent we do not address an issue or argument Knaus raises in this appeal, we deem it rejected. *See* ***Acevedo v. City of Kenosha***, 2011 WI App 10, ¶20 n.2, 331 Wis. 2d 218, 793 N.W.2d 500.

919 (Ct. App. 1999). If more than one reasonable inference might be drawn from the evidence, we are bound to accept the inference drawn by the finder of fact. ***State v. Peppertree Resort Villas, Inc.,*** 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. Meanwhile, interpretation of a municipal ordinance is a question of law that is subject to de novo review. ***Village of Menomonee Falls v. Ferguson***, 2011 WI App 73, ¶14, 334 Wis. 2d 131, 799 N.W.2d 473.

¶7 TOWN OF LEDGEVIEW, WIS., CODE § 121-5 prohibits an owner of real property from "leav[ing] or allow[ing] to remain on the property any motor vehicle which is abandoned, junked, or hazardous motor vehicle unless pursuant to a valid license issued pursuant to § 175.25, Wis. Stats."[5] Under TOWN OF LEDGEVIEW, WIS., CODE § 121-3, a "motor vehicle" is further defined as a "self-propelled device used or intended to be used for the transportation of freight or passengers upon a street or highway." Section 121-3 conversely defines a "junked motor vehicle" as any "vehicle that does not display a current and valid license placed lawfully upon that vehicle." The vehicle must also be one of three things under § 121-3 to qualify as "junked": (a) "partially dismantled, wrecked, nonoperational or discarded"; (b) unable to be "self[-]propelled or moved in the manner in which it originally was intended to move"; or (c) "more than five years old and appear[ing] to be worth less than $500."

¶8 We conclude the evidence at the de novo trial was sufficient to prove Knaus violated TOWN OF LEDGEVIEW, WIS., CODE § 121-5. As an initial matter,

[5] TOWN OF LEDGEVIEW, WIS., CODE § 121-5 further provides: "Violation of this section is hereby determined to be a public nuisance subject to abatement under § 68-4 of this Code." Knaus does not seem to argue anything related to abatement of the violation, and he does not assert he had a valid permit to store a junked automobile outside his house pursuant to WIS. STAT. § 175.25(1) and (3).

the evidence readily showed the vehicle was a "junked motor vehicle" under TOWN OF LEDGEVIEW, WIS., CODE § 121-3. It was undisputed that the registration of Knaus's vehicle had expired in early 2011 and had not been renewed since. The evidence also showed the vehicle was "nonoperational" and could not be "self-propelled" in its then-existing state. According to Roberts, the vehicle was "rusted out" and had not moved from its position since at least 2009. Knaus claimed he could still drive the vehicle, but he admitted that it was on its second engine, that it had traveled a total of 440,000 miles, that he painted over the side windows, that he last started the vehicle "probably[] a year" before the citation, and that he now desired to use the vehicle solely as a "lawn ornament." Finally, Knaus testified he bought the van in 1979, and Roberts testified the vehicle appeared to be worth less than $500. Accordingly, the van satisfied all of the definitions of a "junked motor vehicle" under § 121-3, and the evidence showed Knaus violated § 121-5.

¶9 Knaus's varied arguments to the contrary are unsuccessful and mostly unresponsive to the foregoing evidence presented at trial. Knaus frequently attempts to discredit the evidence before the circuit court by questioning Roberts' credibility and the Town's motives. However, only the trier of fact may weigh evidence, determine credibility or find facts; this court cannot. *See* ***Wurtz v. Fleischman***, 97 Wis. 2d 100, 107-08, 293 N.W.2d 155 (1980). The circuit court found Roberts credible, and it relied on his testimony and the Town's other evidence in making its factual findings. As those findings are not clearly erroneous, we are bound by them. WIS. STAT. § 805.17(2).

¶10 Knaus also attempts to justify his non-compliance with the junked vehicle ordinance by asserting that the Town has engaged in selective prosecution against him. As a threshold matter, Knaus must show that the Town "singled

[him] out for prosecution while others similarly situated have not" been prosecuted and that this discriminatory decision to cite him was "based on an impermissible consideration such as … the exercise of constitutional rights." ***County of Kenosha v. C & S Mgmt., Inc.***, 223 Wis. 2d 373, 401, 588 N.W.2d 236 (1999). He has not demonstrated either requirement. Most of the items Knaus cites in support of his selective prosecution claim are from outside the appellate record and cannot now be considered. *See* ***Roy***, 305 Wis. 2d 658, ¶10 n.1. Moreover, Roberts testified—and the circuit court found—that the Town had issued citations relating to junked vehicles to persons other than Knaus, undercutting Knaus's selective prosecution claim. Knaus again provides no record citations, relevant legal authority, or adequately developed reasoning to support this claim, thereby ending our discussion of it. *See* ***Pettit***, 171 Wis. 2d at 646-47.

¶11 Knaus further insists that his rights to "Freedom of Speech and Expression" allowed him to display his "lawn ornament van" on his property, citing his vehicle's red, white and blue paint job as "show[ing] patriotic expression." As the circuit court noted, that Knaus may consider his vehicle a "lawn ornament" does not excuse the vehicle from compliance with TOWN OF LEDGEVIEW, WIS., CODE §§ 121-5 and 121-3. And even if Knaus's "lawn ornament" could qualify as protected speech under the First Amendment, that alone does not render invalid either the ordinance or the Town's enforcement of it. *See* ***Ward v. Rock Against Racism***, 491 U.S. 781, 791 (1989) (government may impose regulations on time, place and manner of speech if they are content-neutral, narrowly-tailored in service of a legitimate governmental interest, and do not foreclose all avenues of speech); *see also* ***State v. Zwicker***, 41 Wis. 2d 497, 509-10, 164 N.W.2d 512 (1969) (freedom of speech is not absolute). Again,

Knaus does not cite any authority or develop an argument on this issue, so we decline to address it in any greater depth. *See* ***Pettit***, 171 Wis. 2d at 646-47.

¶12 Finally, Knaus contends "the grandfather clause" applied here because his vehicle was in place before the ordinance was revised in 2010. The basis of this argument is not readily apparent. TOWN OF LEDGEVIEW, WIS., CODE § 121-5 does not contain any "grandfather clause" or similar language that would otherwise allow any landowner to keep a "junked motor vehicle" on his or her property. Knaus acknowledges that § 121-5 "d[oes] not have a Grandfather Clause drafted in it." Knaus further acknowledges in his reply brief that he did not raise this "grandfather clause" issue in the circuit court, and we address it no further as a result. *See* ***State v. Dowdy***, 2012 WI 12, ¶5, 338 Wis. 2d 565, 808 N.W.2d 691 (issues not raised in the circuit court will not be considered for the first time on appeal).

By the Court.—Judgment affirmed.

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