COURT OF APPEALS
DECISION
DATED AND FILED

January 11, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1664 **Cir. Ct. No. 2005FO1034**

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

CITY OF OSHKOSH,

PLAINTIFF-RESPONDENT,

V.

JOHN DAGGETT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: SCOTT C. WOLDT, Judge. *Affirmed*.

¶1 SNYDER, P.J.[1] John Daggett appeals from a judgment finding him guilty of violating the Oshkosh municipal ordinance regarding lead hazard

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

reduction. He contends that the circuit court erred by holding him responsible for lead paint abatement instead of taking action against the property's former owner. He further alleges that the City of Oshkosh failed to meet its evidentiary burden under the ordinance in several respects. We disagree and affirm the judgment of the trial court.

¶2 This case addresses a lead paint violation related to property located at 717 Bowen Street in Oshkosh. According to the city health inspector, Sandra Knutson, a child residing at 717 Bowen Street in 2002 was diagnosed with an elevated blood lead level. Knutson, a certified lead risk assessor, then performed an inspection of the property using a device that detects lead-based paint and located many substantial hazards on the property. She issued an abatement order to the then-owner of the property. The property subsequently went into foreclosure and the bank became the new owner. Knutson posted signs around the property that identified it as a lead poisoning hazard. In 2004, the house was sold to Daggett. The offer to purchase included language stating, "See lead-based paint disclosure."

¶3 Upon learning that Daggett was the new owner of 717 Bowen Street, Knutson sent him a letter with a copy of the abatement order, the city ordinance, and a list of lead hazard reduction companies. The letter advised Daggett that he had thirty days to submit a work plan to address the lead paint. After thirty days passed, Knutson sent Daggett a final notice giving him an additional two weeks to submit a plan. Two weeks passed without a response from Daggett and Knutson issued Daggett a citation.

¶4 Daggett sent Knutson a letter stating that he did not plan to do the lead abatement work. He argued that the house was not occupied and that he used

it mostly for storage. At trial, Daggett explained that he had invested approximately $20,000 to improve the property. He testified that he painted the house, improved the lawn, purchased new doors and paneling, and installed a new garage door. He acknowledged, however, that he knew lead abatement was to be done by a licensed lead abatement specialist.

¶5 The trial court heard testimony from Knutson, Daggett and the City of Oshkosh housing inspector, Bruce Luedtke. Based upon the evidence introduced at trial, including the offer to purchase which included a lead-based paint disclosure, the court held that Daggett violated Section 15-25 of the municipal code. Daggett appeals.

¶6 From our reading of Daggett's brief, we glean three primary issues.[2] First, Daggett challenges the validity of the citation, stating he did not receive the required notice of the lead hazard. Next, he challenges certain evidence presented at trial and the trial court's exercise of discretion in weighing and ruling on the evidence. Finally, Daggett argues that the statute of limitations bars this action.

¶7 Before addressing the issues, we turn to the language of the ordinance, which states in relevant part:

> Lead hazards will be identified by risk assessment and/or testing when any person six (6) years of age and under who is occupying or has occupied the premises has been identified as having an elevated blood lead level and the premises has been identified as a potential source of that elevated blood lead level. No owner of any premises shall create any lead hazards or allow to exist on the premises

[2] We agree with the City that Daggett's appellate brief does not conform to the requirements of WIS. STAT. RULE 809.19 and that the arguments contained in the brief occasionally border on the incoherent. We appreciate the City's attempt to clarify the issues for this court.

> any identified lead hazards. The Health Services Division shall conduct a lead risk assessment to identify and evaluate lead hazards and to determine the need for corrective action, where there has been a person six (6) years of age or younger identified as having an elevated blood lead level. The Division shall use reasonable efforts to provide prior notice of the lead risk assessment to the owner of the premises.… Upon written notification by the Health Services Division of the existence of a lead hazard, the owner shall then hire an independent certified lead risk assessor and/or certified lead contractor to develop and submit a written plan, based on the results of the assessment, for lead hazard reduction to the Health Services Division within 30 days.

OSHKOSH, WIS., MUNICIPAL CODE § 15-25 (2001).[3]

¶8 With regard to the citation, Daggett argues that the City violated the notice requirements of the municipal code because he was not given notice of the lead paint problem before he purchased the property. Daggett challenges the veracity of Knutson's testimony at trial. However, we will not overturn credibility assessments by the trier of fact unless patently incredible. *See* ***Chapman v. State***, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975).

¶9 Knutson testified that she posted notices on the property informing the public of a lead poisoning hazard. Daggett calls Knutson's testimony perjury and calls for Knutson to submit photographs of the property prior to the sale to show that notice was posted. However, in his own trial testimony, Daggett does not dispute that the offer to purchase included a lead paint disclosure. When asked by the trial court whether he read the offer to purchase before he signed it, Daggett responded, "No. I wanted that house. It didn't matter what was wrong with the house. I like that house." Accordingly, we ascertain no grounds to overturn the

[3] All references to the Oshkosh Municipal Code are to the 2001 version.

trial court's acceptance of Knutson's testimony as credible. Furthermore, we will not absolve Daggett of his responsibility to read important documents before he signs them. Failure to read a contract is not an excuse that relieves a person from the consequences of his or her lack of vigilance. ***Nauga, Inc. v. Westel Milwaukee Co., Inc.***, 216 Wis. 2d 306, 314-15, 576 N.W.2d 573 (Ct. App. 1998). Accordingly, the record supports the conclusion that Daggett had notice of the lead hazard on the property before he purchased it.

¶10 The record further demonstrates that Daggett had notice of the lead hazard prior to the issuance of the citation. In his testimony, he acknowledged that Knutson had approached him on his property to repost warning signs and that he had said he would post them himself. Daggett also concedes that he received the February 21 letter from Knutson advising him of the lead hazard problem on his property. Given the testimony presented at trial, we find no error with the trial court's determination that Daggett had proper notice of the lead hazard before the citation was issued.

¶11 Daggett also challenges the citation on grounds that it should be issued to the prior owner, who was the responsible party at the time the alleged case of lead poisoning to a child occurred. However, the express language of the ordinance explains that where "any person six (6) years of age and under who is occupying *or has occupied the premises*" is found to have an elevated blood lead level, a lead hazard may exist. OSHKOSH, WIS., MUNICIPAL CODE § 15-25 (emphasis added). Furthermore, "[n]o owner of any premises shall create any lead hazards *or allow to exist* on the premises any identified lead hazards." ***Id.*** (emphasis added). When interpreting an ordinance, the rules of statutory construction are applied. *See* ***Schroeder v. Dane County Bd. of Adjustment***, 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999). If the language of the

ordinance is clear, then we apply the language to the facts of the case. ***Id.*** Because Daggett is the owner of property where a child with an elevated blood lead level has occupied the premises, the citation was properly issued to him. The purpose of the ordinance is to reduce exposure to lead hazards. OSHKOSH, WIS., MUNICIPAL CODE § 15-23. We agree with the City that without a provision for subsequent owners to be held responsible for allowing a hazard to continue, the purpose of the ordinance would be frustrated.

¶12 Daggett raises several evidentiary issues on appeal. Many of these issues would require us to consider new evidence not offered at trial.[4] This court is an error-correcting court and is not the appropriate forum for introducing evidence that should have been introduced at trial. Evaluating evidence that the trial court has not had the opportunity to consider would circumvent our appellate process by placing this court, rather than the trial court, in the position of evaluating evidence in the first place. This approach is inconsistent with the principles of appellate review. *See* ***State v. Flynn***, 190 Wis. 2d 31, 46 n.4, 527 N.W.2d 343 (Ct. App. 1994) (court of appeals would not consider the defendant's affidavit because the court is limited by the record as it comes from the trial court). For this reason we decline to entertain any arguments that rely on evidence not in the record.

¶13 Daggett does challenge the accuracy of the trial transcript. Although he purports to offer specific examples of error, most of the alleged errors are

[4] For example, Daggett refers to a contract that the former owner of 717 Bowen Street allegedly had with the Department of Housing and Urban Development. Daggett references such a contract to demonstrate that the former owner breached the HUD contract by not removing lead paint from the premises. No such contract exists in the record.

simply statements in the transcript with which Daggett disagrees. Where he does allege actual error, it is of the sort that a motion under WIS. STAT. RULE 809.15(3) was designed to address. RULE 809.15(3) states in pertinent part: "DEFECTIVE RECORD. A party who believes that the record, including the transcript of the reporter's notes, is defective or that the record does not accurately reflect what occurred in the circuit court may move the court in which the record is located to supplement or correct the record." This rule is intended to allow a party to ask the judge "to direct that the record conform to the events that occurred at trial. It is an efficacious remedy for the correction of names and other matters that may be either of trivial or substantial consequence." ***State v. Perry***, 136 Wis. 2d 92, 109-10, 401 N.W.2d 748 (1987). Here, for example, Daggett states that page twenty-four of the trial transcript indicates that he used the $20,000 figure to estimate his improvements to the property but once; however, he alleges that he used the $20,000 figure more than once. Although he offers no specific page citation, he also disputes that he said "um hum" as reflected in the transcript. We fail to see, and Daggett does not explain, how such alleged error in any way undermines the outcome of the trial. If he wishes, he may move the trial court for corrections under RULE 809.15(3).

¶14 Daggett further challenges the trial court's assessment of the evidence as it relates to the code requirements. We will not substitute our judgment for that of the fact finder when reviewing the sufficiency of the evidence. Rather, unless we decide that the evidence is so lacking in probative value that no reasonable fact finder could have come to the conclusion that was reached, we defer to that conclusion. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Daggett argues, for example, that there was no child living at the residence who was diagnosed with an elevated blood lead level.

Knutson testified that in 2002 a child under the age of six was diagnosed with an elevated blood lead level while living at 717 Bowen Street. The trial court chose to believe Knutson, a decision entirely within the trial court's discretion when serving as finder of fact. When presented with the classic question of whom to believe, the finder of fact must determine where the truth lies. *See* ***State v. Hines***, 173 Wis. 2d 850, 861, 496 N.W.2d 720 (Ct. App. 1993).

¶15 Finally, Daggett argues that a three-year statute of limitations bars this action, and in his trial court brief he erroneously referenced WIS. STAT. § 254.11 to 254.30 (1996). In his appellate brief, Daggett's entire argument on this point consists of the following: "THE STATUTE OF LIMITATION IS OVER AND IF JDGE [sic] WOLDT WAS OLDER AND HAD SOME EXPERIENCE IN LAW AND BEING A JUDGE THE RESPONDENT WOULD NOT HAVE HAD TO APPEAL THIS CASE." The City counters that WIS. STAT. § 893.93(2)(b) provides the applicable limitation of two years, and it acknowledges some puzzlement as to what date Daggett uses to compute the running of the statute. In his reply, Daggett states, "The prosecutor Mr. Bush had objections when I stated the STATUTE OF LIMIATION [sic] had expired." That is the extent of Daggett's treatment of the issue. Because Daggett does not develop his argument further, our consideration of the issue ends here. We will not address arguments that are inadequately briefed. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶16 Daggett raises a number of other arguments in his brief that are difficult to decipher or comprehend. To the extent we have not addressed an argument raised in his appeal, the argument is deemed rejected. ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate

court is not a performing bear, required to dance to each and every tune played on an appeal.").

¶17 We conclude that the record presents a sufficient basis for the trial court's judgment. Daggett makes few comprehensible arguments and none that are adequately supported by application of relevant law. Because the record facts support the trial court's determination that Daggett violated the municipal code, we will not disturb the trial court's ruling. Unless we decide that the evidence is so lacking in probative value that no reasonable fact finder could have come to the conclusion that was reached, we defer to that conclusion. ***Poellinger***, 153 Wis. 2d at 507. Accordingly, we affirm.

By the Court.—Judgment affirmed.

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