COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-3016-FT

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

VILLAGE OF AVOCA,

PLAINTIFF-RESPONDENT,

V.

GAIL CARR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Iowa County: WILLIAM D. DYKE, Judge. *Affirmed.*

¶1 VERGERONT, J.[1] Gail Carr appeals a judgment that she violated the zoning code of the Village of Avoca on residential fences and imposing a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.21(2)(g) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

forfeiture including costs of $721.30. Carr contends the structure she erected on her property did not violate the zoning code because it was not on the property line and because it was not a fence. We conclude that the code section governs residential fences whether they are on the property line or not and that the structure Carr erected was a fence. We therefore affirm.

¶2 Carr was issued a citation for a violation of VILLAGE OF AVOCA, WIS., ORDINANCES § 17.03(2)(c) which provides:

> (c) Residential fences are permitted on the property lines in residential districts, but shall not, in any case, exceed a height of 6 feet, shall not exceed a height of 4 feet in the front yard and shall not be closer than 2 feet to any public right of way.

The structure that is the subject of the citation is between Carr's house and the public roadway, parallel to the roadway. Carr submitted photographs showing the structure at the evidentiary hearing. Carr testified the structure was 135 feet from the right-of-way and the Village of Avoca police officer estimated it was thirty-five to forty feet from the front line of Carr's property. Carr estimated the length is less than ninety feet. The structure is built from logs standing upright and it is over six feet high. One end is approximately 100 feet from Carr's side property line on one side and 800 to 1,000 feet to the property line on the other side, going between two driveways through her property. The structure has a framed gate across the driveway, and, when closed, the gate prevents access on this driveway to Carr's residence.

¶3 The trial court found, based on an official zoning map submitted by the Village of Avoca and admitted into evidence, that Carr's property was in a residential district. The trial court also found the structure was in the front yard of

Carr's property and exceeded four feet in height. The court concluded the structure was a fence, and, therefore, it violated the zoning code. The court imposed a forfeiture of $10.00 a day for sixty-three days plus costs for a total of $721.30.

¶4 On appeal Carr contends the trial court erroneously construed the zoning code because: (1) the provision regulates only fences on property lines and this structure was not on a property line, and (2) the provision regulates only fences and this is not a fence.

¶5 The application of an ordinance to a set of facts that is not disputed is a question of law, which we review de novo. ***County of Adams v. Romeo***, 191 Wis. 2d 379, 383, 528 N.W.2d 418 (1995). When we interpret an ordinance, we apply the same rules of construction we apply to statutes; we begin with the language of the ordinance and, if it is plain on its face, we apply that language to the facts at hand and do not look beyond the language to ascertain the meaning of the ordinance. ***Schroeder v. Dane County Bd. of Adjustment***, 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999), *review denied*. The ordinance is ambiguous if it has more than one reasonable interpretation. ***Id.*** Whether an ordinance is ambiguous is a question of law. ***Id.***

¶6 We do not agree with Carr that the code provision plainly applies only to fences on property lines in residential districts. Rather, we conclude it plainly applies to all fences in residential districts. Although the sentence begins by stating "residential fences are permitted on the property lines in residential districts …," the continuation of that sentence makes clear the limitations on height and distance from the right of way apply not only to residential fences on the property lines but to all residential fences. In other words, the ordinance

permits residential fences both on the property line and anywhere else on one's property that is not closer than two feet to any public right-of-way, and wherever the fences are located, they must conform to the specified height restrictions. This is the only reasonable reading based on the grammatical structure of the sentence, in that it "shall not exceed" is the verb for "residential fences." It also gives meaning to the phrase "in any case" which has no function if the provision is not directed to residential fences that are located elsewhere than the property lines. *See* ***Lake City Corp. v. City of Mequon***, 207 Wis. 2d 155, 162, 558 N.W.2d 100 (1997) (when interpreting statutes we attempt to give meaning to each word or phrase). Finally, the interpretation urged by Carr is unreasonable because if this provision is directed only to fences on property lines, the limitation that the fence may not be closer than two feet to any public right-of-way makes no sense.

¶7 Carr's second argument is that the structure is not a fence because it is not intended to keep people or things out, or to keep people or things in, or to make a boundary. She contends it is a "privacy wall." She testified that it is intended to be "decorative," and explained, "We sit on the back porch swing and look out and feel like we have one beautiful thing to look at and little sandy pines."

¶8 Carr relies on the definition of fence from WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, which we relied on in ***Walworth County v. Tronshaw***, 165 Wis. 2d 521, 526, 478 N.W.2d 294 (Ct. App. 1991). The issue in that case was whether the word "fence" in that ordinance, which did not contain a definition of fence, was unconstitutionally vague. We first stated that the general rule of construction when words are not defined is that non-technical words are given their ordinary and accepted meaning, which we may ascertain from a recognized dictionary. ***Id.*** at 526. The dictionary definition we referred to was "a

'barrier *intended* to prevent escape or intrusion or to mark a boundary.' WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 837 (17th ed. 1976) (emphasis added)." ***Id.*** We concluded the use of the word "fence" was not unconstitutionally vague. ***Id.***

¶9 We do not agree that the definition of fence we employed in ***Tronshaw*** excludes the structure Carr erected. It is, by her own testimony, a barrier intended to prevent intrusion on her privacy.

¶10 Similarly, the two other definitions Carr offers from other dictionaries do not exclude the structure she built. She cites BLACK'S LAW DICTIONARY 745 (Revised 4th ed. 1968):

> A hedge, structure or partition, erected for the purpose of inclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates.
>
> An enclosure about a field or other space, or about any object; especially an inclosing structure of wood, iron or other materials, intended to prevent intrusion from without or straying from within.

She also cites WEBSTER'S TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE 646 (Unabridged, 1940):

> 1. A structure erected around or by the side of any open space to prevent passage in or out; especially, a structure inclosing or separating yards, fields, etc.

¶11 Although one function of a fence according to these definitions is to enclose a space, the definitions encompass other purposes such, "to divide a piece of land as into distinct portions." That is a function performed by the structure Carr built: the structure divides their property between a portion of the land open to public view and a portion that is private and not open to public view. Also, the

structure erected by Carr is "by the side of any open space" and, when the gate in the structure is closed, it prevents passage on that driveway to Carr's residence.

¶12 We conclude the trial court correctly determined that the common and ordinary meaning of "fence" encompasses the structure Carr erected.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. § 809.23(1)(b)4.