COURT OF APPEALS
DECISION
DATED AND FILED

May 22, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-3068-FT

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

CARL JENSEN, CHERI JENSEN, JIM AND JUDY FLADING, WILLIAM AND CAROL PINGEL, DAVID AND JOANN STAMM, JOHN AND SHARON VISSERS, TOM AND TAMMY ROGERS, JIM AND ARDICE PRINK, GORDY AND JUDY REDLIN, JIM AND WENDY SACHS, DAVID AND BONIBET OLSAN, JIM AND KATHY RISKE, MIKE DAUGHARTY, BETTE RUNNING, TIM BRANDENBURG, WILL AND PATRICIA NOLTE, KAL AND DIANE AHLQUIST, LUKE AND MARTHA RUSSELL, MARY BAHR, DAVE AND LISA CAREW, MILDRED STANELLE, JIM AND HOLLY HARRIS, KEN AND JEANE TSCHANTZ, JIM AND CHERYL MOLENDA, RANDY AND CAROL SEIWERT, JIM SCHIAVO, RUSS AND MICHELLE PAUSTIAN, AND ANDY AND JAN KOBICA,

PLAINTIFFS-APPELLANTS,

V.

CITY OF APPLETON, A MUNICIPAL CORPORATION,

DEFENDANT-RESPONDENT,

WALTER KALATA, HELEN NAGLER, KAREN E. HARKNESS, DANIEL FERRIS, PETER HENSLER, EDWARD SPANG,

RONALD D. KLEMP, SR., RICHARD A. THOMPSON, JANET F. HEURING, ROBERT BELLIN, EARL J. BROOKER, RICHARD E. GOSSE, CHARLES GOFF, KATHY GROAT, JAMES E. CLEMONS, A. PAUL TRELC, JO EGELHOFF AND JEROME R. HILER,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Outagamie County: JOHN A. DES JARDINS, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Carl and Cheri Jensen and others (collectively, the Jensens) are property owners in the City of Appleton.[1] They brought this action seeking an injunction prohibiting the City from installing sidewalks in front of their properties without also requiring sidewalks to be installed in all other similarly situated areas of the city. The Jensens appeal a summary judgment dismissing their claims. They raise one issue on appeal: whether Appleton's sidewalk policy mandates installation of sidewalks in all similarly situated areas. We conclude that under the terms of the sidewalk policy, the city council has discretion to determine where to install sidewalks. Therefore, we affirm the summary judgment of dismissal.

BACKGROUND

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version.

¶2 In January 2000, in response to an informal meeting of neighbors and City personnel, the police department conducted a study of pedestrian and vehicle traffic in the area of Edna Ferber Elementary School. Because of the lack of sidewalks, as many as fifteen children, ages five to ten, were observed at various times walking in the streets. Also, vehicle traffic was described as "very heavy at times." The crossing guard was concerned because ice and snow piled up at curbs, creating slippery conditions and making walking in the streets dangerous. Cars stopping to drop off children added to the problem.

¶3 Department of Transportation records show that pedestrian crashes spike in mornings and afternoons when schools are opening and letting out. The police department's study concluded that safety concerns for the children walking to school favored the installation of sidewalks leading to Edna Ferber school.

¶4 Many area residents opposed sidewalk installation, however, citing aesthetic and cost concerns. Nonetheless, in January 2000, the City voted to install sidewalks on two streets leading to a school, "as defined by current City sidewalk policy."[2]

¶5 The City's sidewalk policy, part II B.1, provides that "[s]idewalks shall be installed along any residential property when a specific need is

[2] WISCONSIN STAT. § 66.0907 provides:

> The council may by ordinance or resolution determine where sidewalks shall be constructed and establish the width, determine the material and prescribe the method of construction of standard sidewalks. The standard may be different for different streets. The council may order by ordinance or resolution sidewalks to be laid as provided in this subsection.

demonstrated and approved by the Common Council." It also provides, in Part II B.3:

> Sidewalks shall be installed on all streets, within ½ mile, leading directly to elementary and middle schools and other major pedestrian generators as demonstrated and approved by the Common Council. The City will work with the School Districts to provide safe walking routes.

¶6 Property owners attended meetings held by the City's municipal services committee and requested that the committee order sidewalks to be installed in other neighborhoods near schools or, alternatively, rescind its resolution. The committee refused. Thereafter, the Jensens filed this action seeking an injunction to prevent the City from installing sidewalks in their neighborhood without also requiring sidewalks in other "similarly situated" neighborhoods.

¶7 The Jensens moved for summary judgment. The circuit court denied their motion and granted the City summary judgment, dismissing the Jensens' claims.

DISCUSSION

¶8 The Jensens argue that they have been unfairly singled out to have sidewalks installed in violation of the sidewalk policy. They contend that because the policy requires sidewalks to be installed in all similarly situated areas, the City council's decision to install sidewalks only in front of their properties, and not on all streets within one-half mile of the City's elementary and middle schools, deprives them of equal protection of the laws.

¶9 We disagree. This argument rests on the Jensens' erroneous interpretation of the sidewalk policy. Because their argument rests on a faulty premise, we must reject it.

¶10 The Jensens focus on the language found in Part II, B.3 of the City's sidewalk policy. They maintain that the phrase "as demonstrated and approved by the Common Council" modifies only "other major pedestrian generators." They assert that it does not refer to streets leading to elementary and middle schools. They contend that by ordering a sidewalk near Edna Ferber School only, the common council misapplied the City's own sidewalk policy. We are unpersuaded.

¶11 When reviewing a summary judgment, we perform the same function as the trial court and our review is de novo. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08.

¶12 To address the Jensens' argument, we employ the same rules of construction as we would employ to interpret an ordinance or statute. We start with the ordinary and accepted meaning. *See* ***Town of Burke v. City of Madison***, 225 Wis. 2d 615, 593 N.W.2d 822 (Ct. App. 1999). The interpretation of language in a document or ordinance is an issue we review de novo. ***Id.***

¶13 We are satisfied that "as demonstrated and approved by Common Council" modifies "all streets, within ½ mile" of the schools as well as other major pedestrian generators. Under this language, the council must first determine whether the street is within one-half mile of an elementary school, middle school, or other pedestrian generator, such as a church or cinema and, next, determine whether to approve the sidewalk. This gives effect to both the words

"demonstrated and approved." Under this language, the common council has discretion to approve sidewalk installation where the need is demonstrated within one-half mile of an elementary or middle school or other pedestrian generator.

¶14 The Jensens argue, however, that our construction would render the term "all" superfluous, contrary to standard rules of construction. We are unpersuaded. The reasonable interpretation is that the phrase "all streets" means that sidewalks shall be installed on all streets, whether they run through residential or commercial areas, within one-half mile of a major pedestrian generator, such as an elementary or middle school, as long as the City council has approved the installation.

¶15 The Jensens further argue that punctuation supports their interpretation. They point out that cases have held that "for a phrase to modify two or more independent clauses in a sentence, there must be a comma separating that phrase from the last of the clauses."[3] Regardless of the validity of this assertion, it fails to address the grammatical devices contained in the sentence in question. There are not two independent clauses in the sentence. Consequently, we reject the Jensens' grammatical analysis.

¶16 Because no facts are in dispute and the circuit court correctly interpreted the City's sidewalk policy as allowing the City council discretion in determining and approving the installation of sidewalks within one-half mile of elementary and middle schools, we affirm the summary judgment of dismissal.

[3] The Jensens rely on ***Baker v. McDel Corp.***, 53 Wis. 2d 71, 191 N.W.2d 846 (1971); ***Georgiades v. Glickman***, 272 Wis. 2d 257, 75 N.W.2d 573 (1956), and ***Jauquet Lumber Co. v. Kolbe & Kolbe Millwork***, 164 Wis. 2d 689, 476 N.W.2d 305 (Ct. App. 1991).

By the Court.—Judgment affirmed.

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