COURT OF APPEALS
DECISION
DATED AND FILED

January 26, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP108 **Cir. Ct. No. 2008CV4501**

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

PHEASANT RUN CONDOMINIUM HOMES ASSOCIATION, CHATEAU-IN-THE-WOOD HOMEOWNERS ASSOCIATION, INC., MEADOWWOOD COURT CONDOMINIUM ASSOCIATION AND WILDERNESS NORTH CONDOMINIUM ASSOCIATION, INC.,

PLAINTIFFS-APPELLANTS,

V.

CITY OF BROOKFIELD,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County: DONALD J. HASSIN, JR., Judge. *Affirmed*.

Before Brown, C.J., Anderson and Reilly, JJ.

¶1 ANDERSON, J. Pheasant Run Condominium Homes Association, Chateau-In-The-Wood Homeowners Association, Inc., Meadowwood Court

Condominium Association and Wilderness North Condominium Association, Inc., appeal the circuit court's order for dismissal based on its grant of summary judgment in favor of the City of Brookfield. They claim that the City violated WIS. STAT. § 703.27(2) (2007-08)[1] and their rights to equal protection under the Wisconsin Constitution by treating condominium owners differently from other multifamily property owners, to their detriment, by refusing to plow, maintain or repair the private roads in their condominium developments. Because the City does not maintain private roads and because the City does not have any laws which treat condominium owners any differently from other property owners located on private roads, we affirm.

¶2 This appeal requests review of the circuit court's order granting summary judgment to the City. We review an award of summary judgment de novo, applying the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). In deciding if there are genuine issues of material fact, we draw all reasonable inferences in favor of the nonmoving party. *See* ***Metropolitan Ventures, LLC v. GEA Assocs.***, 2006 WI 71, ¶20, 291 Wis. 2d 393, 717 N.W.2d 58.

¶3 The four appellants are Wisconsin condominium associations organized pursuant to WIS. STAT. ch. 703. By 1992, the developers of each of these condominium associations had made it public record that the condominiums

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

would be developed utilizing private roads and that maintenance of those roads would be the responsibility of their respective associations. In each instance, the developers, not the City, chose to utilize the City's zoning code, which allows for private roads with shorter setbacks from the road to maximize development of the property. The shorter the setback from the building to the street, the more units a developer can build on the property. The condominium associations' homeowners have benefitted from the use of private roads: if the condominium developments were built with public roads, the developer for each of the developments could not have built as many units on the property as it did, and thus the cost per unit upon purchase almost certainly would have increased.

¶4 This case turns on the interpretation of WIS. STAT. § 703.27(2) and its application to the undisputed facts. Section 703.27(2) states that

> [n]o county, city, or other jurisdiction may enact any law, ordinance, or regulation that would impose a greater burden or restriction on a condominium or provide a lower level of services to a condominium than would be imposed or provided if the condominium were under a different form of ownership.

¶5 The interpretation of a statute is a question of law, which we review de novo. ***Berkos v. Shipwreck Bay Condo. Ass'n***, 2008 WI App 122, ¶8, 313 Wis. 2d 609, 758 N.W.2d 215. Statutory interpretation begins with the language of the statute. ***Id.*** If the meaning of the statute is plain, we ordinarily stop the inquiry and apply that meaning. ***Id.*** The context in which a statute appears is relevant to its plain meaning, as is the history of the statute revealed in prior versions of the statute and legislative amendments to the statute. ***Id.*** Also relevant to a statute's plain meaning is prior case law interpreting the statute. ***Id.***

¶6 However, we generally do not consult extrinsic sources such as legislative history to aid interpretation unless the statute is ambiguous. ***Id.***, ¶9. The test for ambiguity is whether the statute is capable of being understood by reasonably well-informed persons in two or more senses. ***Id.***

¶7 We agree with the circuit court that we need look no further than the language itself to give the statute its proper interpretation. The statute prohibits a jurisdiction from passing into law certain types of inequitable rules; it can be broken into three distinct elements: (1) the enactment of a law, ordinance or regulation; (2) by a county, city or other jurisdiction; (3) which imposes a greater burden or restriction or provides a lower level of services to a condominium than would be imposed or provided if the condominium were under a different form of ownership. *See* WIS. STAT. § 703.27(2).

¶8 Element one prohibits certain types of enactments. It plainly indicates that absent an enactment, there can be no violation of the statute. *See* ***id.*** Thus, in determining whether a violation has occurred under WIS. STAT. § 703.27(2), we first ask whether there has been an enactment of a law, ordinance or regulation relevant to the dispute. If the answer is no, there can exist no violation and our inquiry ends.

¶9 By its plain language, WIS. STAT. § 703.27(2) does not extend to instances where the City chooses not to provide services to condominiums and has chosen this absent the enactment of a law, ordinance or regulation. To interpret § 703.27(2) otherwise would create absurd results. *See* ***Watton v. Hegerty***, 2008 WI 74, ¶¶28, 39, 311 Wis. 2d 52, 80, 751 N.W.2d 369 (The "absurd results" doctrine is the "[t]he doctrine that a statute will not be interpreted to reach an absurd result [in order] to avoid interpreting a statute in accordance with its plain

language or [whenever] a statute is subject to more than one reasonable interpretation.").

¶10 The condominium associations disagree with this interpretation and advocate a cafeteria-style[2] approach to construing WIS. STAT. § 703.27(2). The associations focus exclusively on element three, which forbids unequal treatment, and ignore that element three is a contingent element: it forbids unequal treatment *conducted pursuant to an enactment of a law, ordinance or regulation*.

¶11 If we were to adopt the condominium associations' interpretation, we would be disposing of the first element of the statute, the enactment of a law, ordinance or regulation. Wisconsin's statutory interpretation has never allowed a court to do what the associations ask. *See* ***State ex rel. Young v. Maresch***, 225 Wis. 225, 237, 273 N.W. 225 (1937) ("We cannot amend [a] statute…. If there is a defect in [a] statute, it is not the province of [an appellate] court to correct it. That must be done by the legislature.").

¶12 In short, while the City's decision to treat private roads and public roads differently may be appalling to the condominium associations, it does not violate WIS. STAT. § 703.27(2). The City maintains public roads and does not maintain private roads and the record demonstrates that it does so regardless of what kind of property is located on the roadway. The condominium associations have private roads because their developers chose to build their developments with private roads for economic reasons related to the City's zoning code. The City has

[2] "Cafeteria-style" means to pick and choose, as in choosing what food to purchase from a cafeteria line. *See The Free Dictionary*, http://www.thefreedictionary.com/cafeteria-style ("designed in such a way that one may select from a group or assortment only those things deemed desirable: *a cafeteria-style benefit program*") (last visited Jan. 13, 2011).

not enacted a law, ordinance or regulation in violation § 703.27(2). The circuit court correctly rejected this argument.

¶13 The condominium associations also assert that the circuit court erred in dismissing their state constitutional claims. We disagree. The circuit court correctly determined that this argument was barred by claim preclusion. Whether the doctrine of claim preclusion applies is a question of law which we resolve independently of the circuit court. ***DePratt v. West Bend Mut. Ins. Co.***, 113 Wis. 2d 306, 310, 334 N.W.2d 883 (1983). Claim preclusion "provides that a final judgment 'is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings.'" ***A.B.C.G. Enters., Inc. v. First Bank Se., N.A.***, 184 Wis. 2d 465, 472-73, 515 N.W.2d 904 (1994) (citation omitted).

¶14 Claim preclusion bars the condominium associations' constitutional claims because the federal district court for the Eastern District of Wisconsin has already determined that the City did not violate the condominium associations' equal protection or due process rights under the federal constitution in a suit based on the exact same facts and between the same parties. *See* ***Pheasant Run Condo. Homes Ass'n v. City of Brookfield***, 580 F. Supp. 2d 735, 739-40 (E.D. Wis. 2008). The condominium associations did not appeal that final determination. This issue has been decided and cannot be relitigated.[3]

[3] We note that while the constitutional claims were litigated in federal court, claim preclusion still applies because Wisconsin courts have long held that the equal protection provision of the Wisconsin Constitution and the United States Constitution should be given the "identical interpretation." *See* ***Aicher v. Wisconsin Patients Comp. Fund***, 2000 WI 98, ¶55 n.14, 237 Wis. 2d 99, 613 N.W.2d 849.

¶15 The condominium associations make other claims that we need not address given our analysis. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (If this court affirms the circuit court based on one ground, it need not address others.).

By the Court.—Order affirmed.

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