

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 20, 2011

A. John Voelker
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. 2011AP156

Cir. Ct. No. 2009SC7173

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

LINDA KASPRZAK,

PLAINTIFF-APPELLANT,

v.

CITY OF WAUKESHA,

DEFENDANT-RESPONDENT.

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

¶1 REILLY, J.¹ Linda Kasprzak appeals from a summary judgment order granted in favor of the City of Waukesha that dismissed Kasprzak's claim

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

for damages. Kasprzak contends that the circuit court erred in concluding that a City of Waukesha housing inspector had the authority and discretion to stop construction and not to approve the permit for the construction of a detached garage on Kasprzak's property. The circuit court held that because the housing inspector's decision was discretionary, governmental immunity applied and the City could not be held liable. We affirm the circuit court's summary judgment order.²

FACTS

¶2 In the fall of 2008, Kasprzak began building a detached garage on her property. Scott Lau, a City of Waukesha housing inspector, inspected the garage slab on Kasprzak's property before the proposed construction began. Lau determined that the load capacity of the soil for the garage slab appeared questionable and unable to meet the 2,000 pounds per square foot (psf) requirement in compliance with WAUKESHA, WIS., MUN. CODE ch. 16 and WIS. ADMIN. CODE § COMM. 21 (Jan. 2011), so he withheld the permit until Kasprzak brought the soil into compliance. Lau concluded that Kasprzak's property would not be approved by the City unless she submitted a soil test showing the soil load capacity was within code requirements, or removed and replaced the soil and the new soil passed inspection. Kasprzak disputed Lau's findings, but ultimately ordered an independent soil test. After the soil failed again, Kasprzak removed and replaced the soil. Lau then approved the site for construction.

² Because we hold that the housing inspector acted appropriately, we will not discuss whether governmental immunity applies. *See* WIS. STAT. § 893.80(4) ("[n]o suit may be brought against any ... political corporation, governmental subdivision, or any agency thereof ... or against its officers, officials, agents or employees for acts done in the exercise of ... judicial or quasi-judicial functions.").

¶3 Kasprzak served the City of Waukesha with a notice of claim requesting that the City reimburse her \$2,991.42 for the soil testing, gravel, and grading that she claimed to have been ordered to perform by the housing inspector. The City denied the claim and Kasprzak filed suit in small claims court against the City alleging negligence and demanding judgment for \$2,991.42. The City filed a motion for summary judgment asserting that the housing inspector's decision was discretionary and that the City had governmental immunity. The small claims court granted the motion and dismissed Kasprzak's claims.

¶4 Kasprzak then filed a request for de novo review. The circuit court agreed with the small claims court that governmental immunity applied and therefore upheld the summary judgment award in favor of the City.

¶5 Kasprzak appeals, arguing that the Waukesha municipal code does not require detached residential garages to meet the same soil standards that apply to other structures, and that the housing inspector thus did not have the authority to withhold her construction project and order her to conduct soil tests and improvements. She therefore argues that the City is not protected by governmental immunity.

STANDARD OF REVIEW

¶6 This court reviews the grant or denial of a summary judgment motion de novo, applying the same standards as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate if the record demonstrates that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.8(2). This court reverses a circuit court's decision granting summary judgment if either (1) the circuit court incorrectly decided legal issues,

or (2) material facts are in dispute. *Coopman v. State Farm Fire & Cas. Co.*, 179 Wis. 2d 548, 555, 508 N.W.2d 610 (Ct. App. 1993).

¶7 The rules for the interpretation of municipal ordinances and administrative regulations are the same as those for statutes; they are questions of law that this court reviews de novo. *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 32, 498 N.W.2d 842 (1993); *Orion Flight Servs., Inc. v. Basler Flight Serv.*, 2006 WI 51, ¶18, 290 Wis. 2d 421, 714 N.W.2d 130; *West v. Dep’t of Commerce*, 230 Wis. 2d 71, 74, 601 N.W.2d 307 (Ct. App. 1999).

DISCUSSION

¶8 City of Waukesha housing inspectors assure compliance with codes, ordinances, statutes, and regulations governing new construction and remodeling. WAUKESHA, WIS., MUN. CODE § 2.03(4)(a)2.³ Housing inspectors have the power to stop construction whenever any building work is being done contrary to the building code or in an unsafe, unworkmanlike, or dangerous manner. WAUKESHA, WIS., MUN. CODE § 2.03(7)(c). Housing inspectors also have the power to issue permits if they conclude that a proposed building will comply with all applicable codes, ordinances, statutes, and regulations. See WAUKESHA, WIS., MUN. CODE § 16.03(6)(a).

¶9 During his inspection of Kasprzak’s property, Lau found the soil to be problematic. The soil appeared dark and soft and unable to properly support a concrete garage slab. Lau gave Kasprzak two choices. Kasprzak could either: (1)

³ The City of Waukesha Chief Building Inspector delegates duties to housing inspectors. See WAUKESHA, WIS., MUN. CODE § 2.05(3).

obtain a soil test to determine whether the soil load capacity was within code; or (2) remove and replace the soil, with the new soil's approval subject to re-inspection. Kasprzak performed an independent soil test on the original soil, but after the soil failed the test, she had it removed and replaced with new soil.

¶10 Lau based his inspection decision on WIS. ADMIN. CODE § COMM. 21.15(3), which requires foundations and footings to have a soil-bearing capacity of no less than 2,000 pounds psf.⁴ Kasprzak argues that her detached garage is exempt from the requirements of § COMM. 21.15 because WIS. ADMIN. CODE § COMM. 20.05(4) (Jan. 2011) provides that “the provisions of this code do not apply to detached garages.” If, however, Kasprzak thought the housing inspector mistakenly applied the conditions of § COMM. 21.15, she should have petitioned for a writ of mandamus at the time the housing inspector did not approve her construction project. Additionally, Kasprzak should have included something in the record showing how the original soil on her property would have supported the structure. Housing inspectors have the discretion to stop construction and to withhold construction permits. Kasprzak’s failure to show that the detached garage could have been built on the original soil indicates the housing inspector’s decision was reasonable.

CONCLUSION

¶11 The circuit court correctly decided that the housing inspector acted within his powers. Accordingly, we affirm the circuit court’s summary judgment order.

⁴ The City of Waukesha adopted WIS. ADMIN. CODE §§ COMM. 20-25 as part of its building code. *See WAUKESHA, WIS., MUN. CODE § 16.01(6)(b).*

By the Court.—Order affirmed.

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

