

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 31, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 95-0873

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

SLOUGH CREEK PROPERTIES,

Plaintiff-Appellant,

v.

COLUMBIA COUNTY, WISCONSIN,

Defendant-Respondent.

APPEAL from an order of the circuit court for Columbia County:
RICHARD REHM, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Vergeront, JJ.

VERGERONT, J. Slough Creek Properties, a partnership, appeals from an order declaring that it violated the Columbia County Zoning Ordinance by keeping camper trailers and a motor home on property zoned as agricultural. The order also enjoins the partnership from keeping trailers and

motor homes on its property.¹ We conclude that the trial court correctly interpreted the ordinance and we affirm.

The parties have stipulated to the pertinent facts. Slough Creek Properties is a partnership consisting of four partners who own property in Columbia County. The property is used for hunting and camping, and is zoned agricultural under the Columbia County Zoning Ordinance. There are four units on the property. One is a motor home, which the owner uses to travel to and from the property and takes home when he leaves the property. The motor home is not left on the property unattended and is not stored there. The other three units are camper trailers that are on wheels and capable of being moved, although they rarely are. One of the camper trailers is thirty-three feet in length and two are twenty-seven feet in length. The camper trailers are not suitable for, nor used as, houses. They are used as overnight shelters, as a tent would be used, principally during the hunting season and for a few nights in the summer. None of the units are suitable for use as dwellings and none could reasonably be used as single-family residences.

There is a free-standing outhouse on the property, but no bathing facilities. There is no plumbing or electricity connected to any of the camper trailers. One of the camper trailers has a small, unattached deck built next to it. The back stands on concrete blocks and there is no footing except the blocks. The deck could be picked up and moved. The other camper trailers have free-standing screened-in porches next to them, which are dismantled and stored every fall.

The interpretation of an ordinance and its application to an undisputed set of facts presents a question of law, which this court reviews de novo. *Browndale Int'l Ltd. v. Board of Adjustment*, 60 Wis.2d 182, 199, 208 N.W.2d 121, 130 (1973), *cert. denied*, 416 U.S. 939 (1974).

¹ Slough Creek Properties filed a complaint requesting a declaratory judgment that the camper trailers and motor home are not "structures" within the meaning of the Columbia County Zoning Ordinance and did not violate the Columbia County Zoning Ordinance. Columbia County filed a counterclaim requesting injunctive relief and a forfeiture. The court declined to impose a forfeiture pending compliance with the injunction.

part: Section 11.04, COLUMBIA COUNTY ZONING ORDINANCE, provides in

AGRICULTURAL DISTRICT. Use. In the Agricultural District no building or premises shall be used and no building shall hereafter be erected, moved or structurally altered unless otherwise provided in this section, except for one or more of the following uses....²

² The specified uses in § 11.04, COLUMBIA COUNTY ZONING ORDINANCE, are:

1. General farming,
2. Not to exceed two single family residences or one two family residence when the occupant or head of the occupant household of both units are employed in connection with the farm operation....
3. Not to exceed one mobile home on any operating farm when the occupant or head of the occupant household of such mobile home is employed in connection with the farm operation....
4. Telephone, telegraph and power distribution towers, poles and lines
5. Road side stands....
6. Residential units when created through farm consolidation as provided in 11.04, Paragraph 2.
7. The following conditional uses are limited to those religious, utility (other than those listed above), institutional, governmental, and agricultural related uses which do not conflict with agricultural use and are found to be necessary in light of the alternative locations available for such use when the location of each such use shall have been approved in writing by the Board of Adjustment, after a public hearing and after a view of the proposed site of sites....

(e) Radio and television transmission towers, microwave and radio

Section 11.21, COLUMBIA COUNTY ZONING ORDINANCE, contains these definitions:

BUILDING: A structure having a roof supported by columns or walls. Each portion of a building separated by division walls from the ground up, without openings in those walls, is a separate building for the purpose of this ordinance. No part of said building shall contain in any part a trailer as defined in this section except when the trailer is located in a licensed campground or mobile home park. Such addition to a trailer in a mobile home park shall not exceed fifty (50) percent of the trailer's floor area.

....

MOBILE HOME: A mobile home is that which is or was originally constructed or designed to be transported by any motor vehicle upon a public highway to a site, and designed, equipped and used primarily for permanent, long-term sleeping, eating, and living quarters for a single-family, or is intended to be so used, and includes any additions, attachments, annexes, foundations and appurtenances and arrives at the site complete and ready for occupancy, except

(..continued)

relay towers.

(f) Medical, correctional or charitable institutions.

(g) Migrant labor camps

(h) Real estate, insurance, seed, fertilizer, or other sales office, only when incidental to the principal use of the District....

(i) Solid Waste Disposal Site.

(j) Farm family business, as defined in Chapter 91, Wisconsin Statutes

Section 11.04 also contains provisions regarding height, yard, area and other requirements.

for minor and incidental unpacking and assembly operations.

....

STRUCTURE: Anything constructed or erected, the use of which requires a more or less permanent location on the ground, or attachment to something having a permanent location on the ground, except that no part of said structure shall contain in any part a trailer as defined in this section.

....

TRAILER. Any vehicle, house car, camp car, or any portable or mobile vehicle on wheels, skids, rollers or blocks, either self-propelled or propelled by any other means, which is used or designed to be used for residential, living or sleeping purposes.

The parties apparently agree that the camper trailers meet the definition of "trailer." We conclude they do because they are "portable ... vehicle[s] on wheels ... self-propelled or propelled by any other means ... which [are] used or designed to be used for ... sleeping purposes." We are not certain what definitional category the parties think is appropriate for the motor home. At times the parties and the trial court appear to consider the terms "motor home" and "mobile home" to be the same. We do not agree. We conclude that the motor home as described in the stipulated facts, a spare description to be sure, does not come within the definition of "mobile home." There is no indication that the motor home is "designed to be transported by [a] motor vehicle ... to a site, and designed, equipped and used [or intended to be used] primarily for permanent, long-term sleeping, eating, and living quarters for a single-family." We conclude, however, that the motor home does come within the definition of "trailer" because it is a "mobile vehicle on wheels ... self-propelled ... which is used or designed to be used for ... sleeping purposes."³

³ Paragraph 8 of the stipulated set of facts states:

These units are suitable for camping in reasonably good weather,

Although the parties agree that the camper trailers and motor home are not buildings or structures, they reach opposite conclusions from that point of agreement. The partnership contends that § 11.04, COLUMBIA COUNTY ZONING ORDINANCE, regulates only the erection and uses of buildings and structures and does not regulate activities generally in agricultural districts. According to the partnership, because the camper trailers and motor home are not buildings or structures and the partnership's activities do not involve the use of buildings or structures, § 11.04 does not address the placement or use of the camper trailers and motor home on the partnership's property. Columbia County responds that, precisely because camper trailers and motor homes are not buildings, they are not permitted in agricultural districts. Columbia County, like the trial court, relies on *County of Columbia v. Bylewski*, 94 Wis.2d 153, 288 N.W.2d 129 (1980).

In *Bylewski*, the court interpreted § 11.07, COLUMBIA COUNTY ZONING ORDINANCE, which governs recreational districts. The prefatory language of §§ 11.04 and 11.07, COLUMBIA COUNTY ZONING ORDINANCE, is identical except for the reference to agricultural district in § 11.04 and to recreational district in § 11.07.⁴ In *Bylewski*, Columbia County argued that the

(..continued)

but are not suitable for dwellings, and could not reasonably be used as a single-family residence.

We interpret the reference to "these units" to mean all four units. Even if this reference were meant to refer only to the three camper trailers, the remaining description of the motor home in the stipulated facts does not meet the definition of "mobile home."

⁴ The version of § 11.07, COLUMBIA COUNTY ZONING ORDINANCE, referred to in *County of Columbia v. Bylewski*, 94 Wis.2d 153, 288 N.W.2d 129 (1980), was:

11.07 RECREATION DISTRICT. In the recreation district no building or premises shall be used and no building shall hereafter be erected, moved or structurally altered, unless otherwise provided for in this ordinance, except for one or more of the following specified uses:

1. Single family homes for year round occupancy.
2. Cottages for seasonable occupancy.

The prefatory language has remained unchanged but a number of other permitted uses have been added.

owner of a mobile home violated § 11.07 when he replaced an existing nonconforming mobile home with another mobile home, because mobile homes were not buildings and were therefore not permitted in a recreational district. The court agreed, stating:

The obvious intent of the Columbia county board in enacting sec. 11.07 was to limit the type and use of structures in a "recreation district" to those structures which could be classified as a "building" as that term is defined in the ordinance. In view of the general rule of statutory construction, *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) which provides that "... the express mention of one matter excludes other similar matters not mentioned," all structures not classifiable as a building, such as trailers or mobile homes, are prohibited from recreation districts pursuant to the ordinance. The question that remains is whether the appellant's mobile home qualifies as a building and thus the type of structure permitted by ordinance to be located on property in a "recreation district" or is it a structure prohibited by the ordinance.

Bylewski, 94 Wis.2d at 168-69, 288 N.W.2d at 137 (footnotes omitted).

The definition of "trailer" considered by the *Bylewski* court is the same as that governing this case. See *Bylewski*, 94 Wis.2d at 168 n.6, 288 N.W.2d at 137. The definition of "mobile home" was different: a "portable or mobile vehicle on wheels, ... blocks, either self-propelled or propelled by any other means" and used for residential housing or sleeping purposes. *Id.* at 169, 288 N.W.2d at 137. The court in *Bylewski* concluded that the replacement mobile home met this definition of mobile home and that this definition of mobile home fell within the definition of trailer.⁵ *Id.* at 169-70, 288 N.W.2d at 138. The court also concluded that a trailer did not qualify as a building under

⁵ The current definition of mobile home in § 11.21, COLUMBIA COUNTY ZONING ORDINANCE, cited earlier in this opinion, does not fall within the definition of "trailer" but sets up a distinct definitional category.

the ordinance because a building was defined in § 11.21, COLUMBIA COUNTY ZONING ORDINANCE, as "a structure having a roof supported by columns or walls but which is not a `trailer' as that term is defined in the code." *Id.* at 168, 288 N.W.2d at 137 (footnote omitted). The definition of "building" the *Bylewski* court referred to is, in all relevant respects, the same as that governing this case.⁶

Bylewski requires that we reject the partnership's argument that because the camper trailers and motor home are not buildings, they are not prohibited by § 11.04, COLUMBIA COUNTY ZONING ORDINANCE. The court in *Bylewski* interpreted the identical prefatory language in § 11.07, COLUMBIA COUNTY ZONING ORDINANCE, to mean that only buildings as defined in the ordinance are permitted.

We agree with the partnership that the supreme court's analysis in *Bylewski* does not provide a satisfactory framework for resolving a number of questions that this ordinance might raise. And were we writing on a clean slate, we might well come to a different conclusion than did the *Bylewski* court. However, we may not disregard *Bylewski*. *Bylewski* holds that a trailer is prohibited in a recreational district because it is not a building. Both a camper trailer and a motor home come within the definition of "trailer" in § 11.21. Because the language at issue in this case--the prefatory language of § 11.04 and the definitions of "building" and "trailer" in § 11.21--is the same in all significant respects as that interpreted in *Bylewski*, we must follow *Bylewski*. We conclude that the camper trailers and motor home kept on the partnership's property are not permitted in an agricultural district.

⁶ The definition of "building" in *Bylewski* was:

A structure having a roof supported by columns or walls. Each portion of a building separated by division walls from the ground up, without openings in those walls, is a separate building for the purpose of this ordinance, except that no part of said building shall contain in any part a trailer as defined in this section.

Bylewski, 94 Wis.2d at 158 n.1, 288 N.W.2d at 132. Although the court in *Bylewski* did not address the definition of "structure," it appears that the current definition of "structure" was contained in the version of § 11.21, COLUMBIA COUNTY ZONING ORDINANCE, considered in *Bylewski*.

By the Court. – Order affirmed.

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