

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 12, 2013

Diane M. Fremgen
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. 2012AP2238

Cir. Ct. No. 2012CV424

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

VILLAGE OF NORTH HUDSON,

PLAINTIFF-RESPONDENT,

V.

RANDY J. KRONGARD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Reversed and cause remanded with directions.*

¶1 CANE, J.¹ Randy Krongard appeals an order denying his motion to vacate a default judgment. Krongard argues the judgment is void because the ordinance underlying the judgment conflicts with, and is therefore preempted by,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

state statute. Because the validity of the ordinance at issue cannot be determined from this record, this court reverses and remands with directions.

BACKGROUND

¶2 On November 17, 2011, the Village of North Hudson issued two citations to Krongard for having two junk vehicles in plain view on his property, contrary to North Hudson Village Ordinance §§ 90-41 and 90-44.² The vehicles were deemed junk vehicles because they had expired registrations.

² North Hudson Village Ordinance § 90-41 defines a junk vehicle as “any vehicle or part of a vehicle that is without current license plates and current registration or application, or is disabled in such a manner and to an extent that it cannot legally be driven on the public roadways of this state.”

North Hudson Village Ordinance § 90-44, provides:

(a) No person shall leave in plain view upon private property a junk vehicle for a period in excess of five days. A vehicle is in plain view if it is not in a fully enclosed garage or covered with an automotive car cover as described in subsection (b) of this section.

(b) If the police department finds a junk vehicle on private property, the department shall notify the owner of the real estate to within five days either remove the vehicle to a fully enclosed garage or to completely cover the junk vehicle with a weatherproof, nontransparent commercial car cover; no tarpaulin or other covering device shall be acceptable. There shall never be more than two covered junk vehicles on private property at any time. Notice shall be by regular and certified mail. If the vehicle is not so removed or covered within five days from the date the notice is sent, the police department shall issue a citation under section 90-42 and upon court order shall cause the vehicle to be removed to a suitable place for 30 days. The cost of removal will be charged to the owner of the real estate upon which the vehicle was located. If the vehicle is not claimed after 30 days, it shall be disposed of as provided in this article. If the vehicle is claimed by the owner, all reasonable charges for handling, storage and removal shall be paid by the owner to the village; and the village

(continued)

¶3 On December 14, Krongard appeared pro se in municipal court and pleaded not guilty. Krongard, however, did not appear at the scheduled trial, and the court entered a default judgment against him. On March 27, 2012, Krongard, now represented by counsel, moved to vacate the municipal court’s judgment in part because the “Village of North Hudson Ordinance No. 90-44 is void, unlawful and invalid as preempted, contrary and inconsistent with WIS. STAT. §§ 342.40, 346.55, 349.03 and 349.06 and inconsistent with the foregoing provisions of law.”

¶4 The municipal court denied Krongard’s motion to vacate the default judgment. It reasoned that Krongard failed to specify which WIS. STAT. § 806.07(1)³ basis he was relying on to vacate the default judgment. The court also noted that Krongard failed to include “any supporting papers, affidavits, or other sworn statements of fact that show that there is [a] meritorious defense under this statute to grant relief from the default judgment.”

¶5 Krongard appealed the order denying his motion to vacate. Before the circuit court, Krongard argued the default judgment should be set aside as void because the Village’s junk vehicle ordinance was inconsistent with and therefore preempted by state statute. The Village responded that its ordinance was valid and not preempted by statute.

¶6 The circuit court dismissed Krongard’s appeal. It reasoned that “nothing in the municipal court record or presented to this Court ... justifies relief

shall have a lien upon the vehicle until such charges have been paid.

³ WISCONSIN STAT. § 806.07(1) outlines various reasons a party may move for relief from a judgment.

from the default judgment.” The court also stated, “Krongard argues that the citations he received are void based upon state statute preemption of municipal ordinances While he attempts to argue the merits of his case, that would have been appropriate at the Municipal Court trial, had he been present.” Krongard appeals.

DISCUSSION

¶7 Initially, the Village suggests Krongard’s appeal is an improper appeal from a default judgment and argues Krongard is prohibited from appealing a default judgment. *See* WIS. STAT. § 800.14(1). Although the Village is correct that Krongard is prohibited from appealing a default judgment, in this case Krongard is appealing the order denying his motion to vacate the judgment. WISCONSIN STAT. § 800.115 permits a party to move for relief from a judgment, and WIS. STAT. § 800.14(1) states that a party may appeal a municipal court’s decision on a motion for relief from a judgment. Therefore, Krongard’s appeal of the court’s order denying his motion to vacate the default judgment was properly before the circuit court and now this court.

¶8 On appeal, Krongard argues the court erred by denying his motion to vacate because he asserts the judgment is void. WISCONSIN STAT. § 800.115 states a party may move to reopen a judgment under WIS. STAT. § 806.07(1)(c), (d), (g) or (h). Relevant to this appeal, WIS. STAT. § 806.07(1)(d) allows a party to obtain relief from a judgment if “[t]he judgment is void[.]” *Id.*

¶9 Krongard contends the judgment is void because the Village’s junk vehicle ordinance is invalid based on its conflict with state traffic regulations. The state of Wisconsin has preempted the field of traffic regulations by the enactment of chapters 341 to 348 and 350. *See* WIS. STAT. § 349.03(1); *City of Janesville v.*

Walker, 50 Wis. 2d 35, 36-37, 183 N.W.2d 158 (1971). WISCONSIN STAT. § 349.03 provides that no local authority may enact any traffic regulation unless such regulation is not contrary to or inconsistent with chapters 341 to 348 and 350 or such regulation is expressly authorized by §§ 349.06 to 349.25 or some other provision of the statutes. Although an ordinance need not be identical to a state traffic regulation, an ordinance that has “for its subject matter a traffic regulation must be in strict conformity with state law” otherwise it will be preempted. *Janesville*, 50 Wis. 2d at 39.

¶10 Krongard asserts the Village’s junk vehicle ordinance is in conflict with the state’s traffic regulations because the ordinance impermissibly defines unregistered vehicles as junk vehicles and regulates unregistered vehicles on private property. Krongard points out that WIS. STAT. § 340.01(25j) does not include unregistered vehicles in its definition of a “junk vehicle.” Rather, that statute defines a “junk vehicle” as a “vehicle which is incapable of operation or use upon a highway and which has no resale value except as a source of parts or scrap” and a “vehicle for which an insurance company has taken possession of or title to if the estimated cost of repairing the vehicle exceeds its fair market value.” WIS. STAT. § 340.01(25j)(a), (b).

¶11 Krongard also argues that the state traffic regulations allow for vehicles to be parked on private property with the owner’s consent and that the regulations only permit municipalities to regulate unregistered vehicles on highways. *See* WIS. STAT. § 346.55(3) (“No person may leave or park any motor vehicle on private property without the consent of the owner or lessee of the property.”); WIS. STAT. § 341.65(2)(a) (“Any municipality ... may enact ordinances prohibiting any unregistered motor vehicle from being located upon a highway”). He contends that, because the Village had “no authority under

Wisconsin traffic law to prohibit or regulate the parking or storage of unregistered motor vehicles by their owners on their own property,” this court must conclude the ordinance is invalid, which in turn, renders his judgment void.

¶12 The Village responds that the state traffic regulations are concerned “with the licensing, regulation of, outfitting and operation of vehicles” and its ordinance is “concerned with the upkeep of private property[.]” It argues that its ordinance is not inconsistent or contrary to the state traffic regulations because they regulate “two completely different issues.”

¶13 The Village also contends that, compared to the traffic regulations, its junk vehicle ordinance is not inconsistent with or contrary to the state’s definition of a junk vehicle. The Village argues that, under WIS. STAT. § 340.01(25j), a vehicle is junk if it is not capable of legal operation on the highway. It asserts that an unregistered vehicle is incapable of legal operation on the highway and therefore constitutes a junk vehicle. Finally, the Village contends that, although WIS. STAT. § 346.55(3) permits owners to give permission for motor vehicles to be parked on their property, parking is different than storing vehicles on private property.

¶14 This court is persuaded that nothing in the traffic regulations provides that a municipality can regulate unregistered vehicles on private property. Further, WIS. STAT. § 340.01(25j) defines a junk vehicle as one that is inoperable, not legally inoperable, and has no resale value except for scrap or parts. Therefore, the Village’s definition is broader than the traffic regulation.

¶15 Additionally, the ordinance does not mirror the state traffic regulation in that the ordinance also requires owners of junk vehicles to notify and return the vehicle’s certificate of title to the Department of Transportation. *See*

WIS. STAT. § 342.34(1). Instead, the Village’s ordinance simply requires owners of inoperable or unlicensed vehicles to keep their vehicles out of the public’s view, either by storage in a fully enclosed garage or by a weatherproof, nontransparent commercial car cover. *See* NORTH HUDSON, WIS. ORDINANCES § 90-44(b). This is consistent with the Village’s argument that the purpose of the ordinance is its concern with the upkeep of private property.

¶16 As such, the Village’s argument regarding the purpose of the ordinance and the ordinance’s language itself suggest that the ordinance is not a traffic regulation and the Village did not enact it pursuant to the power granted under the state traffic regulations. Instead, it appears the ordinance may have been enacted using a different power, such as its zoning authority. *See, e.g.*, WIS. STAT. §§ 61.35; 62.23(7) (grant of power to enact ordinances to promote “health, safety, morals or general welfare of the community”).

¶17 However, because it cannot be determined from the record whether the ordinance in question is a traffic regulation or part of a different regulatory scheme, the order is reversed and the matter remanded to the circuit court to determine the validity of the Village’s ordinance. If the ordinance is valid under the Village’s alternative authority, Krongard’s default judgment is not void and the circuit court should deny Krongard’s motion to vacate the judgment. If the ordinance was adopted under its authority from the state traffic regulations, Krongard’s default judgment is void because of its inconsistency and the judgment must be dismissed.

By the Court.—Order reversed and cause remanded with directions.

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

