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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

BUFFALO FUR FARM, INC.,

Plaintiff-Appellant,

vs.

FAYETTE COUNTY,

Defendant-Appellee.

Filed October 21, 1980

0-216
2-64310

Appeal from Fayette District Court - Carroll E. Engelkes, Judge.

Plaintiff appeals from trial court's denial of petition for declaratory judgment and from issuance of injunction. - AFFIRMED.

James Burns, of Miller, Pearson, Gloe & Burns, Decorah, for plaintiff-appellant.

J. G. Johnson, Oelwein, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff, Buffalo Fur Farm, appeals from trial court's denial of its petition for declaratory judgment and from trial court's injunction against use of its premises as a rendering plant. We affirm.

For many years prior to January, 1972, plaintiff's premises in Fayette County were used for collecting, rendering, and shipping dead animal bodies. After a fire at the premises in January, 1972, plaintiff's premises were no longer used for rendering, but continued to be used for receiving, storage, and shipping until at least late fall of 1976. From the fall of 1976 through the summer of 1977 plaintiff renovated a building formerly used for receiving, storage, and shipping. In September, 1977, plaintiff resumed the use of its premises for rendering.

The Fayette County zoning ordinance that went into effect January 1, 1973, classified plaintiff's premises as agricultural, a classification that excludes rendering, which is a heavy industrial use. When the ordinance went into effect, plaintiff's premises, which were used for receiving, shipping, and storing, constituted a lawful nonconforming use. In December, 1977, a few months after plaintiff started rendering operations, plaintiff petitioned the trial court for a declaratory judgment declaring its operation of a rendering plant on its premises a lawful nonconforming use under the Fayette County zoning ordinance. The trial court denied plaintiff's petition and granted defendant's counterclaim for an injunction prohibiting plaintiff from using its premises as a rendering plant.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. The district court's findings of fact have the effect of a jury verdict. Weldon v. Zoning Board of Des Moines, 250 N.W.2d 396, 400-01 (Iowa 1977). Such findings, supported by substantial evidence and arrived at by application of proper legal standards, are binding on this court. Vogelaar v. Polk County Zoning Board of Adjustment, 188 N.W.2d 860, 863 (Iowa 1971); Iowa R. App. P. 14(f)(1). If there is substantial evidence for the district court's decision, we may not substitute our opinion for that of the district court. Johnson v. Board of Adjustment, City of West Des Moines, 239 N.W.2d 873, 878 (Iowa 1976). The fact that the evidence also would have supported an opposite conclusion does not thereby undermine the evidence's substantiality. Bennett v. Guthridge, 225 N.W.2d

137, 139 (Iowa 1975).

Defendant contends that the trial court erred in failing to strictly construe two sections of the Fayette County zoning ordinance against the governmental authority so as to validate plaintiff's nonconforming use of its premises as a rendering plant. See Peterson v. City of Decorah, 259 N.W.2d 553, 555 (Iowa Ct. App. 1977). We initially note that a court may not give an unreasonable reading of an ordinance in the name of strict construction. See Payne v. Ostrus, 50 F.2d 1039, 1042 (8th Cir. 1931); State v. Vietor, 208 N.W.2d 894, 898 (Iowa 1973).

I. Plaintiff's first argument focuses on section 8(A)(2)(d), which in part provides:

> In the event that a non-conforming use of a structure, or structure and land in combination is discontinued or abandoned for a period of two (2) years, the use of the same shall thereafter conform to the uses permitted in the district in which it is located.

The trial court found that plaintiff's resumption of rendering operations in 1977 constituted a violation of the above provision, because the nonconforming use of rendering had been abandoned in 1972. Plaintiff argues that the trial court erred. A finding of abandonment requires the finding of intent to abandon. Pearson v. City of Guttenberg, 245 N.W.2d 519, 529 (Iowa 1976) (quoting Sioux City v. Johnson, 165 N.W.2d 762, 766 (Iowa 1969)). The trial court's error, according to plaintiff, consisted in its inference from the objective facts surrounding the premises' use that there was an intent to abandon use of the premises as a rendering plant.

Substantial evidence on the record supports the trial court's finding of an intent to abandon use of the premises for rendering. A court may reasonably infer from the fact of nonuse for rendering for a period of nearly five years the intent to abandon the use of rendering, see Marchesse v. Morristown Borough Zoning Board of Adjustment, 2 Pa. Commw. Ct. 84, 96-97, 277 A.2d 176, 183 (1971), 1 Anderson, American Law of Zoning § 6.61 (2nd ed. 1976), unless nonuse is caused by factors outside the owner's control, Vestal, Iowa Land Use and Zoning Law 142 (1979). Plaintiff's premises were not used for rendering for nearly five years, although the owners could have resumed rendering operations within two years of the January, 1972 fire. Therefore, the trial court was justified in finding an intent to abandon and in consequently finding that plaintiff violated section 8(A)(2)(d).

In addition, the trial court did not err in concluding that plaintiff violated section 8(A)(2)(d) regardless of whether there was an intent to abandon. Section 8(A)(2)(d) provides that a nonconforming use may not be reestablished if abandoned or "discontinued" for two years. To discontinue plainly means "to stop using, doing, etc.; cease; give up." Webster's New World Dictionary 402 (2d ed. 1974). Hence, a finding that a use has been discontinued does not presuppose a finding that there was an intent to abandon the use. See Annot., 57 A.L.R.3d 279, 303 (1974). From 1972 until 1977 there was a cessation in the use of plaintiff's premises as a rendering plant. Based on the fact that use of plaintiff's premises as a rendering plant was discontinued for two years, section 8(A)(2)(d) was violated regardless of the presence of intent to abandon.

II. Plaintiff's second contention revolves around section 8(A)(2)(c) of the Fayette County zoning ordinance, which provides in part:

> If no structural alterations are made, a non-conforming use of a structure may be changed to another non-conforming use of a similar nature within the same or a more restricted classification.

Plaintiff argues that because in 1977 plaintiff validly used its premises for a heavy industrial, nonconforming use — collecting, storing, and shipping dead animal bodies — and because rendering dead animal bodies is a similar use within the same classification, plaintiff's rendering use of its premises commencing in 1977 is a valid use under section 8(A)(2)(c). Plaintiff alleges the trial court erred in failing to find that rendering is "of a similar nature" to collecting and shipping dead animal bodies under the meaning of section 8(A)(2)(c). We disagree. Rendering dead animals is a manufacturing use, see Webster's Third New International Dictionary 1992 (1971), which is a significantly different use from the mere collection, storage, and shipment of dead animals. The trial court did not err in failing to find plaintiff's use of its premises as a rendering plant valid under section 8(A)(2)(c).

AFFIRMED.