IN THE COURT OF APPEALS OF IOWA

No. 1-460 / 00-1501
Filed November 28, 2001

WERNER W. BUNSE,
Plaintiff-Appellant,

vs.

STUART SCHMELING, The City Planner of the City of Newton, Iowa, THE NEWTON ZONING BOARD OF ADJUSTMENT and JOHN BILLINGSLEY, JEAN GROBEN, TOM PELZER, DENNIS PORTER and HELEN OWENS, as Members of the said Board of Adjustment, and THE CITY COUNCIL OF THE CITY OF NEWTON, IOWA, and JOYCE MOEN, TERRY TOWNSEND, RAY LONG, JANE ANN COTTON, RON FOREMAN and LEE COOPER, as Members of the said City Council,
Defendants-Appellees.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Jasper County, Peter A. Keller, Judge.

Werner Bunse appeals from a district court ruling dismissing his writ of certiorari as untimely. **AFFIRMED.**

Herbert S. Selby of Selby, Updegraff, Smith & Holwerda, Newton, for appellant.

Darrin T. Hamilton, Newton, for appellees.

Heard by Vogel, P.J., and Miller and Eisenhauer, JJ.

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EISENHAUER, J.

A citizen complains the City of Newton wrongfully issued a building permit and permitted his neighbor to build a garage in violation of set back requirements. The trial court ruled the claim was time barred. We affirm.

I. Background Facts & Proceedings. Werner W. Bunse lives next door to Gerald Johnson in Newton, Iowa. In 1989 Johnson obtained a permit to build a garage. He poured a concrete slab for the garage in 1990. He renewed the permit in 1995 and built the garage, completing it on September 24, 1995. Bunse saw the slab poured and the garage built. At the time, another neighbor made inquiry of city officials and was told the building permit had been properly issued.

In January of 1999 Bunse read an article in the local newspaper that led him to believe the garage location violated set back requirements. He then started a process of complaints that resulted in the filing of an appeal to the Newton Zoning Board of Adjustment on June 16, 1999. The appeal was denied, and Bunse filed a petition for writ of certorari in the Iowa District Court for Jasper County on July 19, 1999. The court dismissed the writ, concluding Bunse's appeal to the zoning board was not timely filed.

II. Scope of Review. On appeal to this court from the certiorari ruling, our review is for correction of errors at law. *Helmke v. Board of Adjustment*, 418 N.W.2d 346, 348 (Iowa 1988). We are bound by the findings of the district court if they are supported by substantial evidence in the record. *Id.* We are not bound by erroneous legal rulings that materially affect the court's decision.

Chrischilles v. Arnolds Park Zoning Bd. of Adjustment, 505 N.W.2d 491, 493 (Iowa 1993).

III. Analysis. The trial court analyzed the applicable law and concluded that Bunse was charged with notice of the issuance of the building permit when construction started on the garage in August 1995. *See Arkae Dev., Inc. v. Zoning Bd. of Adjustment,* 312 N.W.2d 574, 578 (Iowa 1981). Iowa Code section 414.10 provides: "Such appeal shall be taken within a reasonable time as provided by the rules of the board . . . ." The rules of the board require an appeal to be filed in ten days. Bunse had actual knowledge of the permit when he observed the garage being built. Bunse claims he relied on assurances by city officials, albeit indirectly, that the garage site complied with zoning ordinances. Because of this reliance, he argues the ten-day statute of limitations for filing an appeal should be tolled until he had knowledge the permit was issued in violation of the zoning ordinance, nearly four years after the garage was constructed.

"Every citizen is assumed to know the law and is charged with knowledge of the provisions of statutes." *Millwright v. Romer,* 322 N.W.2d 30, 33 (Iowa 1982). Bunse made no inquiries when the garage was being built, but relied on another neighbor and on a general belief that: "I didn't think the city would issue anything incorrectly. . . ." The city cannot be estopped from asserting the timeliness based on Bunse's vague belief that the city issued the permit lawfully. Bunse possessed timely knowledge sufficient to place him under a duty to make inquiry and ascertain all the relevant facts. His failure to do so cannot toll the running of the time limits for appeal of the issuance of the building permit. The

trial court correctly concluded that Bunse failed to file his appeal in a timely manner.

Because Bunse's claim is time barred, we need not address the issuance of the building permit or whether the Johnsons were essential parties to the action.

AFFIRMED.