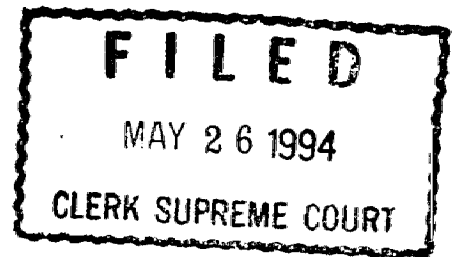


IN THE COURT OF APPEALS OF IOWA

No. 4-001 / 92-1552



CITY OF IOWA CITY, IOWA,

Petitioner-Appellee,

vs.

HUBERT YEGGY, LEONARD YEGGY,  
WILFRED YEGGY, MAXINE YEGGY,  
and BERNARD YEGGY,

Respondents-Appellants.

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Appeal from the Iowa District Court for Johnson County,  
August F. Honsell, Judge.

The respondents appeal from the district court's  
judgment granting the City an injunction restraining them  
from using certain designated property to store junk and  
salvage materials. **AFFIRMED.**

Wilfred Yeggy, Iowa City, pro se, for appellants.

Anne G. Burnside, First Assistant City Attorney, for  
appellee.

Heard by Schlegel, P.J., Habhab, J., and McCartney,  
S.J.\*, but decided by Donielson, C.J., and Hayden, Sackett,  
Habhab, Cady, and Huitink, JJ.

\*Senior judge from the 2nd Judicial District serving on  
this court by order of the Iowa Supreme Court.

**PER CURIAM**

This case involves property known as 828 St. Anne Drive in Iowa City, Iowa. The property is owned by Hubert Yeggy, who obtained it from his brother, Bernard Yeggy, in August 1988. Bernard purchased the property in 1965 from Johnson County. The property is undeveloped.

Bernard also owns the next lot, 834 St. Anne Drive, which he purchased at the same time. Another brother, Wilfred Yeggy, lives on this property. Still another brother, Leonard Yeggy, and his wife, Maxine Yeggy, own 840 St. Anne Drive. Leonard and Maxine purchased this property in 1954, and began living there in 1974.

In 1987 the City of Iowa City charged Bernard with violating the municipal code by having open storage of salvage materials and raising livestock at 834 St. Anne Drive. A judicial magistrate found the property had been used as a salvage operation since 1954. The court concluded use of the property as a salvage operation was a prior nonconforming use. Bernard was found not guilty of open storage of salvage materials. The court determined Bernard's goats were livestock and he was found guilty of raising livestock. The court ordered all the goats to be removed by April 1, 1988.

In September 1988 the City alleged Hubert had violated the municipal code by allowing junk and salvage materials to collect upon the property at 828 St. Anne Drive. A magistrate found the junk and salvage material was a

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nuisance and that Hubert had violated the municipal code. The court rejected Hubert's argument that the 1987 decision established the law of the case for this action. The court noted the earlier case involved Bernard, not Hubert, and was for a different parcel of property. Hubert was ordered to abate the nuisance. Hubert failed to abate the nuisance and the City removed the junk and salvage material on September 24, 1990. This decision was not appealed.

The Yeggys resumed using 828 St. Anne Drive for the storage of junk and salvage material by February 1991. In August 1991 the City filed a petition for an injunction seeking to permanently enjoin the Yeggys from keeping junk or salvage materials on their property at 828 St. Anne Drive, alleging in substance that such condition constituted a nuisance in violation of the city ordinance of Iowa City. The Yeggys raised an affirmative defense claiming they had "grandfather rights" because they had used the property as a junk and salvage yard for approximately forty years and, thus, the exception under the city ordinance applied.

At the trial on April 15, 1992, Julie Slaymaker testified she had been living at 852 St. Anne Drive since July 1983. Slaymaker identified three photographs of 828 St. Anne Drive which she had taken in 1986 and 1987. The photographs show the lot was a grassy area containing goats. No junk or salvage material is apparent in the

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photographs. Slaymaker stated the Yeggys began to put junk and salvage material on the lot at 828 St. Anne Drive after they had to get rid of the goats in the spring of 1988.

Susan Michael testified she moved to 835 St. Anne Drive in 1986. She testified that when she moved in, the lot at 828 St. Anne Drive was mainly vacant except for some goats and a goat pen. Curtis Skay testified he moved to 825 St. Anne Drive in the spring of 1987. He testified 828 St. Anne Drive was then vacant except for the portion farthest from the road, which contained some salvage materials. He stated the lot is now completely filled with refrigerators, water heaters, washers, dryers, and scrap metal.

Wilfred, Bernard, Leonard, and Maxine all testified that since about 1954 they had operated a salvage operation on all three lots owned by the Yeggys. Bernard testified that 834 and 828 St. Anne Drive had previously been known only as 834 St. Anne Drive, and the City later designated the open lot as 828 St. Anne Drive.

The district court found that even if the Yeggys had kept some junk and salvage materials on the rear portion of 828 St. Anne Drive, the salvage business on that property had commenced after the city ordinance was in effect. The court determined the present condition of the property was a nuisance. The court issued a permanent injunction restraining the Yeggys from causing or suffering any refuse, garbage, noxious substances, hazardous waste, junk or salvage materials to be collected or to remain upon the

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premises. The district court denied the Yeggys' posttrial motion.

The Yeggys appealed. They claim the district court should not have granted the City an injunction against them. They claim their use of the property for the storage of junk and salvage materials is a nonconforming use. They believe the 1987 magistrate's decision establishes the property as a nonconforming use. They state that at the time of the 1987 decision both 828 and 834 St. Anne Drive were known as 834 St. Anne Drive and, thus, the decision applies to both lots.

This case was tried in equity and our review is de novo. Iowa R. App. P. 4. It is our responsibility to review the facts as well as the law and determine from the credible evidence rights anew on those propositions properly presented, provided issue has been raised and error preserved in the trial proceedings. City of Central City v. Knowlton, 265 N.W.2d 749, 752 (Iowa 1978).

A city has the burden of proving a violation of its ordinance. City of Jewell Junction v. Cunningham, 439 N.W.2d 183, 186 (Iowa 1989). A party who asserts a nonconforming use has the burden to establish the lawful and continued existence of the use, and once the preexisting use has been established by a preponderance of the evidence, the burden is on the city to prove a violation of the ordinance by exceeding the established nonconforming use. Id.

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The supreme court has stated:

The term "nonconforming use" is employed in the law of zoning to refer to a use which not only does not conform to the general regulation or restriction governing a zoned area but which lawfully existed at the time that the regulation or restriction went into effect and has continued to exist without legal abandonment since that time. In other words, it is a use that existed and was lawful when the restriction became effective and which has continued to exist since that time.

Board of Supervisors v. Miller, 170 N.W.2d 358, 361 (Iowa 1969).

The evidence is almost without contradiction that the city ordinance, insofar as it concerns the existence of a nuisance, has been violated. Thus, we find the City has met its burden of proving the violation of their ordinance. From our de novo review, we conclude there is insufficient evidence to show the Yeggys have established a nonconforming use. The evidence shows that only goats were kept on 828 St. Anne Drive for a number of years, and thus, the Yeggys have not shown a continuing nonconforming use of the property for the storage of junk and salvage material since the time the Iowa City ordinance went into effect.

We recognize that the 1987 magistrate's decision found a valid nonconforming use on 834 St. Anne Drive. Even if we were to consider that the 1987 decision applied to 828 St. Anne Drive, the decision recognized that goats were kept on a portion of the property. This concurs with the testimony of the Yeggys' neighbors that 834 St. Anne Drive

was used for the storage of junk and salvage material, while 828 St. Anne Drive was used to keep goats.

A nonconforming use may not be expanded or enlarged. Conley v. Warne, 236 N.W.2d 682, 687 (Iowa 1976). The exception for nonconforming uses applies only to the use to which the real estate is lawfully devoted and does not provide for the extension to other parts of the lot or to any other real estate than that upon which the use was actually established when the ordinance was enacted. Stan Moore Motors, Inc. v. Polk County Board of Adjustment, 209 N.W.2d 50, 52 (Iowa 1972) (citing McJimsey v. City of Des Moines, 231 Iowa 693, 701-702, 2 N.W.2d 65, 69 (1942)).

As we noted earlier, the trial court made the following statement in its opinion:

Assuming that there is a non-conforming use which applies to the rear portion of the lot located at 828 St. Anne Drive, Iowa City, Iowa, the expansion of the collection and storage of junk in addition to the commencement of a salvage business on these premises since the ordinance was passed constitutes a violation of the ordinances of the City of Iowa City.

We believe the trial court made this statement solely for the purpose of adding additional support to its reasoning and its decision.

We believe the law in this area insofar as this opinion is concerned, should be clarified. When determining whether there has been an unlawful extension of a nonconforming use, emphasis must be placed on whether there

has been an enlargement of the area, not an increase in the business itself. City of Central City, 265 N.W.2d at 754.

From our de novo review of the record, we are unable to determine what the trial court had reference to in its assumption. The appellants do not argue this specific statement, and under these circumstances we need not address it.

We affirm the district court on all issues raised by respondents. Costs of this appeal are assessed to respondents.

**AFFIRMED.**