



IN THE COURT OF APPEALS OF IOWA

No. 9-301 / 88-1872

DON HALWEG and CARL HALWEG,

Appellants,

vs.

CITY OF SIOUX CITY, IOWA,

Appellee.

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Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge.

Appellants appeal a district court decision upholding the action of the city council determining that the private dump on Halwegs' property was a nuisance and ordering its abatement. **AFFIRMED.**

Patrick C. McCormick, Sioux City, for appellants.

James L. Abshier, City Attorney, and C. Maurice Rawe, Assistant City Attorney, Sioux City, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

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Appellants appeal a district court decision upholding the action of the city council determining that the private dump on Halwegs' property was a nuisance and ordering its abatement. We affirm the trial court.

The Halwegs contend that: (1) the district court erred in determining that there was sufficient evidence presented to the council to establish a nuisance; and (2) the definition of "refuse, garbage . . . rubble" in the city ordinance is unconstitutionally vague.

The Halwegs own property in Sioux City that they claim to be using as a salvage yard. In March 1988, the acting manager of the inspection services division of the city gave the Halwegs a notice to abate this alleged nuisance. The notice informed the Halwegs that they were operating a dump on their property and requested that the junk and debris be removed. A hearing was held and the inspection services division upheld its decision. The Halwegs appealed to the city council.

Following a hearing, the city council declared the Halwegs' property a nuisance and ordered the nuisance be abated. The Halwegs then filed a petition for writ of certiorari with the district court. The district court upheld the city council's decision and the Halwegs appeal.

Certiorari is an action at law and this court corrects for errors at law. Benson v. Fort Dodge Police Pension Bd,

374 N.W.2d 392, 394 (Iowa 1985). If there is not substantial evidence to support the findings of the trial court, it has acted illegally. Id. at 395. Evidence is substantial if it is sufficient to warrant the decision made by the trial court. Staads v. Board of Trustees, 159 N.W.2d 485, 490 (Iowa 1968).

Appellant contends substantial evidence does not exist to support the council's action in declaring the nuisance. The record clearly shows sufficient evidence to support the conclusion of the council and the trial court. The witnesses described in great detail the different types of refuse and the manner in which it was maintained. There were photographs presented showing the decaying refuse and the playground from where children could be attracted to the dump. The appellants, on the other hand, failed to present any evidence in opposition other than stating different conclusions concerning the danger and degree of organization. There was substantial evidence to show that a nuisance existed on the appellants' property.

Appellant next contends that the ordinance is unconstitutionally vague. This court will not review issues which are not raised before the trial court and which are raised for the first time on appeal. Gibb v. Hansen, 286 N.W.2d 180, 185 (Iowa 1979). Even issues of constitutional magnitude will not be addressed by this court if they were not presented in the trial court.

Miller v. Wellman Dynamics Corp., 419 N.W.2d 380, 384 (Iowa 1988). It is not evident from the record or from appellants' brief that the issue of vagueness was preserved. There is nothing to show that this issue was raised before the council or the trial court. Therefore, we cannot address this issue.

AFFIRMED.