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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CITY OF CAMANCHE, IOWA,	)	Filed April 26, 1983
Plaintiff-Appellee	)	
vs.	)	2-505 2-68611
JON M. GLAHN,	)	
Defendant-Appellant.	)	

Appeal from Clinton District Court, C. H. Pelton, Judge.

Defendant appeals from the trial court order enjoining defendant from placing additional mobile homes on property developed by him until a modular home is placed on each frontage lot, and ordering that defendant would have six months from the time of the order to construct the modular homes after which time the court would consider removal of the existing mobile homes. REMANDED FOR ENTRY OF JUDGMENT.

Jerry D. Van Scoy of Shaff, Farwell & Senneff, Clinton, for defendant-appellant.

Elizabeth G. Beck, Clinton, for plaintiff-appellee.

Heard en banc.

PER CURIAM

Defendant Jon M. Glahn, an owner and operator of a mobile home park, obtained an option to purchase land adjacent to this park for expansion purposes in the summer of 1979. The purchase was conditioned upon the defendant obtaining rezoning of the property to allow mobile home court use. On October 2, 1979, the Camanche city council voted to rezone the property to a mobile home residence classification. On October 25, 1979, the city council unanimously approved the final plat for the development of the property. Approval was conditioned upon an adequate recreational area and the development of frontage lots "prior to the remainder of the row said lots to be used for modular homes which will act as a buffer zone fronting Ninth Street." Subsequently an ordinance was passed rezoning the property. The defendant then bought the property. The defendant developed the property by surveying it, staking lots, and installing utilities, roadways and sidewalks. The end row lots fronting 9th Street on the first and second rows were improved and reserved for the rental to owners of modular homes. In the fall of 1980 the defendant placed four or five mobile homes on a row headed by the modular home lot without placing a modular home on that lot. This situation was brought to the city's attention and the city decided that the defendant did not comply with the condition of its resolution requiring development of lots to be used for modular homes prior to mobile home lots.

On July 31, 1981, the city filed a petition seeking temporary and permanent injunctions to prevent the defendant from placing further mobile home lots on the property until modular homes were constructed, and seeking removal of mobile homes already in place. On August 7, 1981, the trial court denied plaintiff's request for a temporary injunction. On August 20, the defendant filed his answer which sought damages from the plaintiff, an injunction to prevent the city from failing to comply with its rezoning resolution, and a writ of mandamus requiring

the plaintiff to comply with its zoning resolution. The defendant claimed in part that the term "modular home" as used in the resolution permitting the rezoning was invalidly vague under the due process clause of the fourteenth amendment.

The defendant filed a motion for separate trial, requesting that the issue of the interpretation of the resolution language concerning the development of modular homes be separately tried and adjudicated from the other issues raised in his counterclaim which would be reserved for a later trial. The court granted the motion.

At a trial on the issue concerning the interpretation of the language, the mayor of the city testified that defendant had agreed, at a meeting with the city council, to the requirement of the placement of one modular home prior to the placement of mobile homes in each row. The defendant indicated that he believed he was complying with the condition of the resolution, requiring the development of end row lots for modular homes prior to the development and placement of mobile homes on additional lots in a row, by having the modular home lot ready first and available for rental.

On April 12, 1982, the trial court filed its findings of fact and conclusions of law, construing the restriction in the resolution concerning the development of the front lots for modular homes to include the placement of modular homes thereon. The court also concluded that the words "modular homes" were not invalidly vague. On the basis of these conclusions, the trial court enjoined the defendant from placing additional mobile homes in the development until the construction of a modular home on the frontal lot was completed, and gave the defendant six months from the date of the order to construct modular homes after which time the court would consider the removal of the mobile homes already in place.

Defendant then instituted this appeal, in which he claims that the trial court erred: (1) in granting the injunction by construing the city's zoning resolution as

requiring him to construct modular homes on end row lots prior to the rental and occupancy of mobile home lots; and (2) in finding that the resolution imposing the conditions was not invalidly vague. Our scope of review in this case is de novo. Iowa R. App. P. 4.

We first address defendant's contention that the trial court misinterpreted the city's zoning resolution, which provided as follows:

> The Final Plat of Jon M.Glahn Mobile Home Park, in the City of Camanche, Iowa, be and the same as hereby finally approved said acceptance and approval is conditioned upon Jon M. Glahn providing an adequate recreational area in said mobile home development equivalent to 100 square feet of recreational area per lot, not to include the sewer easement area; said acceptance is further conditioned upon Jon M. Glahn developing lots 101, 140, 141, 180, 181, 221, each lot respectively prior to the remainder of the row said lots to be used for modular homes which will act as buffer zone fronting Ninth Street.

Defendant contends that in order to comply with this resolution, he is only required to develop lots to be used for modular homes; plaintiff contends that he is required to construct modular homes on each lot prior to placing mobile homes on the remainder of the lots. Our determination of this issue hinges on the interpretation to be given the word "developing" and the language which follows it in the resolution.

Absent a showing that a word has been accorded a special meaning in the law, we give that word its ordinary meaning. In Interest of Hopp, 289 N.W.2d 613, 616 (Iowa 1980). In this case we also have the benefit of the explanatory language, "said lots to be used for modular homes which will act as a buffer zone fronting Ninth Street." Testimony was presented at trial to the effect that in order to have a "buffer zone" it is necessary to have some physical structure to act as a screen, and that an empty lot was inadequate to accomplish the purpose set forth in the resolution. On appeal, we give weight to the trial court's findings, particularly when they relate to the credibility of witnesses. Iowa R. App. P.

14(f)(7). We conclude that the trial court did not err in interpreting the resolution to require defendant to construct modular homes on the lots prior to the rental and occupancy of the mobile home lots.

We are likewise unpersuaded by defendant's argument that the resolution was invalidly vague. A strong presumption exists in favor of the validity of zoning ordinances and if their reasonableness is fairly debatable, this court will not interfere by substituting its judgment for that of the legislature. Jaffe v. City of Davenport, 179 N.W.2d 554, 555 (Iowa 1970). The burden of proof of vagueness and indefiniteness is on the party asserting it. Webster Realty Co. v. City of Fort Dodge, 174 N.W.2d 413, 417 (Iowa 1970). A statute is not necessarily void for vagueness simply because its language is subject to more than one interpretation. Williams v. Brewer, 442 F.2d 657, 660 (8th Cir. 1971). Given these guiding principles, we cannot conclude that the resolution in question was invalidly vague.

We conclude that the trial court properly entered its ruling of April 12,1982. In this ruling, the court noted that the decision was probably dispositive of defendant's counterclaim which had been severed from the action, but did not dismiss it. We agree that the decision was dispositive. While the decision may not have been a final judgment with respect to Iowa R. App. P. 1(a), we consider the merits of this appeal pursuant to Iowa R. App. P. 1(c) and 2(a), and affirm the disposition of the counterclaim for the same reasons that we affirm the original action.

REMANDED FOR ENTRY OF JUDGMENT CONSISTENT WITH THIS OPINION.