Susan Bauer, Plaintiff-Appellant, v. Village of DeForest, Defendant-Respondent.

No. 98-2163
COURT OF APPEALS OF WISCONSIN, DISTRICT FOUR
229 Wis. 2d 252*; *599 N.W.2d 666
June 10, 1999, Released

OPINION

PER CURIAM. Susan Bauer appeals from a circuit court decision and order denying her motion for injunctive relief. The circuit court did not err in determining that Bauer's challenge to the Village of DeForest's weed ordinance must fail. Therefore, we affirm.

On July 8, 1997, the Village of DeForest Weed Commissioner inspected Bauer's property. He issued an official order to abate the weeds and tall grass by mowing. The order indicated that it was issued under authority of ßß 66.96 [1] and 66.98, [2] Stats., as well as Village of DeForest Ordinance 11.03(8). [3] The notice identified the weeds on the property as Canadian thistle, leafy spurge, field bindweed, wild mustard, and yellow rocket. By answer to interrogatories, the weed commissioner specifically noted that Canadian thistle, field bindweed and grass over twelve inches existed on the property at the time of the notice.

1 That section reads in relevant portion:

> (2) The term "noxious weeds" as used in this chapter includes the following: Canada thistle, leafy spurge and field bindweed (creeping jenny) and any other such weeds as the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.
>
> (3) Every person shall destroy all noxious weeds on all lands which the person shall own, occupy or control.

2 That section reads in relevant portion:

> (1) Every weed commissioner shall carefully investigate concerning the existence of noxious weeds in the district; and if any person in the district neglects to destroy any weeds as required by s. 66.96, the weed commissioner shall destroy or cause all such weeds to be destroyed, in the manner considered to be the most economical method ....

3 That ordinance reads in relevant portion:

> The following ... conditions ... are hereby specifically declared to be public health nuisances.... (8) All noxious weeds and other rank growth of vegetation. All weeds and grasses shall be kept cut to a height not to exceed one foot.

Bauer contacted the DNR Office of the Public Intervenor, who advised by letter dated July 10, 1997, that the weed commissioner would be happy to meet with Bauer to discuss options, apparently including Bauer's offer to "place black plastic or carpet over the area ... rather than mow it." On July 21, 1997, Bauer wrote to the Village of DeForest President to contest the notice on the various grounds, including a lack of due process. Bauer complained that no method existed for challenging the official abatement notice. By letter dated July 25, 1997, an attorney for the Village responded, clarifying the Village's authority to mow. By letter dated July 28, 1997, the DNR intervenor offered to attend a meeting with Bauer and representatives of the Village, if Bauer would call the weed commissioner to set up the meeting. Bauer did not do so. Bauer also contacted the village clerk, who responded by letter dated August 8, 1997. The clerk stated that although no "established administrative procedure" existed for challenging a weed notice, Bauer was free to "write to the Village Board." Bauer did not do so. On August 18, 1997, the Village mowed Bauer's property. On August 20, 1997, Bauer brought an action for injunction.

The circuit court denied Bauer's request for injunction on several grounds: (1) the Village of DeForest ordinance challenged is constitutional as an exercise of police power, is neither vague nor uncertain, and does not suffer from due process defects; (2) Bauer's "naturist" beliefs are not recognized religious beliefs protected by the first amendment, nor is her unmowed lawn a protected expression of symbolic speech; (3) a permanent injunction is not an appropriate remedy because Bauer's arguments about the illegality of the weed ordinance fail.

Bauer appeals the court's constitutional determinations. First, Bauer appears to argue that because the weed ordinance has no provision for appealing an abatement order, it is unconstitutional on its face. Bauer misunderstands the nature of due process. The record clearly shows that Bauer was made aware that two methods existed to challenge the abatement order-a meeting with the weed commissioner facilitated by the DNR intervenor, or, a letter to the village board. Bauer chose not to pursue either method. Due process does not require a formal apparatus for review of abatement proceedings. Rather, only an opportunity to seek review needs to be provided. *See Wilke v. City of Appleton, 197 Wis. 2d 717, 726, 541 N.W.2d 198, 202 (Ct. App. 1995)*. Because Bauer was provided an opportunity to be heard on the issue, her argument fails.

Bauer also argues that the Village exceeded its authority in forcing the mowing of her property. We reject this argument for several reasons. First, Bauer argues facts to this court. We are an error-correcting court, and we are precluded from finding facts. *See Wurtz v. Fleischman, 97 Wis. 2d 100, 107-08, 293 N.W.2d 155, 158-59 (1980)*. Thus, we do not consider the factual questions of whether weeds were on Bauer's property. Further, this court is not a forum to assess witness credibility. Credibility determinations are not subject to review. *See Turner v. State, 76 Wis. 2d 1, 18, 250 N.W.2d 706, 715 (1977)*. Thus, we do not consider whether affidavits from agriculture, biology, and landscape professionals should have been given greater credibility than the circuit court gave them. [4] For the purposes of this appeal, we accept that weeds forbidden by Wisconsin state law existed on Bauer's property.

4 The circuit court found the proffered affidavits unpersuasive because they addressed only the generic question of whether prairie grasses are "noxious weeds." Because it appeared that none of the affiants had viewed Bauer's property, the circuit court discounted the opinions.

Given this factual situation, we conclude that we need not address Bauer's legal arguments regarding vagueness and uncertainty. Even were the statutes or the ordinance vague about what weeds are prohibited beyond Canadian thistle and field bindweed, the fact that these two clearly prohibited weeds were on Bauer's property makes the application of the challenged laws neither vague nor uncertain. *Cf. State v. Menard, Inc., 121 Wis. 2d 199, 358 N.W.2d 813 (Ct. App. 1984)* (regulation which clearly defines what is prohibited is not void for vagueness).

We further conclude that the circuit court did not err in finding that Ordinance 11.03(8) is an appropriate exercise of the Village's police power. The test is whether the object sought to be achieved is proper, and whether the means chosen are rationally related to the purpose. If so, the exercise of police power is valid. *See Wilke, 197 Wis. 2d at 726, 541 N.W.2d at 201*. Here, no argument has been raised that the object is in any manner improper-the statutes and ordinance applied relate to the subject of noxious weed abatement, a matter which has concerned the State of Wisconsin from 1861, when the first predecessor statute on this subject was published, ch. 206, ßß 1,2 (1861) until today, through thirty-one successor versions. The means chosen are rationally related to this object, because, as the law requires, the weeds must be prevented from blooming, ß 66.96(1), Stats. Thus, the weed commissioner is specifically charged with "destroying" them, *see* ß 66.98(1), Stats., to prevent their setting seed, and a village ordinance accomplishing this same aim is a proper exercise of police power.

Bauer argues that Ordinance 11.03(8) is based on ßß 66.96 and 66.98, Stats., but that these statutes do not mention weed height or tall grasses. We conclude, however, that a requirement to keep lawns mowed to a height of twelve inches or less effectuates the requirement to prevent weeds from growing tall enough to set seed. Thus, Ordinance 11.03(8) properly prohibits "rank" growth.

As the circuit court properly concluded, further explanation of the height requirement is set forth in Village of DeForest Ordinance 12.07, which states in relevant portion that all persons must mow all grasses or weeds exceeding one foot in height in order to avoid the weeds and grasses which can promote hay fever, give off unpleasant odors, or conceal filthy deposits. Bauer argues that Ordinance 12.07 "is not relevant" because the abatement notice did not allege violation of that ordinance, but only Ordinance 11.03(8). We reject this argument. Statutes (and ordinances) must be construed *in pari materia*, and this is especially so if the laws construed are on the same topic. *Cf. Scott A. v. Garth J., 221 Wis. 2d 781, 786, 586 N.W.2d 21, 23 (Ct. App. 1998)* (in interpreting statutes, courts look to the purpose of the whole enactment, and avoid a construction which will defeat the manifest object of the act; when multiple laws relate to the same issue, they should be read *in pari materia* and harmonized if possible). Ordinance 11.03(8) prohibits both weeds and "rank growth," and Ordinance 12.07 assists in the interpretation of Ordinance 11.03(8) by defining further reasons for abatement of tall growth.

Bauer also argues that she is a "naturist," and implies that some first amendment constitutional protection is due her beliefs. However, Bauer's argument is undeveloped, and we will not consider it further. *See*, *State v. Shaffer, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980)* (holding that we will generally not consider arguments unsupported by legal authority).

By the Court.-Order affirmed.

This opinion will not be published. *See* Rule 809.23(1)(b)5, Stats.