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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000489-MR

DAVID WHEATLEY;
BARDSTOWN AUTO WRECKERS, INC.;
AND BARDSTOWN AUTO SALES, INC. APPELLANTS

APPEAL FROM NELSON CIRCUIT COURT
v. HONORABLE CHARLES C. SIMMS, III, JUDGE
ACTION NO. 02-CI-00624

JOINT CITY-COUNTY PLANNING
COMMISSION OF NELSON COUNTY, KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, STUMBO, AND THOMPSON, JUDGES.

STUMBO, JUDGE: David Wheatley, et al., appeals from an order of the Nelson Circuit Court interpreting the term "inoperable motor vehicle" for the purpose of applying a Nelson County zoning regulation. Wheatley, et al., contends that the court improperly considered unrelated statutory language in defining the terms of the regulation, failed to strictly construe the regulation in favor of the land owner,

and improperly imposed greater restrictions on his use of the parcel than are applied to other similarly zoned properties. For the reasons stated below, we affirm the order on appeal.

Wheatley owns and operates Bardstown Auto Wreckers, Inc. ("BAW") in Nelson County, Kentucky. BAW is licensed by the Commonwealth to sell used motor vehicles and to engage in restrictive automobile recycling for the purpose of selling used automobile parts. BAW owned the real property situated at 4540 Springfield Road, Bardstown, Kentucky, and during the pendency of this action transferred it to BAW Rental Property, LLC ("BAW Rental").

BAW Rental leases the parcel to Bardstown Auto Sales, Inc. ("BAS"). Roger Burkhead is the sole officer and shareholder of BAS, which sells used motor vehicles, including vehicles which are damaged but repairable. While many of the vehicles have marketable title, some have "salvage title" indicating that the vehicle is in such poor or damaged condition that it may not be driven on the roadways of the Commonwealth except for the purpose of being driven to a certified inspector.

The parcel owned by BAW and leased to BAS is zoned "B-4 General Business District," which is set out in Article 6, Section 6.14 of the Nelson County Zoning Regulations. B-4 zoning provides in relevant part that the zoned parcels may be used for "wholesale and heavy commercial uses" including "used car, truck or heavy equipment sales lots . . . ."

The Joint City-County Planning Commission of Nelson County, Kentucky ("the Commission") filed a complaint in Nelson Circuit Court alleging

that BAS's outside storage and display of vehicles with salvage titles violated the B-4 zoning because said vehicles were not "used cars" for purposes of the zoning regulation. The Commission alleged that BAS could properly operate in an I-2 district which specifically includes "junk or wrecking yards." The definition for junk yard specifically excludes used cars in operable condition, but does not define the term "operable."

After taking proof, the circuit court rendered Findings of Fact, Conclusions of Law and Judgment on March 31, 2005. The court determined that B-4 zoning allowed BAS to sell used cars with good titles, and that the issue was whether BAS could sell vehicles with salvage titles. The court determined that to obtain a salvage title, a vehicle must be "wrecked, destroyed, or damaged, to the extent that the title estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its preaccident condition . . . exceeds seventy-five percent (75%) of the retail value of the vehicle . . . ." KRS 186A.520(1). It went on to find that vehicles with salvage title were "unusable upon the highways of Kentucky" except when in route to a certified inspector. KRS 186A.520(4). And finally, the court found that 1) a junk yard could operate only in an I-2 zoning district; 2) that the zoning regulations defined junk yards to include places where "salvaged machinery" is stored, and specifically excluded from the definition "used cars in operable condition," and, 3) that the word "salvage" is defined as "to save (damaged or discarded material) for further use." The Judgment restrained

BAS from "selling any inoperable used cars with salvage titles from outside its premises."

BAS then tendered a motion to alter, amend or vacate the judgment, arguing that the court improperly extended the plain and unambiguous zoning language by looking to KRS 186A.520 for assistance in formulating definitional statements affecting the scope of the zoning. Citing *Hamner v. Best*, 656 S.W.2d 253 (Ky. App. 1983), BAS noted that any restrictions contained in zoning regulations may not be extended by the courts to include limitations not clearly prescribed.

The circuit court denied BAS's motion by way of an order rendered on May 26, 2005. BAS prosecuted an appeal from that denial, which it subsequently abandoned.

In July, 2005, the Commission sought a show cause order in Nelson Circuit Court directing BAS to demonstrate why it should not be held in contempt for failure to abide by the court's prior order. Before a hearing on the motion was conducted, the parties filed memoranda seeking the court's determination as to what constituted an "inoperable motor vehicle." On January 13, 2006, the court rendered an order on the definitional issue which rejected the Commission's claim that any motor vehicle with a salvage title should be considered inoperable. It relied on *Webster's II New College Dictionary (1995)* to find that inoperable means "incapable of being used or operated." It went on to rule that vehicles parked on the lot at BAS should be 1) capable of being driven off the premises, and

2) law enforcement should not have probable cause to stop said vehicles due to their physical condition. Stated differently, the court opined that salvage title alone is not enough to characterize a vehicle as inoperable for purposes of the zoning regulation at issue. This appeal followed.

BAS now argues that the court erred in adding additional and impermissible limitations to the Nelson County zoning regulations. Specifically, BAS takes issue with the court's January 13, 2006, order limiting vehicles on BAS's lot to be capable of being driven off the lot and not in a physical condition giving law enforcement probable cause to stop the vehicle on the roadway. Citing *Hamner*, *supra*, and similar cases, BAS notes that it is well-established that any restrictions contained in zoning regulations may not be extended by the courts to include limitations not clearly prescribed. It also points out that zoning regulations, being in derogation of common law property rights, must be strictly construed in favor of the property owner. The focus of his argument on this issue is that the B-4 district classification, which incorporates by reference B-3 zoning, clearly identifies "used car lots" as permitted under the zoning scheme. Since those regulations make no limitation or other definition as to what constitutes a used car lot or the vehicles that can be sold therefrom, BAS contends that any court-imposed limitation in excess of the zoning language is necessarily improper. That is to say, it is BAS's contention that the court may not look outside the zoning language to amend or otherwise add to the restrictions set out in the regulation.

In a similar vein, BAS contends that by relying on statutory language addressing highway usage, the court improperly equated highway use with the zoning restrictions and thus impermissibly expanded the zoning regulation. It further argues that the criteria mandated by the circuit court as to operability and lack of probable cause also improperly imposes greater restrictions upon BAS's use of the parcel than are applied to other similarly zoned properties. BAS contends that the January 16, 2006, order should be reversed on the basis that it is an improper expansion of the Nelson County zoning regulations, and that the operation of BAS should be determined to fall within the definition of used car sales properly permitted under the existing B-4 business district. In the alternative, BAS seeks to have the January 16, 2006, order amended as to the definition of operable motor vehicles, and/or to strike that part of the order stating that motor vehicles on BAS's lot must be in a physical condition such that law enforcement would not have probable cause to stop said vehicles on the roadway.

We have closely examined the record and the law, and find no basis for reversing the order on appeal. BAS's claim of error centers on its assertion that the Nelson Circuit Court improperly went beyond the scope of the B-4 zoning regulation in resolving the Commission's complaint against BAS. We agree with BAS's recitation of the law and reliance on *Hamner*, *supra*, for the proposition that any restrictions contained in zoning regulations may not be extended by the courts to include limitations not clearly prescribed. However, the resolution of this issue is grounded in our recognition that the circuit court was charged with the duty of

strictly construing the zoning regulation and refraining from expanding the scope of its terms on the one hand, while at the same time reasonably determining the legislative intent of the Commission and giving proper effect to the regulation's language. At issue are the terms "used car lots" and "used car . . . sales lots" set out in the B-4 regulation and B-3 regulation by incorporation, as well as "junk or wrecking yards" in the I-2 regulation along with the regulatory definition of a junk yard as "a place where . . . inoperative, or salvaged machinery . . . are bought, sold . . . ."

BAS would have the circuit court refrain from seeking to define these terms by going outside the regulation, and instead limit the analysis merely to a determination that B-4 zoning allows for "used car lots" and that BAS operates such a lot. Such an analysis, however, would not resolve the corpus of the Commission's claim, to wit, that BAS's possession and sale of salvage titled vehicles classifies its operation as that of a junk yard rather than a used car lot.

A circuit court may determine the legislative intent of a zoning commission in its enactment of zoning regulations. *Gates v. Jarvis, Cornette and Payton*, 465 S.W.2d 278 (Ky. 1971). In fact, *Hamner* itself demonstrates that zoning regulations may be construed by the courts, so long as the regulations are strictly construed. *Hamner*, *supra*. In the matter at bar, the circuit court first looked to the express language of the B-4 and B-3 regulations and noted their reference to "used car . . . sales lots." It then determined that junk yards could only conduct business in the I-2 district; that the definition for junk yard specifically

excludes used cars in operable condition, but does not define the term "operable," that the zoning regulations defined junk yards to include places where "salvaged machinery" is stored; and, that the elements for acquiring salvaged title were set out by statute. Based on the foregoing, the court determined that the effect of the B-4, B-3 and I-2 regulations, taken in conjunction with the common meanings of the words contained therein, was to limit BAS under the regulatory scheme to possessing and selling vehicles which were capable of being driven off the lot, i.e., which were not in such poor physical condition as to warrant law enforcement intervention when driven on public roadways.

The record and the law support this conclusion, and we find no abuse of discretion arising in the trial court. See generally, *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982), stating that " . . . in reviewing the decision of a trial court the test is not whether we would have decided it differently, but whether the findings of the trial judge were clearly erroneous or that he abused his discretion . . . ." Accordingly, we find no error.

For the foregoing reasons, we affirm the January 13, 2006, order of the Nelson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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