IN THE COURT OF APPEALS OF IOWA

No. 0-817 / 10-0836
Filed November 24, 2010

DENNIS SHARKEY,
Plaintiff-Appellant,

vs.

DUBUQUE COUNTY ZONING BOARD OF ADJUSTMENT,
Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Plaintiff appeals the district court decision annulling his writ of certiorari challenging the Dubuque County Zoning Board of Adjustment's decision he violated zoning ordinances. **AFFIRMED.**

Todd J. Locher of Locher & Locher, Farley, for appellant.

Ralph Potter, County Attorney, and Brigit Barnes, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., Doyle, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, S.J.

I. Background Facts & Proceedings

This case involves two parcels of land in Dubuque County owned by Dennis Sharkey. The legal description of the first parcel (Parcel A) is:

> Lot 1-2-16, Lot 2-2-16, Lot 1-17 and Lot 2-17 of Marshfield Addition except the abandoned railroad right of way in Section 3, Dubuque Township, Dubuque County, Iowa.

This property is zoned M-1, Industrial, and M-2, Heavy Industrial. The legal description for the second parcel (Parcel B) is:

> Lot 1-1-2-5 and Lot 1-5, all in Block 3 of R.G. Splinter's Subdivision, Section 3, Dubuque Township, Dubuque County, Iowa.

Parcel B is zoned R-3, Single Family Residential.

On September 20, 1988, Sharkey entered into a stipulation (with Dubuque County in an action by the County to enforce its zoning ordinances) that involved the same property.[1] The stipulation provided that as to a portion of the property, Sharkey was "permanently enjoined from conducting or permitting any vehicle salvage operation or storage of any vehicles or junk." He was also permanently enjoined from storing vehicles, junk, and other materials on Parcel B. The stipulation was adopted by the district court.

The district court entered an order on April 25, 1989, finding Sharkey was in contempt for failing to make a good faith effort to comply with the 1988 order. He was sentenced to thirty days in jail, which was suspended provided he

[1] In the stipulation, Parcel A was described as, "Lot 1 of 17 and Lot 1 of 2 of 16 in 'Marshfield,' Dubuque County, Iowa." Parcel B was described as, "Lot 2 of 17 and Lot 2 of 2 of 16 and Lot 2 of 7, all in 'Marshfield,' Dubuque County, Iowa." Parcel D encompassed "Lot 1 of Lot 5 of Block 3" and "Lot 1 of Lot 1 of Lot 2 of Lot 5 in Block 3" in R.G. Splinter's Subdivision in Marshfield, Dubuque County, Iowa.

complied with the court order. Sharkey did not comply with the court order, and an arrest warrant was issued. *See Sharkey v. Iowa Dist. Ct.*, 461 N.W.2d 320, 322 (Iowa 1990). The Iowa Supreme Court annulled the writ of certiorari in Sharkey's action to challenge the jail sentence imposed for violating the injunction. *Id.* at 324.

In 1994, in regard to the same property, Sharkey was charged with unlawful disposal of hazardous waste and unlawful storage of hazardous waste. *See State v. Sharkey*, 574 N.W.2d 6, 7 (Iowa 1997). He was convicted and sentenced to two years in prison on each count. *Id.* On appeal his convictions were affirmed. *Id.* at 10.

On March 21, 2007, Anna O'Shea, the zoning administrator for Dubuque County, sent Sharkey two letters outlining problems with his property.[2] In regard to Parcel A, the letter stated there were semitrailers, scrap metal, wood, appliances, and vehicles being stored outside on the property, in violation of zoning ordinances. In regard to Parcel B, O'Shea asserted there were boats, junk cars and trucks, scrap metal, tires, and piles of wood being stored outside on the property, in violation of zoning ordinances. The letters noted no flood plain management permit had been issued for either property.

Sharkey appealed the zoning violations to the Dubuque County Zoning Board of Adjustment, and a hearing was held on June 5, 2007. The Board determined both properties were being used as illegal junkyards and the proper flood plain permits had not been obtained.

[2] O'Shea sent a third letter to Sharkey, which dealt with Lots 2-7 and 1-1-7 of Marshfield Addition in Section 3, Dubuque Township. The subject of this letter was not raised before the district court, and is not part of this appeal.

Sharkey filed a petition for writ of certiorari challenging the decision of the Board. He claimed (1) his use of the real estate conformed to the existing zoning regulations; (2) he had a permissible existing nonconforming use; (3) the definition of "junkyard" in the Dubuque County Zoning Ordinances was unconstitutionally vague and ambiguous; and (4) the Board's decision was otherwise illegal or unconstitutional.

The district court concluded Sharkey's claims were barred by issue preclusion because the same parties had entered into a stipulation regarding the same properties back in 1988. The court determined "Sharkey cannot raise the issues now before the board that should have been raised when the injunction was entered." The court did not address Sharkey's claim the definition of "junkyard" was vague because Sharkey had "waived this argument by his previous stipulation that he was in violation of the same ordinances in 1988." The court annulled the writ. Sharkey filed a motion to enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2), and this was denied by the court. Sharkey appeals the decision of the district court.

II. Standard of Review

Iowa Rule of Civil Procedure 1.1412 governs our review of an appeal from a district court's decision on a writ of certiorari. *Baker v. Bd. of Adjustment*, 671 N.W.2d 405, 414 (Iowa 2003). That rule provides that "[a]ppeal to the supreme court lies from a judgment of the district court in the certiorari proceeding and will be governed by the rules applicable to appeals in ordinary actions." Iowa R. Civ. P. 1.1412. Our review is therefore the same as from a judgment founded on a

special verdict by a jury, that is, on assigned errors only. *Baker*, 671 N.W.2d at 414. We are bound by the district court's factual findings if supported by substantial evidence. *Chrischilles v. Arnolds Park Zoning Bd. of Adjustment*, 515 N.W.2d 491, 493 (Iowa 1993). However, we are not bound by erroneous legal rulings that materially affect the court's decision. *Id.*

III. Issue Preclusion

The district court determined Sharkey's claims were barred by issue preclusion. Issue preclusion prevents a party to a prior action from relitigating in a subsequent action issues raised and resolved in the earlier action. *Heidemann v. Sweitzer*, 375 N.W.2d 665, 667 (Iowa 1985). A party asserting issue preclusion must show: (1) the issue concluded is identical; (2) the issue was raised and litigated in the prior action; (3) the issue was material and relevant to the disposition of the prior action; and (4) the determination of the issue was necessary and essential to the resulting judgment. *George v. D.W. Zinser Co.*, 762 N.W.2d 865, 868 (Iowa 2009). Issue preclusion "serves two important goals of providing fairness to the successful party in the first case and promoting efficient use of court resources by prohibiting repeated litigation over the same issue." *Hunter v. City of Des Moines Mun. Housing Auth.*, 742 N.W.2d 578, 584 (Iowa 2007).

Sharkey contends issue preclusion does not bar his challenges to the action of the Board. He admits the same property is involved, but contends the issues raised at the time of the 1988 stipulation and those raised now are not the same. He claims his use of the property is the same as that of his predecessor,

which predated the adoption of the Dubuque County Zoning Ordinances. He states his use of the property is a permissible existing nonconforming use. Sharkey also asserts the property is not actually in a flood zone.

In the 1988 action the district court found the use of the property for auto salvage and the storage of vehicles and junk constituted a public nuisance and was not permitted under the Dubuque County Zoning Ordinance. The court also found Sharkey needed to follow the Dubuque County Flood Plain Management Ordinance. The issue of whether Sharkey's property is subject to the Dubuque County Zoning Ordinance has already been determined, as well as the issue of whether the Flood Plain Management Ordinance applies. We affirm the district court's conclusion in this proceeding that under the doctrine of issue preclusion these issues may not be relitigated.

IV. Definition of "Junkyard"

Sharkey contends the term "junkyard" as defined in the Dubuque County Zoning Ordinances is unconstitutionally vague and ambiguous. The district court in the present action specifically declined to address this issue, finding, "Plaintiff has waived this argument by his previous stipulation that he was in violation of the same ordinances in 1988."

Although the district court did not cite the doctrine of claim preclusion, we believe this was the basis for the court's decision. In general, the doctrine of claim preclusion bars further litigation of a claim or cause of action. *Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992). Claim preclusion involves the following elements: (1) the parties in the two actions were the same; (2) the claim in the

second action could have been fully and fairly adjudicated in the prior case; and (3) there was a final judgment on the merits in the prior action. *George*, 762 N.W.2d at 868. Claim preclusion "applies only when a party has had a 'full and fair opportunity' to litigate in the first trial." *Id.* (citation omitted). An adjudication in a prior action between the same parties on the same claim is final as to all matters that could have been presented in that prior action. *B & B Asphalt Co. v. T.S. McShane Co.*, 242 N.W.2d 279, 286 (Iowa 1976).

Sharkey's claim that the definition of "junkyard" is vague and ambiguous could have been fully and fairly adjudicated in the prior action. The adjudication in the 1988 action is final as to all matters, such as the issue concerning the definition of "junkyard," that could have been presented in that action. *See id.* We conclude Sharkey is prohibited by the doctrine of claim preclusion from raising his present claim concerning the definition of the term "junkyard."

V. Current Violations

We turn then to the issue of whether Sharkey was currently violating the applicable zoning ordinances. Under Dubuque County Zoning Ordinance 1-2.42, a junkyard is defined as follows:

> An open area where used, waste or secondhand materials are bought, sold, exchanged, stored, baled, packed, assembled or handled, including, but not limited to, scrap iron and other metals, paper, rags, rubber tires and bottles. The term includes a vehicular wrecking yard, but does not include uses carried on entirely within enclosed buildings.

The evidence showed Sharkey was storing semitrailers, scrap metal, appliances, boats, junk cars and trucks, tires, and piles of wood, which would come within the definition of a junkyard. A junkyard is permissible in a M-2, Heavy Industrial

District, with a special use permit. Dubuque County Zoning Ordinance 1-15.11(c)(18). No special use permit has been issued for this property since 1993. Therefore, the Board of Adjustment properly found Sharkey was in violation of the zoning ordinances.

As we noted previously, in 1988, the district court found Sharkey needed to follow the Dubuque County Flood Plain Management Ordinance. Thus, the issue of whether the Flood Plain Management Ordinance applies has already been determined. There was no evidence that Sharkey had obtained the proper Flood Plain Permits for this property. The Board concluded Sharkey had failed to obtain the proper permits.

We affirm the decision of the district court that annulled the writ of certiorari.

AFFIRMED.