

81636-1

NO. 259676-III

COURT OF APPEALS, DIVISION III

IN AND FOR THE STATE OF WASHINGTON

PAUL LAWSON,

Respondent,

v.

CITY OF PASCO, a Municipal Corporation of the State of
Washington,

Appellant.

BRIEF OF APPELLANT

LELAND B. KERR, WSBA #6059
VICKI L. HIGBY, WSBA #31259
PAINE HAMBLEN LLP
7025 West Grandridge Blvd., Suite A
Kennewick, WA 99336
(509) 735-1542

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR 2

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 3

IV. STATEMENT OF THE CASE..... 4

A. FACTUAL BACKGROUND 4

B. PROCEDURAL HISTORY 7

V. SUMMARY OF ARGUMENT 8

VI. LEGAL ARGUMENT..... 9

A. Appellant City of Pasco Has Statutory Right to Enact Zoning and Regulate Land Use and PMC 25.04.060 is Permissible Exercise of Police Powers. 9

B. RCW 59.20 Does Not Prohibit or Preempt the Provisions of PMC 25.40.060 – It Provides a Means to Enforce the Code..... 12

C. Question of Whether RV Used As Permanent Residence is a "Recreational Vehicle" or a "Mobile Home" is Moot. 16

VI. CONCLUSION..... 18

TABLE OF AUTHORITIES

CASES

Guimont v. Seattle, 77 Wn. App. 74, 89, 896 P.2d 70 (1995) 10, 11, 12, 13

STATUTES

RCW 25.40.0809

RCW 35A.63.10010

RCW 59.20 1, 2, 3, 8, 9, 12, 13, 14, 15, 16, 18, 19

RCW 59.20.03016, 17, 18

RCW 59.20.030(10).....17

RCW 59.20.030(9).....17

RCW 59.20.0401, 9, 13, 14, 15, 18

RCW 59.20.06017

RCW 59.20.08016

RCW 59.20.080(1)(d).....15

RCW 59.20.080(3).....15

RCW 59.20.080(d).....16

RCW 59.20.1308, 14, 15, 18

RCW 59.40.06018

OTHER AUTHORITIES

Pasco Municipal Code 25.40.060 ... 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

RAP 10.3(a)(3)2

I. INTRODUCTION

Appellant City of Pasco asks the Court of Appeals to recognize 1) that Respondent Paul Lawson has violated Pasco Municipal Code 25.40.060 by providing sites to recreational vehicles in his Residential Park; and 2) that RCW 59.20 does not protect or preempt these violating rental agreements, but instead makes them null and void and authorizes termination of the tenancies. Thus, Respondent Lawson has no statutory or other basis for violating PMC 25.40.060 and the trial court's decision permitting him to continue doing so should be reversed.

This is not a case involving a constitutional or other challenge to a properly enacted city ordinance. Instead, Respondent Lawson is contending that because he already broke the code in entering into rental agreements with recreational vehicles, and RCW 59.20 protects those rental agreements, he is therefore authorized by statute to continue violating the City of Pasco code.

This argument, and the trial court's decision adopting it, leads to an absurd result and ignores the express language of RCW 59.20.040 making any such rental agreements unenforceable and expressly authorizing the eviction of the recreational vehicles from the Residential Park.

Thus, the statutory protection Respondent Lawson seeks to hide behind does not exist and the trial court's order should be reversed.

II. ASSIGNMENTS OF ERROR

Pursuant to RAP 10.3(a)(3), Appellant City of Pasco assigns error to the following actions by the trial court:

1. The trial court erred in vacating the City of Pasco's Notice of Violation CEB2005-0502.
2. The trial court erred in vacating the City of Pasco Code Enforcement Board's affirmation of Violation CEB2005-0502.
3. The trial court erred in reversing the determination of the Code Enforcement Board.
4. The trial court erred in holding that the City of Pasco may not, by ordinance, preclude the use of mobile home park space by a recreational vehicle as long as the recreational vehicle is used as the permanent residence of the occupant.
5. The trial court erred in holding that RCW 59.20 preempts any ordinance that bars the placement of a recreational vehicle on a mobile home park, as long as the recreational vehicle is used as the permanent residence of the occupant.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the provisions of RCW 59.20 regulating and determining landlord-tenant legal rights, remedies, and obligations provides any basis for vacating City of Pasco's Notice of Violation CEB2005-0502 or the Code Enforcement Board's affirmation of Violation CEB2005-0502, or for reversing the Code Enforcement Board's determination.
2. Whether the provisions of RCW 59.20 regulating and determining landlord-tenant legal rights, remedies, and obligations preempts or otherwise precludes Pasco Municipal Code 25.40.060 prohibiting recreational vehicles inside residential or mobile home parks.
3. Whether, instead, RCW 59.20 requires compliance by landlords with municipal codes such as Pasco Municipal Code and invalidates any rental agreements that violate or conflict with such codes.

IV. STATEMENT OF THE CASE

This matter arises out of a LUPA appeal from a City of Pasco Code Enforcement Board determination that Respondent Paul Lawson violated City of Pasco Municipal Code 25.40.060.¹

A. Factual Background

Respondent Lawson owns a Residential Park in Pasco, Washington. In Pasco, a Residential Park is essentially the same thing as a mobile home park, providing lots for mobile and manufactured homes. CP 63-64. In contrast, a recreational vehicle park is something separate and different from a Residential Park or mobile home park and there are separate lots size and other requirements for recreational vehicles parks, whether used as permanent residences or not. CP 12-13

As the owner of a Residential Park, Respondent Lawson is subject to Pasco Municipal Code [PMC] 25.40.060, which provides:

No recreational vehicle sites for occupancy purposes shall be permitted within any residential park.

CP 79.

Sometime before December 15, 2005, the Inspection Services Manager for the City of Pasco, Mitch Nickolds, received a complaint

¹ For purposes of the LUPA appeal, Plaintiff Paul Lawson was referred to as the "appellant" and Defendant City of Pasco was referred to as the "respondent." However, to avoid confusion or lack of clarity, these party designations will not be used in this brief. City of Pasco will properly be referred to as the Appellant and Mr. Lawson as the Respondent.

regarding Respondent Lawson's Residential Park. CP 46-47. Mr. Nickolds inspected the property on December 15, 2005 and upon inspection he discovered three or four recreational vehicles occupying sites in Respondent Lawson's Residential Park.² CP 46, 48. All of the parties agree that the presence of these vehicles in Respondent Lawson's Residential Park violated PMC 25.40.060. CP 49-50.

Thus, on January 23, 2006, Appellant City of Pasco issued a Correction Notice to Respondent Lawson. CP 47, 113. The Correction Notice stated that Respondent Lawson had violated PMC 25.40.060 and directed him to remove the recreational vehicles from the Residential Park. CP 113.

Sometime after the Correction Notice was issued to Respondent Lawson, Mr. Nickolds began receiving telephone calls from Respondent Lawson's tenants regarding the need for them to relocate their recreational vehicles. CP 47. At least one of the recreational vehicles may have left the park, but others remained. CP 47-48. Thus, on April 13, 2006 Appellant City of Pasco issued Respondent Lawson a Notice of Civil Violation for Violation No. CEB2005-0502. CP 97.

² Mr. Nickolds also noted other violations related to a fence and some sheds or storage buildings that had been erected in the Recreational Park without the necessary permits and in violation of other Pasco Municipal Codes. However, these other violations are not at issue in this appeal and thus will not be discussed.

The Notice of Civil Violation gave the date of the original inspection, attached the Correction Notice that had been previously sent to Respondent Lawson, and notified Respondent Lawson that he was still in noncompliance with the City ordinance. CP 97. The Notice of Civil Violation also gave notice of a compliance hearing by the Code Enforcement Board that would be held on May 4, 2006 at 7:00 p.m. and told specifically where the hearing would be held. CP 97 Finally, the Violation gave Respondent Lawson until two days before the compliance hearing to make the necessary corrections and obtain approval from the Code Enforcement Board in order for the compliance hearing to be canceled. CP 97.

Respondent Lawson failed to make the necessary corrections and thus the compliance hearing was held by the Code Enforcement Board on May 4, 2006. CP43. At the compliance hearing, Respondent Lawson was represented by counsel and after taking testimony, reviewing briefing and documents, and hearing argument – including Respondent Lawson's own admission that he was in violation of PMC 25.40.060 – the Code Enforcement Board concluded that there was a violation of PMC 25.40.060. CP 64-66.

The Code Enforcement Board gave Respondent Lawson ninety days to comply with the Code and imposed a monetary fine for

noncompliance beyond the ninety days. It also authorized Respondent Lawson to appeal the decision. CP 66-68. The Code Enforcement Board's decision was reduced to writing in a Compliance Determination Order dated May 8, 2006. CP 75.

B. Procedural History

Respondent Lawson filed a LUPA Petition Appeal from Municipal Ruling on May 23, 2006. CP 115. After extensive briefing by both parties, on December 18, 2006, a Franklin County Superior Court trial judge overturned the Code Enforcement Board's decision and Appellant City of Pasco's requirement that Respondent Lawson remove the recreational vehicles from his Residential Park pursuant to PMC 25.40.060. CP 8-9.

On February 15, 2007, Appellant City of Pasco timely filed a Motion for Reconsideration of the trial court's decision on the LUPA appeal. CP 20A-20B. On February 16, 2007, the trial judge denied Appellant City of Pasco's Motion for Reconsideration and affirmed his prior decision. CP 10.

The trial court's Order on the LUPA appeal was then finally entered on February 20, 2007. CP 8-9. The Order vacated the Code

Enforcement Board's affirmation of Violation CEB2005-0502 and the City of Pasco's Notice of Violation CEB2005-0502; reversed the determination of the Code Enforcement Board; ordered that Appellant City of Pasco may not preclude by ordinance the use of a mobile home park space by a recreational vehicle used as a permanent residence; and ordered that RCW 59.20 preempts any ordinance barring placement of recreational vehicles used as permanent residences in mobile home parks. CP 8-9.

Appellant City of Pasco timely appealed the trial court's February 20, 2007 Order.

V. SUMMARY OF ARGUMENT

The trial court incorrectly concluded that RCW 59.20 preempts PMC 25.40.060 and thus its Order vacating the code violations and prohibiting Appellant City of Pasco from properly zoning real property should be reversed. PMC 25.40.060 is a proper exercise of the zoning and police powers by Appellant City of Pasco as far as regulating property use. RCW 59.20 does not prohibit or even address the proper use of such authority by Appellant City of Pasco.

On the contrary, RCW 59.20 supports and enforces compliance with municipal codes such as PMC 25.40.060: RCW 59.20.130 expressly requires Respondent Lawson to comply with PMC 25.40.060; RCW 25.40.080 provides him with a means and grounds for evicting the

recreational vehicle tenants; and RCW 59.20.040 renders unenforceable the rental agreements that violate PMC 25.40.060.

Thus, RCW 59.20 does not block or preempt the provisions of PMC 25.40.060 or Respondent Lawson's need to comply therewith, as the trial court improperly concluded. Instead, RCW 59.20 actually upholds and requires compliance with PMC 25.40.060 and does not provide any basis for vacating or reversing the decision of the Code Enforcement Board, the City of Pasco's Violation CEB2005-0502, or the provisions of PMC 25.40.060 itself. The trial court's Order should therefore be reversed.

VI. LEGAL ARGUMENT

RCW 59.20 does not conflict with or preempt Appellant City of Pasco's zoning and land use powers and thus provides no basis for the trial court's decision vacating and reversing Violation CEB2005-0502 and prohibiting the Appellant City of Pasco from zoning its Recreational Parks as provided for in PMC 25.40.060. The trial court's Order should therefore be reversed and the original determination of the Code Enforcement Board reinstated.

- A. **Appellant City of Pasco Has Statutory Right to Enact Zoning and Regulate Land Use and PMC 25.04.060 is Permissible Exercise of Police Powers.**

It is well established that a municipality has authority to regulate the use of land and that such regulation is a legitimate exercise of state police power regarding property use. Guimont v. Seattle, 77 Wn. App. 74, 89, 896 P.2d 70 (1995); RCW 35A.63.100. What is more, the Court has specifically recognized a municipality's authority not only to regulate mobile home parks, *but to exclude recreational vehicles from mobile home parks*. Guimont, 77 Wn. App. 74. This is all PMC 25.40.060 does and, as the Court concluded in Guimont, this is a legitimate zoning and property use regulation. Id.

In Guimont, owners of a mobile home park in Seattle challenged the constitutionality of Seattle Ordinance that, among other things, prohibited recreational vehicles [RVs] from occupying lots in mobile home parks after the effective date of the Ordinance. Id., at 78. In analyzing the constitutionality of the RV prohibition, the Court recognized that the Ordinance served an important public and legitimate State interest in reserving and persevering mobile home lots – which were quickly disappearing – for the elderly and low income. Id., at 84. The Court also noted that RVs, whether used for permanent residences or not, "are truly mobile and people who use them as permanent homes have options other than mobile home parks in which to locate their homes." Id., at 88.

The court ultimately held that the Seattle Ordinance did not constitute an unconstitutional taking and did not violate due process. Guimont, 77 Wn. App. 74. Instead, the Court upheld the Ordinance as "a regulation on the use of land and thus a legitimate exercise of state police power regarding property use." Guimont, 77 Wn. App. at 89 (citing Robinson v. Seattle, 119 Wn.2d 34, 56, 830 P.2d 318 (1992)).

Like the Ordinance in Guimont, PMC 25.04.060 prohibits RVs from occupying sites in mobile home parks. What is more, the same legitimate public purpose and State interest recognized by the Court in Guimont is behind PMC 25.40.060. See Affidavit of David McDonald, CP 13 ("Recreational vehicles were prohibited from being placed in mobile home parks, to ensure that affordable housing was available for elderly and lower income individuals and to maintain the value of residential parks and the property value of mobile and manufactured homes located within residential parks.")³

Thus, PMC 25.40.060 is a "legitimate exercise" of Appellant City of Pasco's zoning and police power for regulating land use. The trial court's Order to the contrary is without basis and directly contradicts the

³ As Mr. McDonald's Affidavit also states, RVs are not without any place to go – City of Pasco has approved locations within the City limits for parks and sites RVs can occupy and in January of 2007, the City Council approved location of a new RV park, increasing availability of land for RVs. CP 13.

Court's reasoning and holdings in Guimont. The trial court's Order should therefore be reversed.

B. RCW 59.20 Does Not Prohibit or Preempt the Provisions of PMC 25.40.060 – It Provides a Means to Enforce the Code.

Respondent Lawson has not challenged the constitutionality of PMC 25.40.060 nor contended that it is an improper use of Appellant City of Pasco's zoning or land use regulation powers. Nor does the trial court's Order invalidate PMC 25.40.060 as unconstitutional or an impermissible exercise of zoning or land use powers.

Instead, Respondent Lawson has contended – and the trial court agreed – that RCW 59.20 preempts or trumps the City ordinance. Essentially, Respondent Lawson's reasoning seems to have been that since he already violated the City code by renting spaces to RVs, he must continue to do so under RCW 59.20. This argument ignores the actual provisions of RCW 59.20 and leads to an absurd result – i.e., if you violate a city ordinance to create a situation governed by statute, then you should be able to continue violating the ordinance. Unfortunately, the trial court's Order adopts and implements this absurd result.

The first important point to keep in mind is that RCW 59.20 *governs* these mobile home park landlord-tenant relationships – *but it does not mandate or require them*. Thus, there is nothing in the statute that

requires or even authorizes Respondent Lawson to violate PMC 25.40.060 by renting spaces to these RVs, whether permanent residences or otherwise.

The scope and purpose of RCW 59.20 is expressly stated in RCW 59.20.040:

This chapter shall *regulate and determine* legal rights, remedies, and obligations arising from *any rental agreement* between a landlord and a tenant regarding a mobile home park[.]

(emphasis added). The Chapter then provides various requirements and guidelines, and procedures for the relationship and rental agreements between landlords and tenants. Chapter RCW 59.20 et seq.

The Chapter does not, however, provide or require anything regarding *who* a mobile home park *must* rent to – be it RVs or otherwise. In fact, as the Court recognized in Guimont, a park owner such as Respondent Lawson "is not required to sell or retain the Park, may change its use and may reject tenants on any lawful basis." Guimont, 77 Wn. App. 85. In this case, that lawful basis is PMC 25.40.060 and RCW 59.20.130 expressly states that *the landlord must comply with the applicable codes* – again, PMC 25.40.060.

Thus, there is no express provision in RCW 59.20 that conflicts with or invalidates the requirement the of PMC 25.40.060 and in fact the

statute requires compliance by Respondent Lawson with the code. Respondent Lawson admits himself that he is in violation of the City of Pasco's code. CP 46. He is therefore also in violation of RCW 59.20.130.

However, Respondent Lawson's argument – and apparently the reasoning of the trial court – has been that even though he is in violation, RCW 59.20 does not provide him with a means or grounds for terminating the existing tenancies for the RVs currently in his Recreational Park. CP 84. Therefore, he has contended that he is statutorily permitted or even required to continue violating Appellant City of Pasco's valid and otherwise enforceable land use code. The trial court's order permits him to do just that.

Respondent Lawson's argument and the trial court's Order ignores the express provisions of RCW Chapter 59.20. First, RCW 59.20.040 which states: "**All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter.**" (emphasis added). Thus, as discussed above, by admitting that he is in violation of PMC 25.40.060, Respondent Lawson is also admitting that his existing tenancies conflict with the requirement under RCW 59.20.130 that he comply with all such codes. His rental agreements, and the tenancies created thereunder, are therefore unenforceable and void pursuant to RCW 59.20.040.

Aside even from the rental agreements, the second portion of RCW 59.20 that Respondent Lawson ignores is RCW 59.20.080(1)(d), which expressly authorizes Respondent Lawson to terminate the tenancies he erroneously claims the statute protects:

(1) A landlord shall not terminate or fail to renew a tenancy...**except for one or more of the following reasons:**

....

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes or park models[.]

The same statute then goes on to expressly state that it applies to the eviction of "recreational vehicles used as primary residences from a mobile home park." RCW 59.20.080(3).

That is exactly the situation presented here. Respondent Lawson has been directed by Appellant City of Pasco that he – and thus his tenants – are in violation of PMC 25.40.060 by permitting RVs to occupy sites in his Residential Park. Respondent Lawson admits and agrees that the violation has occurred but claims he has no means for evicting his tenants. However, RCW 59.20.080(3) expressly applies for the eviction of RVs used as mobile homes and RCW 59.20.080(d) states that such tenancies shall be terminated for failure to comply with the City ordinance.

Thus, RCW 59.20 not only makes the rental agreements between Respondent Lawson and his tenant unenforceable, but it expressly

authorizes Respondent Lawson to terminate the tenancies for failure to comply with the PMC 25.40.060. RCW 59.20.080.

The bottom line is that Respondent Lawson has no grounds under RCW 59.20 for either permitting the RVs in his Recreational Park in the first place or for permitting them to remain in violation of PMC 25.40.060. The trial court's Order permitting him to continue violating PMC 25.40.060 and prohibiting Appellant City of Pasco from exercising its valid zoning and land use regulation powers is without legal basis. Said Order should therefore be reversed and Violation CEB2005-0502 and the Code Enforcement Board's determination accordingly reinstated.

C. **Question of Whether RV Used As Permanent Residence is a "Recreational Vehicle" or a "Mobile Home" is Moot.**

A good deal of time was spent at the trial court level trying to define just what the RVs in Respondent Lawson's Recreational Park are and towards this end, the parties relied heavily upon the definitions in RCW 59.20.030. Respondent Lawson appeared to make the argument that the RVs in his park were not actually "recreational vehicles" as prohibited by PMC 25.40.060 because they were used as permanent residences. He thus argued that, under the definitions in RCW 59.20.060, the RVs in his park should be treated *like* mobile homes and not like transient recreational vehicles.

This line of argument inappropriately mixes terms and definitions between the Code and the Statute. First, RCW 59.20.030 expressly states that those definitions are for purposes of that Chapter only. RCW 59.20.030. Thus, the definitions contained therein do not control beyond that Chapter and specifically do not control or define anything in the Pasco Municipal Code. In other words, "recreational vehicle" as used in PMC 25.40.060 is not limited to the definition in RCW 59.20.030(10).

Second, no one is contending or arguing that the RVs in Respondent Lawson's Residential Park are *actually* anything other than recreational vehicles. All Respondent Lawson asked was that they should be *treated like* mobile homes or manufactured homes, not that they *were* mobile or manufactured homes. Thus, PMC 25.40.060's prohibition on recreational vehicles – which is not limited to or controlled by the definition in RCW 59.20.030 – clearly applies to the RVs in Respondent Lawson's park. He admits that himself.

Finally, RVs that are used as permanent residences are defined in RCW 59.20.030(9):

(9) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence.

Thus, the argument back and forth about how to define these RVs under RCW 59.20 is settled by the provisions of the statute itself. Further, these

RVs used as permanent residences are still subject to the provisions and requirements of the Chapter, and thus the rental agreements for them are unenforceable because they conflict with PMC 25.40.060 and RCW 59.20.130.

Again, this definition for "park models" does not control for the Code and thus does not move these permanent residence RVs outside the prohibition for recreational vehicles. The definition does, however, invalidate pursuant to RCW 59.20.040 the rental agreements Respondent Lawson has been relying upon to continue violating the code.

Thus, this argument over what to call the RVs used as permanent residences is a moot point because, regardless of how RCW 59.20.030 defines them, PMC 25.40.060 still prohibits them and RCW 59.40.060 still renders their leases unenforceable. The trial court's Order to the contrary is without legal basis and should be overturned.

VI. CONCLUSION

The trial court's Order should be reversed because 1) nothing in RCW 59.20 preempts or conflicts with the City of Pasco's proper exercise of its zoning and land use powers to prohibit recreational vehicles in Residential parks; and 2) the express provisions of RCW 59.20 make the rental agreements that exist with the current RV tenants unenforceable and

provides the grounds for Respondent Lawson to terminate the RV tenancies and evict them.

Thus, there is no statutory basis for Respondent Lawson to continue violating PMC 25.40.060 and the trial court's order permitting him to do so is without legal basis. Said Order should therefore be reversed and the previous Violation 2005-0502 and determination by the Code Enforcement Board reinstated.

DATED this 19th day of June, 2007.

PAINE HAMBLÉN LLP



Leland B. Kerr, WSBA #6059
Vicki L. Higby, WSBA #31259
Attorneys for Appellant City of
Pasco

I:\Spodocs\28868\00046\plead\00511967.DOC

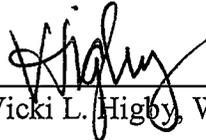
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of June, 2007, I caused to be served a true and correct copy of the foregoing Brief of Appellant as follows:

<u> </u>	U.S. MAIL	Clerk of the Court of Appeals
<u> XX </u>	HAND DELIVERED	COURT OF APPEALS,
<u> </u>	INTER-CITY MESSENGER	DIVISION III
<u> </u>	TELECOPY	500 N. Cedar Street
		Spokane, WA 99210

<u> </u>	U.S. MAIL	George Fearing
<u> </u>	HAND DELIVERED	LEAVY, SCHULTZ,
<u> XX </u>	INTER-CITY MESSENGER	DAVIS & FEARING, P.S.
<u> </u>	TELECOPY	2415 West Falls
		Kennewick, WA 99336

Attorneys for Respondent



Vicki L. Higby, WSBA #31259