



January Case Law Update January 31, 2016

A summary of Wisconsin court opinions decided during the month of January related to planning

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Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

The Amish and Building Permits

An unpublished decision by the Wisconsin Court of Appeals, [Eau Claire County v. Borntreger](#) highlights an interesting Freedom of Religion issue that has confronted several Wisconsin Counties that are home to the Old Order Amish. State and local laws require building and sanitary permits for the construction of residences. Those that practice the Amish religion must follow a modest lifestyle. The use of modern technology required in building and sanitary codes violates their religious beliefs. Applying for the permit requires signing an application that states the applicant will adhere to the applicable building codes. Signing the application form would constitute a false statement since the Amish have no intent to comply and false statements are prohibited by their religion.

The Borntreger case arose as a result of an enforcement action brought by Eau Claire County because the Borntregers, who are Amish and constructed a residence, did not obtain the required building and sanitary permits due to their religious beliefs. The Borntregers moved to dismiss the County's action based on religious freedom grounds. The circuit court denied the motion and later granted summary judgment to the County and ordered the Borntregers to apply for building and sanitary permits. The Borntregers did not appeal the granting of summary judgment. The Borntregers did not obtain the necessary permits as required by the circuit court's order so the County filed a motion for contempt. The circuit court granted the contempt order. The Borntregers appealed the contempt order.

While the Wisconsin Court of Appeals acknowledges that the Wisconsin Constitution provides much broader protections for religious liberty than the First Amendment of the U.S Constitution, the Court does not address that issue in this case. The Court of Appeals found that the religious liberty issue was decided by the circuit court in the earlier summary judgement action which the Borntregers did not appeal. This action only deals with whether the Borntregers were in contempt of a court order. The Borntregers did not refute that they had not complied with the circuit court's order. The Court of Appeals therefore affirmed the circuit court's finding of contempt.

[It should be noted that the dispute in this case arose prior to the recent legislation in the state budget creating [Wis. Stat. § 101.648](#) which provides a waiver from certain sections of the State's Uniform Dwelling Code. The Wisconsin Department of Safety and Professional Services has developed a [Waiver Form](#) for individuals who wish to apply for the waiver.]

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]