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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0734**

Lake County,
Appellant,

vs.

William Leslie,
Respondent,

Mary Jo Spencer,
Respondent.

**Filed January 27, 2009
Reversed and remanded
Halbrooks, Judge**

Lake County District Court
File No. 38-CV-06-724

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respondents)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Lake County challenges the district court's grant of summary judgment to respondents. Because we conclude that a genuine issue of material fact exists as to whether respondents' building is a "dwelling" for purposes of the county's zoning ordinance, we reverse and remand.

FACTS

In July 2001, respondents William Leslie and Mary Jo Spencer applied for a permit to build a structure on their shoreland property on Greenstone Lake in Lake County (the county). The county issued a permit to respondents in August 2001, and respondents constructed a one-room building with a floor plan of 192 square feet by the end of May 2002. The structure complies with the county's 25-foot setback requirement for water-oriented accessory structures, but does not comply with the 100-foot setback requirement for dwellings.

The county's land-use administrator sent respondents a letter dated May 31, 2002, notifying them that the structure might not be in compliance with the county's land-use ordinance. The letter advised respondents to examine the permitted uses, screening and coloration requirements, and dimensional maximums for water-oriented accessory

structures as set forth in the ordinance. Respondent Leslie replied in a letter dated June 8, 2002, explaining how the structure met the requirements of the ordinance.¹

By letter dated January 18, 2003, to the county's planning and zoning commission, another Greenstone Lake property owner complained about respondents' structure. On July 31, 2003, the land-use administrator sent Leslie a cease-and-desist order, prohibiting further use of the structure. The order did not specify how the structure violated the ordinance.

On October 13, 2006, the county filed a civil complaint seeking an injunction against respondents, claiming that the structure was being used as a dwelling in violation of the ordinance. The county requested that the district court order respondents to remove the structure from its current location to the 100-foot setback line for dwellings. Respondents moved for summary judgment on January 14, 2008. Following a hearing, the district court granted respondents' motion, and judgment was entered on March 20, 2008. This appeal follows.

D E C I S I O N

On appeal from an order granting summary judgment, we determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court must view the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

¹ In response, the land-use administrator sent Leslie a June 14, 2002 letter stating that the structure's roofed deck violated the ordinance. The deck was later removed and is not at issue on appeal.

The county argues that the district court erred in granting summary judgment to respondents because an issue of material fact exists as to whether the structure is a dwelling. The county's land-use ordinance defines a dwelling as "[a]ny building or portion thereof designed or used as the residence or sleeping place for one or more persons, including a manufactured home." Lake County, Minn., Comprehensive Plan & Land Use Ordinance No. 12, art. 3, § 3.20 (2002).² The ordinance does not specify criteria for determining whether a building has been designed or used as a residence or sleeping place.

The district court found that the record does not support the county's allegation that respondents' structure has been "designed or used as a dwelling." But we conclude that the district court improperly weighed the evidence when it granted summary judgment to respondents. For example, the county submitted the affidavit of a deputy assessor, in which the assessor stated that, since 2003, he has assessed respondents' structure as a residential cabin as opposed to a storage building. The district court found that the tax assessment was not "significant in determining whether the structure was used or designed as a dwelling." The district court also considered Leslie's statement that respondents intended to "use the structure to get away from bugs and bad weather," concluding that the statement is not "determinative of whether the structure was designed or used as a dwelling." In addressing the testimony of deposed witnesses, the district court found "that the balance of the testimony could not lead a rational trier of fact to find

² The current version of the ordinance went into effect on May 26, 2006. The county's complaint cites to the current version, but the district court quotes the 2002 version of the ordinance. Both parties cite to the 2002 version in their briefs.

that the structure was designed or used as a dwelling.” In making these credibility and weight-of-the-evidence determinations, the district court erred. *See Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007) (stating that “[w]eighing the evidence and assessing credibility on summary judgment is error.”).

The district court’s determination that “a rational trier of fact could not find that the structure was designed or used as a dwelling” appears to rely on the fact that none of the county’s witnesses had seen anyone inside respondents’ structure. But the county’s circumstantial evidence should not be disregarded on a motion for summary judgment. *See Forsblad v. Jepson*, 292 Minn. 458, 459–60, 195 N.W.2d 429, 430 (1972) (stating that all inferences from circumstantial evidence must be resolved against the movant for summary judgment); *Gutwein v. Edwards*, 419 N.W.2d 809, 813 (Minn. App. 1988) (concluding that “direct and circumstantial evidence, viewed in its entirety” can raise genuine issues of material fact).

The record could support a finding that respondents’ structure has not been designed or used as a residence or sleeping place. None of the county’s witnesses have seen anyone inside the structure. Respondents’ neighbor Ernest J. Seliskar saw a tent on the property, corroborating respondents’ claim that they sleep outdoors when they are at Greenstone Lake. Furthermore, the structure lacks plumbing, electricity, and furniture.

But the record could also support a finding that respondents have designed or used the structure as a residence or sleeping place. The structure is the only building on

respondents' isolated property.³ It has large screened windows, a screen door, and an insulated floor. Respondents have stayed at the property overnight, and the county's planning and zoning administrator testified that during a visit to the property he saw no signs that respondents had been "staying somewhere other than the [structure], i.e., camping spots or tent pads or things of that nature in the vicinity." Seliskar testified that on a stormy night in July 2002, he saw lights inside the building, a canoe outside, no one outside, and no tent outside. Seliskar also testified that in July 2004, respondents spent a weekend at their property: "[T]hey had no tent, and they . . . spent the night." The structure has been assessed as a residential cabin since 2003 without objection by respondents. Finally, in their answers to the county's interrogatories, respondents admitted that Spencer and her friends "may have slept briefly" in the structure on two occasions because of inclement weather.

We cannot conclude on this record that, as a matter of law, respondents' structure has not been "designed or used as the residence or sleeping place for one or more persons." Because a genuine issue of material fact exists as to whether the structure is a dwelling, we reverse the district court's grant of summary judgment and remand for trial.

Reversed and remanded.

³ The record indicates that respondents' property is not accessible by road.