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STAFF PHOTO BY KEVIN HARNACK
Outbuildings on the Zoulek property in Richfield abut an abandoned quarry. The Zouleks recently won a court battle over whether local officials have the authority to stand in the way of their plans to use an old quarry as a place to dispose of "clean fill" taken from construction sites.

LICENSED TO FILL

APPEALS COURT UPHOLDS 1996 DECISION, LETTING PIT ACCEPT CLEAN-FILL MATERIALS

By Erika Strebel
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Thanks to a recent Wisconsin Court of Appeals decision, landowners who are looking to use their land for the disposal of "clean fill" have no reason to worry about local governments standing in their way.

The ruling stems from a dispute between Danah and Tom Zoulek, the owners of a disposal site in Washington County's village of Richfield, and local officials. Through their company Scenic Pit LLC, the Zouleks had proposed using the site to dispose of waste from various nearby construction projects.

The Zouleks insisted that their plans called for accepting only accept "clean" fill, usually meaning gravel and dirt taken from sites with no history of contamination. Local officials did not accept their assurances, though, saying in part that they didn't believe all environmental or health hazards had been eliminated.

With its decision in the case, the Wisconsin Court of Appeals did not break new ground. In fact, it did little more than uphold a precedent the Wisconsin Supreme Court had set in 1996. But even though victory in this case might not have shaken the legal world, that did not make it any less sweet to the Zouleks.

It not only meant the couple can now open their pit to trucks coming from construction sites. It also reinforced the notion that local governments have no business trying to set limits on the disposal of solid waste.

The Zouleks' dispute centered on roughly 40 acres the Zouleks bought in Richfield in 2015. The site is taken up both by a farmhouse where Danah Zoulek now lives with the couple's children and a 29-acre gravel pit.

Used in the 1960s and '70s as a limestone quarry, the site is now where the Zouleks want to start taking in truckloads of clean fill. The Zouleks' plan was to fill the former quarry in and eventually divide the site into residential lots, boosting the land's value, which had been diminished by the presence of the gravel pit.

Danah Zoulek, who drove dump trucks in Ramadi, Iraq, while she was with the Army's 983rd Engineering Battalion, said she also has plans to use the pit as a training site for Army earth movers.

"What are they going to do?" she said. "Run into a hill? They can't ruin anything on the pit."

But once residents got wind of the plan, they complained to village officials, who responded by changing the site's zoning and contending the Zouleks' plans couldn't move forward without getting storm-water and erosion permits from the village.

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JUST WHAT ARE THEY UP TO?

MADISON ATTORNEYS KEEPING AN EYE ON LAWMAKERS, STATE BUDGET

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Although the Wisconsin Supreme Court recently wrapped up its latest term, releasing its final decision for the period earlier this month and selecting which rule-change proposals it will hear next term, lawyers haven't necessarily taken their eyes off the Capitol.

A great deal of attention is in fact being paid to the state budget, which is taking longer than usual to hammer out. The two-year spending plan was officially due on July 1, but the governor and the Republicans who control the two houses of the state Legislature have so far failed to reach common ground on various matters.

The delays are not just affecting the state's road transportation fund and other budgetary priorities that are at the center of much of the controversy. They are also touching matters that are of great import to the legal profession. Lawmakers, for instance, have yet to act on many of Gov. Scott Walker's proposals concerning the State Public Defender's office.

To some lawyers, the biggest question is not when the next budget will get passed. It's whether some of the proposals that lawmakers will be asked to vote on in coming weeks and months belong in the state budget in the first place.

Andy Erlandson, a civil litigator at Hurley Burish & Stanton, said he has seen legislators in the last two decades increasingly use the budget rather than standalone legislation to modify state laws.

"I think that the substance and amount of public debate on issues has probably gone down, and I don't know that I can attribute that to one party or another," he said.

Unlike standalone legislation, law changes attached to budgets are not scheduled to be debated at public hearings. In some cases,

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PIT

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The Zouleks went to court in June 2015 seeking a declaration that they were exempt from having to get those permits for their pit. Their main contention was that although the Wisconsin Constitution's principle of home rule gives local governments control over their own affairs, the state's solid-waste statutes carve out an exception for landfills and clean-fill sites.

The case did not go well for the Zouleks at first. In a decision handed down in September 2015, Washington County Circuit Court Judge Andrew Gonring concluded that the Zouleks' pit was not exempt from local approval, saying he could find no direct conflicts between the village of Richfield's rules and state statutes involving the disposal of solid waste.

In later finding in favor of the Zouleks, a three-judge panel of the state court of appeals said its decision in the case was determined largely by precedent.

"Leaving the regulation of clean fill facilities to DNR may or may not be good policy, but it is what the legislature and DNR have done through statute and administrative rule (as interpreted by the supreme court)," according to the decision. "And that is what must dictate the outcome."

Tom Zoulek, a project manager at Butler-based Mid City Plumbing & Heating, said he was happy with the decision.

"It's very rewarding to have this appeal come back in our favor and be written as strongly as it is," he said.

Tom Zoulek said the decision made it clearer than before that local governments have very little power over clean-fill sites. He said contractors like Mid City often have a tough time getting rid of clean fill, which is sometimes also referred to in the industry as spoil.

"It's going to be very helpful for the construction industry," he said. "Trucking and getting rid of spoil is very expensive."

Danah Zoulek noted that the precedent cited in her case stems from a decision the state Supreme Court handed down in 1996 in DeRosso v. City of Oak Creek. In DeRosso, the justices found that a Milwaukee County judge had properly enjoined Oak Creek from enforcing a local ordinance that would have prevented a particular property from being used as a clean-fill site. The justices found that the ordinance was clearly not in keeping with the state's solid-waste statutes, which the parties in the case had agreed were a matter of statewide concern.

"I was literally was shocked when the circuit court ruled against us because the law was so clear," Danah Zoulek said. "The Court of Appeals decision really restored my faith in the justice system. For a while, I was convinced that politics would outweigh common sense."

But there is no guarantee the case is closed. Expressing disagreement with the Court of Appeals' decision, village officials have said the pit is still out of conformance with two provisions of the state's administrative code that were cited by the appeals court. Reached last week, Village Administrator Jim Healy said local officials now plan to submit an appeal to the Wisconsin Supreme Court.

MADISON

CONTINUED FROM PAGE 1

lawmakers will take part in only a short discussion before voting to add a proposal to the state's spending plans.

Even so, it would be unfair to accuse the budget committee, officially the Joint Committee on Finance, of accepting every proposal that's up for addition to the budget. This year in particular has seen top lawmakers take out large sections of Walker's proposed budget and send them to the Legislature to be considered as standalone bills.

In May, the panel responded to opposition from the legal community and others by rejecting a number of Walker's proposals that would have eliminated certain statutory entities and requirements. Among other things, the provisions that were cast aside would have eliminated an independent board that reviews workers' compensation, equal-rights and jobless-benefits appeals.

ERLANDSON

Still another proposal struck down earlier this year would have eliminated the statutory requirement calling for court reporters to be present at workers' comp hearings.

Erlandson's colleague, the criminal defense lawyer Jonas Bednarek, said that many of the statutory changes that he has seen embedded in budget bills over the years have been detrimental to his clients. Among other examples, he cited changes that allowed the admission of hearsay evidence in preliminary hearings and "other acts" evidence in sexual assault cases.

BEDNAREK

"The effect is anti-criminal defendant," Bednarek said. "(The laws) tilt toward the prosecution and tilts more."

Erlandson, for his part, remembers being frustrated about 10 to 12 years ago when lawmakers used the state budget to modify the deadline governing how much time defendants in civil cases have to respond to complaints.

Before the change, defendants of all stripes were given 20 days to file a responsive pleading. Not until the adoption of the new law did differing rules start to apply different sorts of clients. Insurers now, for instance, have 45 days to answer a complaint.

Erlandson said he wished that lawmakers had not adopted the change without first pausing to look more closely at its likely consequences. One way they could have done that would have been to listen to people who, like him, use the rules every day.

"I would hope that these trends shift," Erlandson said. "I just think you end up with better laws, a better organized court system and a more efficient and effective one – and it serves everyone's interests."

CASE DIGESTS

CONTINUED FROM PAGE 7

counterclaimed for breach of contract and declaratory judgment, and requested (pursuant to an Illinois statute) additional damages for "vexatious and unreasonable" claims-handling. Horace Mann also filed a third-party complaint against its insurance broker, Aon Risk Insurance Services West, for negligence in reporting the extracontractual "claim" to Lexington. The district court resolved Lexington's complaint, in Horace Mann's favor, at summary judgment, but awarded judgment to Lexington and Aon on Horace Mann's claims under Federal Rule of Civil Procedure 50(a). Horace Mann appeals the Rule 50(a) decisions, and for the following reasons, we affirm.

Affirmed

Breach of Contract

Case Name: James Hunt v. Moore Brothers, Inc., et al.
Case No.: 16-2055
Officials: WOOD, Chief Judge, and POSNER and HAMILTON, Circuit Judges.

James Hunt worked as a truck driver in Nebraska. On July 1, 2010, he signed an Independent Contractor Operating Agreement with Moore Brothers, a small company located in Norfolk, Nebraska. Three years later, Hunt and Moore renewed the Agreement. Before the second term expired, however, relations between the parties soured. Hunt hired Attorney Jana Yocum Rine to sue Moore on his behalf. She did so in federal court, raising a wide variety of claims, but paying little heed to the fact that the Agreements contained arbitration clauses. Rine resisted arbitration, primarily on the theory that the clause was unenforceable as a matter of Nebraska law. Tired of what it regarded as a flood of frivolous arguments and motions, the district court granted Moore's motion for sanctions under 28 U.S.C. § 1927 and ordered Rine to pay Moore about $7,500. The court later dismissed the entire action without prejudice.

We have no need to consider whether the sanctions imposed by the district court were also justified under the court's inherent power. See Chambers v. NASCO, Inc., 501 U.S. 32, 45– 46 (1991). Nor are we saying that the district court would have erred if it had denied Moore's sanctions motion. We hold only that it lay within the district court's broad discretion, in light of all the circumstances of this case, to impose a calibrated sanction on Rine for her conduct of the litigation, culminating in the objectively baseless motion she filed in opposition to arbitration. We therefore AFFIRM the district court's order imposing sanctions.

Affirmed

Amended Order

Case Name: United States of America v. Vincent Jones
Case No.: 16-4254
Officials: WILLIAM J. BAUER, Circuit Judge JOEL M. FLAUM, Circuit Judge MICHAEL S. KANNE, Circuit Judge

The opinion issued on June 28, 2017, in connection with the above-referenced case, is AMENDED as follows: Page 6, first paragraph under the heading Discussion, line 5: the word "in" should be inserted after the word "wrong."

Page10, footnote1, is completely replaced with the following language: "For purposes of argument, we will assume that the gun safes were closed, and thus the officers could not have observed the guns in plain view."

Amended

Parsimony Principle

Case Name: United States of America v. Carnell King
Case No.: 16-3572
Officials: KANNE, SYKES, and HAMILTON, Circuit Judges.

Defendant Carnell King appeals his below-guideline sentence. Since he pled guilty and the district court's guideline calculation was admittedly correct, it is not surprising that we affirm the sentence. We issue a precedential opinion in the case, however, because King has raised a novel argument about the relationship between the Sentencing Guidelines and the statute instructing sentencing judges on what to consider in making their decisions, 18 U.S.C. § 3553(a). The district judge did exactly what he was supposed to do in this case: calculate the correct offense level and criminal history category under the Guidelines, then step back and use his independent judgment under § 3553(a) to impose a sentence tailored to the individual offender and his crimes. See Gall v. United States, 552 U.S. 38, 49–50 (2007). King argues, however, that the "parsimony principle" in § 3553(a), which instructs the court to impose a sentence "sufficient, but not greater than necessary," to serve the statutory purposes of sentencing, requires an adjustment of the applicable guideline calculations themselves. In support, he cites a tentative suggestion from a non-precedential Sixth Circuit decision. We reject his argument, which would make post-Booker federal sentencing even more complex than it already is, but without gaining any apparent benefit in terms of more just sentences.

The parsimony principle in § 3553(a) is an important and binding instruction from Congress. A sentencing court takes it into account sufficiently when the court considers whether and to what extent to accept the advice provided by the Sentencing Guidelines in a particular case. Judge Gettleman did so here and imposed a sentence that was thoughtful and sound. The judgment of the district court is AFFIRMED.

Affirmed

Sentencing

Case Name: United States of America v. Keefer Jones
Case No.: 16-1494
Officials: BAUER, FLAUM, and HAMILTON, Circuit Judges.

In July 2002, Appellant Keefer Jones was convicted of possession of crack cocaine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B). In 2004, the district court sentenced Jones to 262 months' imprisonment and eight years' supervised release. The district court imposed several conditions of supervised released, including drug testing, mental health treatment, and sex offender treatment. Jones appealed, but did not challenge the conditions of supervised release. We affirmed.

Affirmed

Fourth Amendment Rights Violation

Case Name: Don Meadows v. Rockford Housing Authority
Case No.: 15-3897
Officials: WOOD, Chief Judge, and RIPPLE and SYKES, Circuit Judges.

Don Meadows alleges that his Fourth Amendment rights were violated when an administrator at the Rockford Housing Authority ("RHA") ordered the locks on his apartment changed. We must determine whether the employees of a private security company, who carried out that order, are entitled to qualified immunity. The district court concluded that they are. We agree and thus affirm the district court's grant of summary judgment for the defend- ants.

Affirmed

Equal Protection Clause

Case Name: Monarach Beverage Co., v. David Cook, et al.,
Case No.: 15-3440
Officials: FLAUM, EASTERBROOK, and SYKES, Circuit Judges.

We are again asked to decide whether an aspect of Indiana's alcohol regulation system violates the Equal Protection Clause. Two years ago we upheld an Indiana law that prohibits grocery and convenience stores from selling chilled beer. See Indiana Petroleum Marketers & Convenience Store Ass'n v. Cook, 808 F.3d 318 (7th Cir. 2015). In this case Monarch Beverage Company challenges a feature of Indiana's "prohibited interest" law that separates beer and liquor wholesaling by prohibiting beer wholesalers from holding an interest in a liquor-distribution permit. See IND. CODE §§ 7.1-3-3-19, 7.1-5-9-3, 7.1-5-9-6. Monarch contends that this component of the prohibited-interest law lacks a rational basis. A district judge rejected this argument and upheld the law. We affirm that judgment. Indiana's policy of separating beer and liquor wholesaling survives review for rationality.

Affirmed