

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 21, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 98-1161

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

FIDELIS I. OMEGBU,

PLAINTIFF-APPELLANT,

v.

**THOMAS A. MASON CO., INC.,
PLATT CONSTRUCTION COMPANY
AND JOINT CERTIFICATION PROGRAM (JCP),**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
LEE E. WELLS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Fidelis I. Omegbu, *pro se*, appeals from the circuit court order dismissing his action against Thomas A. Mason Company, Inc. (Mason), Platt Construction Co. (Platt), and the Milwaukee County Joint

Certification Program (JCP).¹ Omegbu argues that the circuit court erred in concluding: (1) that he failed to meet the statutory prerequisite for bringing his claims against JCP; and (2) that he lacked standing to assert claims on behalf of his corporation. We affirm.

I. BACKGROUND

¶2 JCP is an agency that certifies business entities as minority, female, or disadvantaged, for the purpose of evaluating their bids on public works contracts. Mason and Platt are companies certified as minority-owned businesses qualified to bid on projects under JCP. Omegbu is the owner of Kasa Corporation, d/b/a Kasa Electric LLC and Kasa Construction LLC, which also is a certified minority-owned business qualified under JCP. Omegbu, personally, and not in the name of his corporation, filed an action bringing a number of claims. Essentially, Omegbu alleged that JCP had improperly certified Mason and Platt, that Mason and Platt had used their certification status to fraudulently obtain minority business enterprise (MBE) contracts and that, as a result, Kasa Corporation had suffered financial damages.

¶3 JCP, Mason, and Platt moved to dismiss Omegbu's action on several grounds. Granting their motions, the circuit court concluded that Omegbu had failed to serve Milwaukee County as required under WIS. STAT. § 893.80(1)

¹ In its brief to this court, Milwaukee County explains that JCP is a consortium comprised of agencies and organizations in addition to Milwaukee County but that, for purposes of this action, JCP is a Milwaukee County agency; the other entities are not involved.

(1997-98),² and that Omegbu lacked standing to bring the action on behalf of his corporation. The court was correct.³

II. ANALYSIS

¶4 We review *de novo* the circuit court’s grant of summary judgment.⁴ See *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). WISCONSIN STAT. § 802.08(2) sets forth the standard by which summary judgment motions are to be judged: “The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

¶5 As noted, Omegbu’s cause of action sought damages from JCP for its allegedly improper certification of Mason and Platt as minority-owned businesses. WISCONSIN STAT. § 893.80 provides, in relevant part:

Claims against governmental bodies or officers, agents or employes [sic]; notice of injury; limitation of damages and suits. (1) ...[N]o action may be brought or maintained against any ... political corporation,

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

³ Resolving the appeal on these bases obviates the need to address several of Omegbu’s arguments as well as Mason’s and Pratt’s substantial arguments that, regardless of standing, Omegbu’s complaint failed to state a cause of action. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issue need be addressed).

Platt, but not Mason or JCP, requests sanctions against Omegbu for bringing what it deems a frivolous appeal. We decline to order sanctions.

⁴ In dismissing Omegbu’s complaint, the circuit court considered materials outside of the pleadings. Therefore, the dismissal is reviewed as a grant of summary judgment. See WIS. STAT. § 802.08(3); *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 331, 565 N.W.2d 94 (1997).

governmental subdivision or agency thereof nor against any officer, official, agent or employe [sic] of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the ... political corporation, governmental subdivision or agency and on the officer, official, agent or employe [sic] under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the ... corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant ... corporation, subdivision or agency or to the defendant officer, official, agent or employe [sic]; and

(b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant ... corporation, subdivision or agency and the claim is disallowed.

¶6 In this case it is undisputed that JCP is a governmental subdivision or agency, and that Milwaukee County is entitled to notice of actions against JCP. It also is undisputed that Omegbu failed to provide notice to Milwaukee County as required by the statute. Accordingly, we conclude that the circuit court correctly dismissed Omegbu's action against JCP based on Omegbu's failure to comply with the notice of claim statute.

¶7 Omegbu's complaint also sought damages from Mason and Platt for interfering with Kasa Corporation's employment opportunities. Omegbu alleged that Kasa Corporation was not awarded contracts due to Mason's and Platt's conduct. At the hearing on the motion to dismiss, the circuit court explained:

[W]e're not looking at the merits ..., just looking at the named party. You should be here as a corporation basically. The corporation is the ... Kasa Corporation for which Mr. Omegbu is the sole stockholder and probably the

director of it and the officer of it, and maybe the only employee of it.

Nevertheless, it is a corporate status, it is a corporate responsibility, and with it goes your obligation to comply with the laws of Wisconsin. The laws of Wisconsin clearly say, look, if you bring an action like this, you must bring it in your corporate responsibility or corporate capacity because they're the ones that have applied for these other bids; and you're the one that has applied for certification by JCP; that is the corporation not the individual. As such, you should be here with counsel; and you as an individual do not have a cause of action against ... Platt and Mason.

And while arguably you might have had some standing as to JCP, I still don't think you do because you have previously applied for certification ... in your corporate status.

So under the circumstances, I'm satisfied that you do not, as to [Mason and Platt], have the standing to bring this lawsuit. You have not brought it in your corporate capacity.

¶8 The circuit court was correct. Omegbu's complaint sought injunctive relief and damages for Mason's and Platt's alleged interference with Kasa Corporation's bidding on MBE contracts. Kasa Corporation, however, was not a party to Omegbu's suit against Mason and Platt. Although Omegbu is the sole shareholder of Kasa Corporation, he cannot bring an action on behalf of Kasa Corporation because he is not a lawyer. *See Life Science Church v. Shawano County*, 221 Wis. 2d 331, 333, 585 N.W.2d 625 (Ct. App. 1998) ("The Wisconsin Supreme Court has ruled that nonlawyers such as officers, directors, and shareholders may not represent corporations in Wisconsin courts."). Thus, the circuit court properly concluded that Omegbu could not assert Kasa Corporation's claims against Mason and Platt.⁵

⁵ Omegbu asserts that he can seek relief for the personal economic losses that he suffered as a result of Kasa Corporation's lost business. He also asserts that Kasa Corporation is merely his alter ego, and thus the corporate fiction should be ignored. Both assertions are without merit. It is well established that "a stockholder has no individual right of action for an alleged injury to

(continued)

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

the corporation in which he holds shares.” *Lee v. Threshermen’s Mut. Ins. Co.*, 26 Wis. 2d 361, 363, 132 N.W.2d 534 (1965); see also *Marshfield Clinic v. Doege*, 269 Wis. 519, 526-27, 69 N.W.2d 558 (1955) (“An injury to a corporation gives no individual right of action, although the injury to the corporation may incidentally result in the depression of the value of the stocks and bonds.”). The corporate fiction is not to be ignored simply as a means of avoiding this rule, but rather, is ignored only if recognizing the corporate fiction “would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong equitable claim.” *Jonas v. State*, 19 Wis. 2d 638, 644, 121 N.W.2d 235 (1963) (internal quotation marks and citation omitted); see also *Lee*, 26 Wis. 2d at 363 (“The underlying rationale is that having chosen to conduct their business in the corporate form, the shareholders are bound to observe this nonconducting entity which they have interposed between themselves and those with whom they deal.”). This case does not present a situation in which it is appropriate to ignore the corporate fiction.

