COURT OF APPEALS
DECISION
DATED AND FILED

May 27, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

Appeal No. 2014AP799 **Cir. Ct. No. 2007CV1153**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

ROBERT E. BRENNER, ALLEN J. SEIDLING AND SUSAN M. SEIDLING,

PLAINTIFFS,

STEVEN J. WICKENHAUSER AND CRISTY K. WICKENHAUSER,

PLAINTIFFS-APPELLANTS,

V.

CITY OF NEW RICHMOND AND NEW RICHMOND REGIONAL AIRPORT COMMISSION,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for St. Croix County: HOWARD W. CAMERON, JR., Judge. *Affirmed*.

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Steven and Cristy Wickenhauser appeal an order denying their motion for reconsideration following dismissal of their inverse condemnation action. The Wickenhausers filed a motion for reconsideration following a bench trial, arguing the circuit court failed to consider the effect of airplane overflights on a portion of their land at its "highest and best use," namely, as commercial property. The circuit court concluded that the testimony of the Wickenhausers' valuation expert on this point was immaterial, because his testimony concerned a diminution in value attributable to the property's proximity to the airport, not overflights. We conclude the circuit court did not clearly err in so construing the testimony of the Wickenhausers' expert, and we therefore affirm.

BACKGROUND

¶2 The present case has been the subject of two previous appellate court decisions, which together set forth the facts underlying this inverse condemnation action filed by several landowners, including the Wickenhausers. *See* ***Brenner v. New Richmond Reg'l Airport Comm'n***, 2012 WI 98, 343 Wis. 2d 320, 816 N.W.2d 291 (***Brenner II***); ***Brenner v. City of New Richmond***, No. 2010AP342, unpublished slip op. (WI App May 10, 2011) (***Brenner I***). We recite only those facts necessary to an understanding of the limited issue presented by this appeal.

¶3 The New Richmond Regional Airport, located in St. Croix County, is owned and operated by the City of New Richmond and the New Richmond Regional Airport Commission (collectively, "the City"). *See* ***Brenner II***, 343 Wis. 2d 320, ¶5. In September 2006, the airport commenced construction on a project to extend its 4,000-foot runway by 1,500 feet. ***Id.***, ¶6. The City acquired by direct condemnation approximately 62 acres of land from the Wickenhausers,

whose 142.5 acres of land abutted the north end of the airport. ***Id.*** The City also acquired a 3.813-acre avigation easement[1] over the airspace above the Wickenhausers' home. ***Id.*** Although zoned so as to permit commercial and industrial uses, the land at issue in this appeal—approximately 77 acres neither acquired in fee by the City nor subject to the avigation easement—has mostly been used for agricultural or storage purposes.

¶4 The Wickenhausers, together with several other landowners not involved in this appeal, petitioned the circuit court, pursuant to WIS. STAT. § 32.10, to commence inverse condemnation proceedings, which included consideration of the Wickenhausers' remaining 77 acres.[2] ***Brenner I***, No. 2010AP342, unpublished slip op. ¶1. The circuit court concluded that the regulatory takings analysis established in ***Howell Plaza, Inc. v. State Highway Commission***, 92 Wis. 2d 74, 284 N.W.2d 887 (1979), also applied to instances of physical occupation, which include overflights, and dismissed the petition because there had been no taking—i.e., the Wickenhausers and others had not been deprived of all or substantially all beneficial use of their properties. ***Brenner I***, No. 2010AP342, unpublished slip op. ¶5.

¶5 On appeal, we concluded "the circuit court's factual findings were provided in the context of an improper legal standard." ***Id.***, ¶14. The ***Howell*** test does not apply in instances of physical occupation. ***Id.***, ¶¶8-9. The supreme court

[1] As our supreme court explained, an avigation or avigational easement is "'[a]n easement permitting unimpeded aircraft flights over the servient estate.'" ***Brenner v. New Richmond Reg'l Airport Comm'n***, 2012 WI 98, ¶6 n.3, 343 Wis. 2d 320, 816 N.W.2d 291 (***Brenner II***) (quoted source omitted).

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

accepted a petition for review in the case and agreed that the circuit court improperly used the test for regulatory takings in an overflight case. *See* ***Brenner II***, 343 Wis. 2d 320, ¶47. Instead, "[t]he standard for a taking in an airplane overflight case is whether the overflights have been low enough—that is, invasions of a person's block of superadjacent airspace[3]—and frequent enough to have a direct and immediate effect on the use and enjoyment of the person's property." ***Id.***, ¶64. The supreme court remanded the case to the circuit court to apply this—the correct—legal standard. ***Id.***, ¶85.

¶6 Further evidentiary proceedings were held on March 22 and June 3, 2013. As relevant to this appeal, the Wickenhausers' appraiser, Robert Strachota, testified there was a decrease in the value of the Wickenhausers' property, which was attributable to the runway expansion. The Wickenhausers' appellate arguments rely solely on the following portions of Strachota's testimony:

> Q. All right. Then how did you proceed to determine the impact, if any, of the extension of the runway on those 77 acres?
>
> A. Okay. In the before situation, as I've said, we appraised the property with commercial on the west side and industrial on the back under its highest and best use and assuming no impact of the runway extension. Now, in the after situation, I'm appraising the property with the impact of the extension, the runway extension, and we conclude that we have a change in the highest and best use of the property. We believe that in the after situation, the property will be used for industrial purposes across the board, and there will be no commercial application of any

[3] "Superadjacent airspace" refers to that airspace above the ground, up to an altitude at which the landowner's interests give way to the public's. *See* ***Brenner II***, 343 Wis. 2d 320, ¶54; *see also* ***United States v. Causby***, 328 U.S. 256, 263-64 (1946) ("The navigable airspace which Congress has placed in the public domain is 'airspace above the minimum safe altitudes of flight prescribed by the Civil Aeronautics Authority.'" (quoted source omitted)).

> of the property, even though it's zoned as commercial, because of the impacts of the runway extension.
>
> And the cause of that is really kind of two reasons. There are physical reasons of noise and dirt and dust that affect the use of the property; so that's kind of one category of difference between the before and the after. But the second category is the density of people that will be allowed … the use of the property. At the end of a runway like this, the normal regulations are that you do not want to have a lot of density of people, because this is frequently where the accidents occur. As you study accidents on airports, … most accidents occur at the end of runways; and I've appraised airport property all around the country, and the data overwhelmingly shows that the accidents occur at the end of runways ….
>
> ….
>
> As a result of that, communities and the [marketplace] limit the … density of people that you allow to build buildings there; so, for instance, you would never put a school, and that's an obvious extreme because there's lots of people and kids and so on, in the commercial zoning [area] … in the after situation. Rather, … the zoning would encourage you to use the property for … an industrial property or a warehouse where there isn't the density of people; so in the event of an accident, people aren't harmed. And that's what happens in the marketplace normally with property that's at the end of a runway within the RPZ,[4] which is the area influenced by the airport.
>
> ….
>
> Q. All right. You mentioned before the concern that is going to occur as a result of the airport extension regarding density. Could you expand on that a bit and tell us what you mean by that?
>
> A. Sure. In the appraisal process, before the valuation occurs, we have a step called highest and best use. And when we conduct a highest and best use, we have three

[4] "RPZ" refers to the runway protection zone, which projects outward from the end of the runway in a cone-like shape. It appears from a map submitted at trial that the RPZ in this case, as it pertains to the Wickenhausers' property, is entirely within the avigation easements acquired by the City.

> categories of … investigation that we need to conduct. The first is what is physically possible, the second is what is legally permissible, and the third is what is economically supportable; so when we do our highest and best use in the before, and the runway is not extended, we look at what's physically possible. We think commercial makes sense on the western portion of this property. Legally speaking, it's zoned that way. It's far enough away from the end of the runway that there aren't any safety issues. And, economically speaking, there's a market for commercial property in New Richmond. And we value it thus accordingly, because all of those three tests are satisfied for the commercial value.
>
> When we conduct the highest and best use in the after situation, we're challenged on, first, physically, because now the runway is close by and we do have physical impacts from the runway. Secondly, legally speaking, we have safety issues, and you simply just don't put lots of people close to the end of runways. You just don't do that. It eliminates the commercial use. So legally possible, I'm challenged as to how a commercial use could ever be put on the western side of the Wickenhauser property. And then, thirdly, market wise, the marketplace, the people that buy commercial property don't buy property for commercial uses at the end of runways for all the reasons that we've just discussed. So when I go through that analysis, I conclude in the after appraisal that the highest and best use is no longer commercial for the west side. It's industrial.

Strachota concluded the difference between the "before" value—i.e., valuing the land as a mixture of industrial and commercial—and the "after" value—i.e., valuing the land entirely as industrial—was $780,000.

¶7 Following the evidentiary proceedings, the circuit court entered an order on October 8, 2013, dismissing the Wickenhausers' inverse condemnation claim. The court's eighteen-page decision reviewed much of the evidence presented during the hearings. Based on the evidence, the court determined the Wickenhausers failed to prove "by the preponderance of the credible evidence that there was a taking of their property as defined by the [Wisconsin Supreme Court]

…." The circuit court appears to have agreed (or at least assumed) that there were some overflights, although it apparently did not believe the evidence established overflights of sufficient frequency and altitude to constitute a taking.[5]

¶8 Even if any such overflights occurred, the circuit court concluded there was insufficient evidence that the Wickenhausers suffered a direct and immediate effect on the use and enjoyment of their property due to overflights. The court observed there was no evidence—and in fact there was credible evidence to the contrary—that any overflights affected the use or rental of the relevant property for storage or agricultural purposes.

[5] The circuit court noted the Wickenhausers presented videotape and other evidence regarding the number of overflights, but it concluded this evidence was either irrelevant or entitled to no weight. The court stated the video appeared heavily edited and the footage was such that it was difficult, if not impossible, to judge the height at which each aircraft was flying. The Wickenhausers also presented evidence that overflights on weekends numbered between 20 and 25, or 30 and 35 if the planes were practicing takeoffs and landings. However, there was no evidence about the number of weekday flights, nor was there credible evidence indicating at what height any of the planes were traveling, as it is apparent the circuit court gave no weight to what scant layperson testimony there was regarding the height of flights over the Wickenhausers' property. Based on the evidence, it appears the circuit court found exactly one instance of a plane flying outside the avigation easement and below 500 feet while above the Wickenhausers' remaining 77 acres. Other than that single occurrence, the court stated it was "unable to find other instances of planes flying below [that altitude] … by the preponderance of the credible evidence." This would hardly satisfy the ***Brenner II*** standard for a taking.

Nonetheless, it is possible the circuit court's assumption that constitutionally problematic overflights occurred was influenced in part by the supreme court's decision in ***Brenner II***. It appears the circuit court viewed the supreme court as having made a finding that, as the circuit court commented, "aircraft were frequently traveling below the minimum safe altitude in flights over the [Wickenhausers'] property." *See also* ***Brenner II***, 343 Wis. 2d 320, ¶29 ("The [circuit] court also found that airplanes and helicopters use the space above the home and property of each plaintiff.") In fact, the supreme court only noted that the "*allegations* in the record are that aircraft were frequently travelling below the minimum safe altitude." ***Id.***, ¶73 (emphasis added). On remand, it was still necessary for the Wickenhausers to establish a "taking" under ***Brenner II*** by establishing the frequency and altitude of the alleged overflights over *their* property, which, based on the record, it appears they failed to do.

¶9 Instead, the court noted the Wickenhausers' inverse condemnation claim, at least as presented at trial, appeared to be based on a decrease in property value associated with the property's proximity to the expanded runway, not overflights. There was credible testimony that the Wickenhausers experienced certain inconveniences or disturbances, such as dust, vibrations, noise and odors.[6] None of these disturbances, though, were specifically attributed to overflights over the relevant portion of the Wickenhausers' property, versus the general expansion of the off-premises runway.

¶10 The circuit court's decision rejected Strachota's testimony on this basis. Although the court acknowledged Strachota's testimony that there was a decrease in value due to "safety issues and businesses that … would not build next to the airport," the court concluded there was "no testimony that the loss of value was solely attributed to aircraft flying (overflights) below the 500 foot airspace and outside the avigation easement …."

¶11 Following entry of the October 8, 2013 order, another order was entered at all of the plaintiffs' request on October 28, 2013.[7] That order incorporated the totality of the court's October 8, 2013 decision and indicated it was a final order for purposes of appeal. No appeal was taken from the October 28, 2013 order.

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[6] Moreover, the court determined the testimony about these occurrences was not relevant to the inverse condemnation claim to the extent it concerned the effects of planes flying within the avigation easement.

[7] The October 28, 2013 order appears to have been prompted by a letter to Judge Cameron from the Wickenhausers' counsel, who also appeared in the case on behalf of other landowners who, unlike the Wickenhausers, prevailed on their inverse condemnation claims. Counsel asserted that although the court's October 8, 2013 order instructed him to draft a judgment, he could not ethically author a decision against one of his clients.

¶12 On November 25, 2013, plaintiffs' counsel requested that the court enter an amended order for the purpose of facilitating a request for litigation expenses on behalf of the other landowners who had prevailed on their inverse condemnation claims. Counsel proposed that the order be identical to the court's October 28, 2013 order (which adopted in its entirety the court's October 8, 2013 order), except for the following language: "There being no just cause for delay, let judgment be entered accordingly." The requested order was entered on December 8, 2013.[8]

¶13 On December 12, 2013, the Wickenhausers filed a motion for reconsideration of those portions of the October 8 and December 8, 2013 orders that pertained to their claims. The Wickenhausers agreed that "any disturbance caused to their [p]roperty by activities outside of the boundary of the [p]roperty, including smell, dust, and noise emanating from the airport itself, [is] … irrelevant." However, they argued the circuit court erroneously confined its analysis to "whether the overflights caused by the airport extension had a direct and immediate effect on the use and enjoyment of their [p]roperty as agricultural land." (Footnote omitted and formatting altered.) The Wickenhausers faulted the court for failing to make "findings … that deal with the [p]roperty as it is presently zoned, commercial and industrial, nor is there any analysis of the impact of the overflights on commercial and industrial property." The Wickenhausers proposed that the court evaluate the effect of overflights on activities permitted within these zoning areas, which represented the "highest and best use" of their property.

[8] The order was entered over the objection of the City, who opposed the Wickenhausers' request under the belief that entry of a new order would allow the Wickenhausers to evade the time limit contained in WIS. STAT. § 805.17(3) for filing motions for reconsideration.

¶14 The circuit court entered an order denying the Wickenhausers' motion for reconsideration on February 19, 2014. Again, the court concluded the "Wickenhauser[s'] property may have suffered a loss in value but that does not necessarily mean there has been a taking, because the reasons [for the devaluation] testified to by Strachota are unrelated to … overflights of the 77 acres." The court found Strachota's testimony credible to the extent he concluded the runway expansion decreased the value of the Wickenhausers' property. However, the reasons for the lower value—namely, dust and noise, and decreased commercial interest in the market attributable to regulatory and safety concerns—were caused by "the mere existence of the expanded runway, not overflights."

¶15 The Wickenhausers attempted to appeal the circuit court's various orders. In response, the City filed a motion to dismiss the appeal, contending the notice of appeal was not timely filed because the motion for reconsideration itself was untimely. By order dated July 3, 2014, we concluded we were without jurisdiction to review the circuit court's orders entered on October 28 and December 8, 2013 because, respectively, there was no timely appeal from the first order, and the second order was identical in substance to the first. We determined we did possess jurisdiction to review the order denying reconsideration, but only to the extent it raised new issues.[9] *See* ***Silverton Enters., Inc. v. General Cas. Co.***

[9] Our July 3, 2014 order also informed the parties they could brief the issue of whether the motion for reconsideration was an untimely request for reconsideration of the October 28, 2013 order, or conversely, a timely request for reconsideration of the December 8, 2013 order. We observed that the issue might affect the circuit court's authority to rule on the motion, although it did not affect our jurisdiction to review the order.

(continued)

of Wis., 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988) ("No right of appeal exists from an order denying a motion to reconsider which presents the same issues as those determined in the order or judgment sought to be reconsidered.").

DISCUSSION

¶16 We must first address the standard of review. The Wickenhausers argue we should review the order denying their motion for reconsideration de novo. *See* ***E-L Enters., Inc. v. Milwaukee Metro. Sewerage Dist.***, 2010 WI 58, ¶20, 326 Wis. 2d 82, 785 N.W.2d 409 ("Whether government conduct constitutes a taking of private property without just compensation is a question of law that this court reviews de novo."). We agree that we will review an order or judgment de novo to the extent the decision requires a determination of whether the facts, as found by the trial court, satisfy the constitutional standard for a taking.

¶17 However, the Wickenhausers' proposed standard of review ignores that we have jurisdiction in this appeal only to review the order denying their motion for reconsideration. "To prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact." ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685

The parties have, indeed, briefed the issue. However, we elect to decide this appeal of the circuit court's order denying the Wickenhausers' motion for reconsideration on the merits. Even if the motion for reconsideration was timely filed, the Wickenhausers are not entitled to relief for the reasons set forth in this opinion. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (when a decision on one issue is dispositive, we need not reach other issues raised).

N.W.2d 853. Manifest error, at least in a legal sense, is not tantamount to disappointment on the part of the losing party; rather, it "is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent." ***Id.*** (quoting ***Oto v. Metropolitan Life Ins. Co.***, 224 F.3d 601, 606 (7th Cir. 2000)). We review a trial court's decision on a motion for reconsideration for an erroneous exercise of discretion. ***Id.***, ¶6.

¶18 The Wickenhausers principally argue the circuit court failed to consider the impact of overflights on the "highest and best use" of their property. They note that even though the property is currently used only for agricultural and storage purposes, it is undisputed that the land is zoned such that it can be used for a mixture of commercial and industrial purposes. The Wickenhausers contend they ought to be able to recover just compensation if overflights eliminate or make undesirable any commercial uses for their property that are allowed under the applicable zoning laws, even if the property is not currently used commercially.

¶19 We take no position regarding whether, from a legal standpoint, the Wickenhausers' "highest and best use" argument has merit.[10] We need not reach this issue because the case may be decided on narrower grounds. *See* ***Miesen v. DOT***, 226 Wis. 2d 298, 309, 594 N.W.2d 821 (Ct. App. 1999) ("[W]e should decide cases on the narrowest possible grounds and should not reach constitutional issues if we can dispose of the appeal on other grounds."). These "narrower

[10] We note that the applicable test, as set forth by our supreme court, requires a "*direct and immediate* effect on the use and enjoyment" of the property at issue. ***Brenner II***, 343 Wis. 2d 320, ¶64 (emphasis added). The Wickenhausers observe that a property owner may use and enjoy his or her property to the fullest extent allowed by law, *see* ***Mayer v. Grueber***, 29 Wis. 2d 168, 176, 138 N.W.2d 197 (1965), and they appear to argue they are entitled to just compensation because they were deprived of this present right to use a portion of their property for commercial purposes.

grounds" pertain to the testimony of the Wickenhausers' appraiser, Strachota, to which they cite extensively on appeal. The Wickenhausers claim Strachota's testimony established a diminution in value caused by a reduction in the highest and best use of the land.

¶20 The circuit court, in the order denying reconsideration, thoroughly vetted Strachota's testimony and concluded it was not probative of any matter related to overflights, irrespective of the property use considered. The court determined that Strachota credibly opined there had been a diminution in the value of the Wickenhausers' property, but that the diminution related only to the fact that an airport runway was now located nearby. "[T]he basis of Strachota's valuation," wrote the circuit court, "does not have to do with overflights but tort claims, i.e. dust, dirt and noise, safety issues and marketplace forces …."

¶21 At a minimum, the circuit court did not clearly err when it so interpreted Strachota's testimony. Even accepting, for our purposes, that there was some diminution in the value of the Wickenhausers' property at its highest and best use, Strachota's testimony, as quoted at length above, is clear any such effect was brought about because of the property's proximity to the airport—not because of any alleged overflights. The cited testimony was given in response to two questions about the impact of the runway extension. Strachota never once used the word "overflight" in the cited testimony, and he clearly linked any physical effects on the property to the fact that the "runway is [now] close by."[11] Further, the safety and regulatory issues, which Strachota believed would reduce

[11] As the City observes, the Wickenhausers stretch the record by repeatedly suggesting Strachota used the word "overflights," when in fact he did not.

the market for the parcel as commercial property, were solely attributed to the notion that "you simply just don't put lots of people close to the end of runways."

¶22 Moreover, the circuit court thoroughly considered the relevancy of Strachota's testimony prior to the motion for reconsideration, raising the question of whether the Wickenhausers' motion truly raised any "new" issues.[12] The City objected to Strachota's testimony on the ground that "he has given consideration to factors other than direct overflights over this property." The Wickenhausers did not directly dispute this assertion.[13] Rather, they claimed that the supreme court in ***Brenner II*** "was never intending to say [that] when the extension of this runway creates an invasion of the property by dust, noise, and smell that comes from the airport extension as opposed to directly from planes, that that is not [a] legitimate consideration."

¶23 To the contrary, and as the circuit court recognized, that is precisely what the supreme court said. The supreme court recognized "some uneasiness" in holding that "courts will recognize damages for a taking caused by government-authorized action that occurs inside a block of air but not recognize damages

[12] In a jurisdictional sense, the Wickenhausers' reconsideration motion *did* raise a new issue by suggesting the circuit court committed an error of law by failing to consider the effect of overflights on the value of their property at its "highest and best" use. Be that as it may, the Wickenhausers have consistently used Strachota's testimony as the sole factual basis for this legal argument. In turn, the circuit court has consistently rejected Strachota's testimony since October 8, 2013, because Strachota did not attribute any diminished value to overflights alone versus other factors. Although the motion for reconsideration raised a "new" issue, it did nothing to address the circuit court's rationale for rejecting Strachota's testimony, on which that "new" issue entirely relied.

[13] The circuit court indicated, in response to the objection, that it generally agreed with the City's position that Strachota's testimony was immaterial. However, the court stated it would let the evidence in, subject to additional argument later, to avoid having to hold further evidentiary hearings.

emanating from government-authorized action outside that block of air, even though the consequences for property owners may be identical." ***Brenner II***, 343 Wis. 2d 320, ¶66. Yet, the supreme court ultimately concluded this was the better rule. "Generally speaking, actions that occur outside or above this [superadjacent] block of air do not constitute a taking, even if the actions have adverse consequences to the person's property." ***Id.***, ¶62.

¶24 The supreme court quoted extensively from ***Batten v. United States***, 306 F.2d 580 (10th Cir. 1962), in an "effort to assist the circuit court" with this specific issue. *See* ***Brenner II***, 343 Wis. 2d 320, ¶¶65-66. The ***Batten*** court noted the landowners near the airport in that case were bothered by shock waves, vibrations, noise, smoke, and oily black deposits on their property. ***Batten***, 306 F.2d at 582-83. While such disturbances might give rise to consequential damages in a tort or nuisance case, no such damages are available in inverse condemnation actions when there has been no "taking" of the property due to government occupation in the first instance. *See* ***id.*** at 583-84.

¶25 Our supreme court, in consideration of ***Batten***, directed the circuit court to "adhere to property principles in determining whether there have been 'takings' of air easements by invasions of the property owners' superadjacent airspace." ***Brenner II***, 343 Wis. 2d 320, ¶68. The circuit court did precisely that and properly rejected Strachota's testimony about the effect of disturbances related to the airport expansion. To the extent the Wickenhausers claim this case is about something more than overflights, that assertion is at odds with the supreme court's view of the case. If the Wickenhausers believed the supreme court in some way mischaracterized their claim, it was incumbent upon them to file a motion seeking reconsideration or clarification. *See* WIS. STAT. RULE 809.64. We are bound by the supreme court's decision as written. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189,

560 N.W.2d 246 (1997) ("The supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case.").

By the Court.—Order affirmed.

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