COURT OF APPEALS
DECISION
DATED AND FILED

June 2, 1999

Marilyn L. Graves
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* § 808.10 and RULE 809.62, STATS.

No. 98-2331
98-2368

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

98-2331
JOHN NOVAK,

PLAINTIFF-RESPONDENT,

V.

LEON D. STENZ, SPECIAL ADMINISTRATOR OF THE ESTATE OF ANTOINETTE GRYCH NOVAK KLUKOW BLASZCAK,

DEFENDANT,

ANTOINETTE CLOTHIER, PATRICIA BARTHOLOMEW, BRIDGET STUTZMAN, BRETT BARTHOLOMEW, PEGGY BARTHOLOMEW, MELISSA HARTLEY, AND DYANA NOVAK,

MOVANTS-APPELLANTS.

98-2368
IN RE THE ESTATE OF ANTOINETTE GRYCH NOVAK KLUKOW BLASZCZAK:

JOHN NOVAK,

PETITIONER-RESPONDENT,

V.

ANTOINETTE CLOTHIER, PATRICIA BARTHOLOMEW, BRIDGET STUTZMAN, BRETT BARTHOLOMEW, PEGGY BARTHOLOMEW, MELISSA HARTLEY, AND DYANA NOVAK,

APPELLANTS.

APPEAL from orders of the circuit court for Forest County: ROBERT E. KINNEY, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Seven of Antoinette Blaszczak's heirs appeal orders denying their motion to vacate the order appointing a special administrator and denying their motions to intervene in an adverse possession action against the estate. We conclude that the trial court properly denied the motion to vacate but erred when it denied the motions to intervene. Therefore, we affirm in part, reverse in part and remand for further proceedings.

Antoinette Blaszczak died intestate in 1950. Under § 237.01(1), STATS., (1949-50), her homestead went to her surviving spouse until he died or remarried, at which time it passed to her heirs. Her husband did not remarry and died in 1962. According to the adverse possession complaint, one of the heirs, John Novak, treated the property as his own since 1962. He paid the property taxes and standby water and sewer bills, rented out the living quarters until they fell into disrepair, arranged for the fire department to burn down the house, cleaned up the waste and rented the now vacant lots to a government agency to use as a parking lot.

Novak filed a special administration petition on February 6, 1998, seeking appointment of a special administrator to accept service of a summons and complaint in the adverse possession action he planned to file against the estate. The register in probate sent the court an order appointing Leon Stenz special administrator, which the court signed. On March 4, 1998, the court held a hearing on the appointment of a special administrator, not remembering it previously signed the order. At the hearing, the court determined that it should appoint Leon Stenz special administrator and accepted Stenz's proposal that he accept service in the adverse possession case and default. The court required Stenz to send a letter to all of Antoinette Blaszczak's heirs informing them of his plan and telling them that they should petition the probate court to have a personal representative appointed if they disagree with his plan.

On March 5, 1998, Novak filed his adverse possession action against the estate. Two of the heirs filed a motion to intervene and a proposed answer on March 18, 1998, one week before the deadline for filing an answer. Four other heirs filed a motion to intervene one day after the deadline for filing an answer, sixteen days after Stenz's letter informing the heirs that he would default. The seventh heir filed a motion to intervene and a proposed answer on April 17, 1998. The seven heirs also filed a motion to vacate Stenz's appointment as special administrator on the ground that the order is void because the court violated their due process rights by signing the order before the hearing. The trial court denied the motion to vacate Stenz's appointment, denied the motions to intervene, struck the proposed answers and granted a default judgment on the adverse possession claim.

The trial court properly denied the motion to vacate the order appointing the special administrator. The seven heirs have not established any due

process violation or other basis for concluding the appointment was void. Even an erroneous order is not void if the court has jurisdiction over the parties and the subject matter. *See* ***Slabosheske v. Chikowske***, 273 Wis. 144, 150, 77 N.W.2d 497, 501 (1956). The trial court conducted a hearing on the appointment, not knowing that it had already signed an order before it knew that the appointment would be contested. The court only discovered that it had previously signed an order when the seven heirs' attorney complained that he was not given an opportunity to review the order before it was signed. Their attorney acknowledged that any defect could have been cured by rendering and entering a new order reflecting the decision made at the contested hearing. Under these circumstances, the trial court afforded the seven heirs notice, an opportunity to be heard and a decision by an impartial judge. *See* ***Patterson v. Board of Regents***, 114 Wis.2d 495, 502, 339 N.W.2d 130, 133 (Ct. App. 1983).

The seven heirs also argue that the special administrator's appointment is void because the order appointing him and the letters of special administration do not grant him the power to defend the lawsuit. The trial court's ruling from the bench specifically authorized the special administrator to accept process in the adverse possession lawsuit and default. The court clarified that the special administrator was not required to default but could reasonably elect to do so because any lawsuit would substantially diminish the $4,000 estate. The order appointing Stenz is not "void" merely because it fails to fully delineate the trial court's oral decision.

The trial court erred, however, when it refused to allow the seven heirs to intervene. The court must allow intervention under § 803.09(1), STATS., when the intervenors meet each of the requirements: (1) timely application; (2) an interest relating to the property; (3) a showing that disposition of the action may,

as a practical matter, impair or impede the proposed intervenors' ability to protect that interest; and (4) a showing that the proposed intervenors' interest is not adequately represented by existing parties. *See* ***Armada Broadcasting Inc. v. Stirn***, 183 Wis.2d 463, 470-71, 516 N.W.2d 357, 359-60 (1993); ***Bilder v. Township of Delavan***, 112 Wis.2d 539, 545, 334 N.W.2d 252, 256 (1983). Whether the seven heirs timely requested intervention should be measured from the date the adverse possession action was commenced, not the date they acquired an interest in the property. Two of the heirs requested intervention before the time for filing an answer expired and only one week after Stenz's letter informing them that he would default. While Stenz's letter suggested an alternative means of contesting the adverse possession claim by requesting appointment of a personal representative, the heirs' prompt efforts to intervene constitute a reasonable alternative means of defending the claim.

The trial court erred when it concluded that the seven heirs' interest in the real estate is too remote and contingent to support intervention. Only by prejudging the adverse possession claim could the court determine that the heirs lost their legal interest in the property.

We affirm the order denying the motion to vacate the order appointing the special administrator. We reverse the order denying the motion to intervene, striking the answers and granting default judgment. Because we conclude that neither party has entirely prevailed in these consolidated appeals, we award no costs on appeal.

By the Court.—Orders affirmed in part, reversed in part and cause remanded. No costs on appeal.

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