COURT OF APPEALS
DECISION
DATED AND FILED

July 14, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2239 **Cir. Ct. No. 2013CV1918**

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

HARRY HALL AND GEORGIA HALL,

PLAINTIFFS-APPELLANTS,

V.

VILLAGE OF ASHWAUBENON BOARD OF DIRECTORS AND VILLAGE OF ASHWAUBENON BOARD OF REVIEW,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed*.

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

¶1 PER CURIAM. Harry and Georgia Hall, pro se, appeal a judgment dismissing their complaint for failure to state a claim upon which relief can be granted. We agree with the circuit court that the Halls, who seek to recover for an

allegedly excessive property tax assessment, failed to state a claim because they did not allege compliance with the statutory prerequisites necessary to bring such an action. We reject the Halls' various arguments to the contrary, and affirm.

BACKGROUND

¶2 This case concerns the property tax assessment of a unit in the Riverstone Creek Condominium located in Ashwaubenon, Wisconsin. The development was approved by the Village of Ashwaubenon (the Village) in 2005. The Village granted a building permit in 2006, and the project was nearly complete by May 2007. At that time, a final inspection was performed. The Halls' unit, which they purchased later that year for $167,000, failed inspection.

¶3 In 2009, the Halls inquired with the Village about the status of their certificate of occupancy. The Village Department of Building Inspection and Zoning advised them that the final inspection in 2007 revealed seven code violations, none of which had been corrected to the Village's knowledge. Accordingly, the Village had not scheduled a follow-up inspection and no certificate of occupancy had issued.

¶4 Since the Halls' first property tax bill arrived in 2008, the Halls have for many years paid property taxes on their unit under protest. They have also

attempted, with mixed success, to navigate the detailed system established by our legislature for challenging a property tax assessment.[1]

¶5 Consistent with this history, the Halls appeared at the Village Board of Review's September 26, 2013 meeting to challenge their 2013 tax assessment. The assessor also appeared and testified that for the 2013 tax year, he valued the Halls' property at $144,900. The assessor provided three recent sales of properties to support his valuation.

¶6 Georgia Hall testified on the Halls' behalf at the hearing. She claimed their condominium unit was worth one cent. She objected to the imposition of any property tax, contending the unit could not be lawfully taxed because no certificate of occupancy had issued and, thus, the Halls' unit was an "illegal" dwelling. Georgia made several other arguments, including that: (1) the Board of Review was biased because it consisted of individuals who were also on the Village Board of Directors; (2) the Halls were assessed for an unequal share of the condominium common elements; (3) there were errors on the property record card on file with the Village; (4) the developer filed an illegal plat; and (5) certain

[1] Online court records show the Halls have filed three actions, including this one, against the Village or the Village Board of Directors since 2010. After the Village Board of Review overruled the Halls' objection to their 2010 assessment, the Halls successfully sought certiorari review in the circuit court, which vacated the Board of Review's decision and remanded for reconsideration. The basis for the circuit court's ruling was that the Board of Review improperly imposed a "reasonableness" requirement for property owners' statements regarding their property's value (the Halls' forms had stated their property had a value of either nothing or one cent) when it rejected the Halls' petition on that basis alone. The Halls did not fare as well in 2011, when the circuit court dismissed their action after concluding the Halls improperly served the Village and Board of Review; on appeal, we concluded the circuit court lacked personal jurisdiction over the Village entities due to insufficient service of process. *See* ***Hall v. Village of Ashwaubenon Bd. of Directors***, No. 2011AP2746, unpublished slip op. (WI App Oct. 10, 2012). This action appears to be the Halls' third attempt to challenge their property tax assessment in the courts.

alterations by the Village to the initial development proposal were unlawful and resulted in "clouded title." One Review Board member observed that the body lacked the authority to consider many of the legal issues the Halls raised. The Review Board then voted unanimously to sustain the Halls' 2013 assessment as being a correct value, finding that the assessor used assessment methods that conformed to the statutory requirements.

¶7 The Halls, pro se, commenced the present action on December 5, 2013, naming the Board of Directors and the Board of Review as defendants. Unlike previous attempts to obtain certiorari review of the Review Board's decision, this time the Halls sought de novo review. The Halls' complaint identified seven purported causes of action, entitled as follows: (1) "TAX BOARD IS BIAS;" (2) "EXTRAVAGANT TAXES CONDOMINIUM COMMON ELEMENTS;" (3) "UNIFORM TAX OF COMMON ELEMENTS;" (4) "PROPERTY RECORD CARD ERRORS;" (5) "TAX ON ILLEGAL DWELLING AND INVALID PLAT;" (6) "CLOUDED TITLE;" and (7) "MORTGAGE CONTRACT ILLEGAL." The Halls sought an order prohibiting the Board of Directors and the Board of Review from imposing future taxes on their unit, a refund of taxes previously paid, an order requiring the Board of Directors to "cease and desist from allowing or waiving changes of its ordinances for developers," an order requiring payment in the amount of their mortgage as a penalty for "allowing an illegal dwelling to be occupied," and damages for "harassment, intimidation, and a willful disregard of [the Boards'] administrative duties, the Law and the Halls['] Fourteenth Amendment Rights."

¶8 The Village filed a notice of appearance and answered the Halls' complaint. The captions in the notice of appearance and the answer removed the Board of Directors and the Board of Review as parties and substituted the Village

as the sole defendant. The Village generically responded to each of the Halls' causes of action by stating it "denies the allegations contained therein as irrelevant opinions, comments and conclusions and asserts that the plaintiffs' [sic] have failed to state a claim for relief." The Village also advanced a number of affirmative defenses.

¶9 On March 28, 2014, the Halls filed a "Motion for Entry of Default." Despite its title, the motion did not request a default judgment based on the Board of Directors' and Board of Review's failures to appear and answer. Rather, the motion asserted the Village's answer was inadequate because it gave no reason for denying the Halls' allegations. The Village, construing the motion to be a traditional motion for default judgment under WIS. STAT. § 806.02, responded that such a judgment was not appropriate because the Village timely appeared and answered the complaint.[2] The Halls countered that the Village's response did not address the merits of the motion or the claims stated in their complaint.

¶10 The Village filed its own motion, seeking summary judgment based upon the Halls' failure to state a claim upon which relief could be granted. The Village argued the majority of the Halls' claims were challenges to the Board of Review's decision upholding the 2013 property tax assessment, and as such could only be reviewed by an action for certiorari or a claim for excessive assessment. The Village asserted that the Halls had not alleged any errors by the Board of Review, as WIS. STAT. § 70.47(13) requires, and, "[i]n either event, the Halls have not done what they are required to do prior to commencing an action." As for the

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

Halls' remaining claims, entitled "CLOUDED TITLE" and "MORTGAGE CONTRACT ILLEGAL," the Village argued no relief was available (at least as against the Village). The Halls responded that the Village's motion was a "bully tactic," and they argued that nothing the Village submitted directly responded to their claims. The Village's reply requested that all of the Halls' motions and briefs be struck for noncompliance with the local rules.

¶11 The circuit court held a hearing on the motions on September 8, 2014. The Village restated its belief that the Halls failed to state a claim, observing that it was not clear whether the Halls intended to appeal the Board of Review's decision using the certiorari mechanism available under WIS. STAT. § 70.47(13), or whether they sought to recover for an excessive assessment under WIS. STAT. § 74.37. The Village argued that, either way, the Halls had not complied with the statutory prerequisites to commencing an action. The circuit court asked the Halls for clarification of their claim, and they responded that they had consulted with attorneys, but none would take their case, so they decided to proceed pro se under § 74.37.[3] Georgia Hall stated this approach would "give[] me a chance to go to court and do a de nova [sic] instead of doing a certiorari and sending me back to the Board [of Review] that just finished telling me we don't have the knowledge, the ability, or the grounds to be able to do this."

[3] At the hearing, the Halls stated they were relying on WIS. STAT. § 74.73, which is entitled "Rights of occupant or tenant who pays taxes." The Halls' complaint, and their appellate brief, includes references to both that section and WIS. STAT. § 74.37. We presume these references to § 74.73 are either misstatements or typographic errors, transposing the numerals "3" and "7," and that all the citations were intended to be to § 74.37. If instead the Halls intended to seek relief under § 74.73, they do not explain in any way how that statute would apply to them, and we do not address its applicability. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (undeveloped arguments need not be addressed).

¶12 The circuit court construed the Halls' "Motion for Entry of Default" as a motion for summary judgment and considered the matter to be before the court on cross-motions for summary judgment. It agreed with the Village that the Halls' complaint failed to state a claim against the Village, adopting the argument contained in the Village's brief supporting its motion for summary judgment. Accordingly, it dismissed the Halls' complaint with prejudice and awarded costs to the Village.

DISCUSSION

¶13 We review a grant of summary judgment de novo. ***Chapman v. B.C. Ziegler & Co.***, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425. Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. WIS. STAT. § 802.08(2). In this case, the circuit court granted the Village's motion for summary judgment after concluding that the Halls' complaint failed to state a legally cognizable claim. "Whether a complaint properly pleads a cause of action is a question of law which we decide without deference to the decisions of the lower courts." ***Hermann v. Town of Delavan***, 215 Wis. 2d 370, 378, 572 N.W.2d 855 (1998).

¶14 The gravamen of the Halls' complaint is that they were required to pay too much in property taxes for the 2013 tax year. "The tax appeal administrative procedures of chs. 70 and 74 of the Wisconsin Statutes are a highly evolved and carefully interwoven set of statutes providing a comprehensive remedy for individuals seeking redress for excessive assessments." ***Id.*** at 394. These "detailed and comprehensive objection and appeals procedures … were

intended to be the exclusive means by which taxpayers may challenge the valuation of real property assessed for taxation." ***Id.*** at 382.

¶15 Before seeking court review, a taxpayer must first challenge the assessment before the applicable board of review, pursuant to WIS. STAT. § 70.47. *See* ***Id.*** at 384. The Halls appear to have correctly followed this procedure, or at least the Village does not argue that they failed to comply with that section.

¶16 Then, if the applicable board of review determines the assessment was correct, the property owner may choose one of three paths to appeal the board's determination. ***Id.*** at 380; ***U.S. Oil Co. v. City of Milwaukee***, 2011 WI App 4, ¶15, 331 Wis. 2d 407, 794 N.W.2d 904. First, the property owner may appeal the board of review's determination by commencing an action for certiorari review. *See* WIS. STAT. § 70.47(13). Second, the property owner may file a written complaint with the Wisconsin Department of Revenue, alleging that the assessment is "radically out of proportion to the general level of assessment of all other property in the district." *See* WIS. STAT. § 70.85. Third, after paying the tax, the property owner may file a claim against the taxation district or the county, whichever entity collected the tax, to recover the allegedly excessive amount. *See* WIS. STAT. § 74.37. If this claim is denied, the taxpayer may commence an action in the circuit court claiming an excessive assessment. Sec. 74.37(3)(d).

¶17 Here, the Halls have elected to proceed under WIS. STAT. § 74.37. Their desire to proceed under this section is evident both from their argument at the September 8, 2014 hearing and from the face of their complaint, which contends they are "entitled to a full trial de nova [sic]." Of the three review methods, de novo review is available only under § 74.37. *See* ***U.S. Oil***, 331 Wis. 2d 407, ¶17 (WISCONSIN STAT. § "74.37(3)(d) actions allow property owners

to again fully contest their case in a court trial despite having contested it before the board of review."); *see also* ***Nankin v. Village of Shorewood***, 2001 WI 92, ¶25, 245 Wis. 2d 86, 630 N.W.2d 141 ("In addition, unlike certiorari review, during a court trial, the court may make its determination without giving deference to any determination made at a previous proceeding."). The Halls' complaint specifically cites § 74.37(3)(d) as the procedural mechanism they have selected to achieve their desired relief.

¶18 However, before attempting under WIS. STAT. § 74.37(3)(d) to recover in the circuit court the amount of the excessive assessment not allowed, the Halls were required to do a number of things. First, they needed to timely file a claim against the taxation district. *See* WIS. STAT. § 74.37(2)(a). This claim was required to be in writing, to state the alleged circumstances giving rise to the claim and the amount of the claim, and to be signed and served on the clerk of the taxation district. *See* WIS. STAT. § 74.37(2)(b). The "taxation district" in this case is the Village—not the Board of Directors or the Board of Review. *See* WIS. STAT. § 74.01(6). Upon receipt of the Halls' filing, the Village would then have had 90 days to allow or deny the claim before it was disallowed by operation of law. *See* WIS. STAT. § 74.37(3).

¶19 "[W]hen there is a statutory condition precedent to an action challenging a property assessment, a complaint failing to allege compliance with such condition precedent must be dismissed for failure to state a claim upon which relief may be granted." ***Hermann***, 215 Wis. 2d at 387. Here, the Halls' complaint does not indicate they complied with any of the statutory prerequisites to commencing an action in the circuit court under WIS. STAT. § 74.37(3)(d), and they do not argue their compliance on appeal. Accordingly, the circuit court properly dismissed the Halls' challenge to their 2013 property tax assessment.

¶20 We observe the Halls' complaint also appears to include causes of action unrelated to their 2013 tax assessment. As best we can tell, the Halls' cause of action entitled "CLOUDED TITLE" alleges that certain actions taken by the Board of Directors when considering the development proposal for the condominiums were contrary to the Village's "Comprehensive Smart Growth Plan." The Halls' cause of action entitled "MORTGAGE CONTRACT ILLEGAL" appears to have been intended to invalidate their note and mortgage with their credit union, which is not a party to the action. Neither of these claims are proper subjects for WIS. STAT. § 74.37 review. No matter how the Halls may characterize these claims, they do not relate to an allegedly excessive tax assessment. Therefore, these claims were properly dismissed.

¶21 The Halls' appellate brief could be construed as arguing that the circuit court improperly dismissed their case with prejudice, preventing them from further challenging the Board of Review's decision upholding their 2013 tax assessment. We reject this argument, as the time for the Halls to challenge their 2013 property tax assessment has long passed. WISCONSIN STAT. § 74.37 imposes strict timing requirements. A claim must be presented to the taxation district no later than "January 31 of the year in which the tax based upon the contested assessment is payable." *See* WIS. STAT. § 74.37(2)(b)5. The Halls would have had to present their § 74.37 claim to the Village no later than January 31, 2014. They failed to do so.

¶22 Although the grounds previously stated represent a sufficient basis to affirm the circuit court's grant of summary judgment to the Village, we nonetheless briefly address several of the Halls' arguments. We do so out of recognition that pro se litigants are "not trained in either procedural or substantive law," and we therefore "provide pro se litigants a degree of leeway in complying

with the rules expected of lawyers." ***Rutherford v. LIRC***, 2008 WI App 66, ¶27, 309 Wis. 2d 498, 752 N.W.2d 897.

¶23 The Halls contend the Village's responsive pleading in this lawsuit was procedurally insufficient because the Village was not named as a party in the complaint. They seem to argue they were entitled to a default judgment because neither the Board of Directors nor the Board of Review made an appearance or filed a responsive pleading. As an initial matter, the Halls failed to make this argument to the circuit court; their "Motion for Entry of Default" asserted the Village's answer was substantively deficient, not that the Halls were entitled to a default judgment by virtue of the Board of Directors' and Board of Review's failures to appear. *See* ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (general rule is that issues not presented to the circuit court will not be considered for the first time on appeal). In any event, the Village was, by law, a party in interest to the Board of Review proceedings, *see* WIS. STAT. § 70.47(11), and, as the "taxation district," was required to be named in the Halls' excessive assessment suit, *see* WIS. STAT. § 74.37(3). Accordingly, we conclude the Village was the proper entity to answer the complaint.[4]

¶24 The Halls' argument may be slightly different—that the Village's answer was substantively inadequate because it failed to join issue. In its answer, the Village grouped the Halls' allegations into numbered paragraphs by cause of action—i.e., "paragraphs 20-25," relating to the Halls' claim entitled,

[4] Our conclusion that the Village was the proper party to answer the complaint should not be read as sanctioning the Village's decision to modify, sua sponte, the adversary caption in its answer. The Village's appellate brief does not provide any authority that would have justified this action without leave of the court.

"EXTRAVAGANT TAXES CONDOMINIUM COMMON ELEMENTS"—and then generically denied each grouping without regard to the substance of the individual allegations, which they dismissed wholesale as "irrelevant opinions, comments and conclusions." This appears not to have satisfied WIS. STAT. § 802.02(2), requiring all denials of the complaint's averments to "fairly meet the substance of the averments denied." Nonetheless, the Village's responsive pleading clearly set forth the defense upon which the circuit court ultimately granted judgment, which was the Halls' failure to state a claim.[5] As we have explained, there is no set of facts under which they can recover for an allegedly excessive assessment, and their complaint was properly dismissed despite the Village's failure to join issue.

¶25 The Halls next assert that the Board of Review was biased. This is not a claim of actual bias, though; rather, the Halls broadly assert that WIS. STAT. §§ 70.46 through 70.48 are unconstitutional because they designate a village's president, its clerk, and other public officials as members of the board of review.[6] The Halls claim this composition of the Board of Review places them on unequal footing with property owners in first-class cities, where the board of review must "consist of 5 to 9 residents of the city, none of whom may occupy any public office or be publicly employed." *See* WIS. STAT. § 70.46(1). The Halls' only argument in this regard is that the classification lacks a rational basis, but they do not explain why this is so. We must presume statutes are constitutional, and the

[5] For this reason, and others, the Village's answer and motions were not "frivolous," as the Halls claim.

[6] This particular requirement is contained in WIS. STAT. § 70.46(1); the Halls' constitutional challenges to the remaining statutes are not explained.

Halls must demonstrate that they are unconstitutional beyond a reasonable doubt. ***Milwaukee Cnty. v. Mary F.-R.***, 2013 WI 92, ¶9, 351 Wis. 2d 273, 839 N.W.2d 581. They have failed to meet this burden by virtue of their conclusory assertion that the legislature's choice lacked a rational basis, without further explication. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address arguments that are inadequately briefed or supported only by general statements).

¶26 The Halls next claim the Village "ignored its ministerial duties" by allowing an illegal dwelling to be occupied and allowing an invalid plat to be recorded, and they argue they "signed a mortgage contract in good faith," assuming that the Village would protect its residents. They further claim the Village "ignore[d] its governmental obligations and … permit[ted] the ministerial duties and known danger exception by allowing extravagant taxes." As best we can tell, these are arguments for abrogating the governmental immunity conferred by WIS. STAT. § 893.80(4). "Ministerial duty" and "known danger" are legal terms of art used when referring to certain exceptions to that immunity. *See* ***Lodl v. Progressive N. Ins. Co.***, 2002 WI 71, ¶24, 253 Wis. 2d 323, 646 N.W.2d 314. Although the Village pled governmental immunity as an affirmative defense, the Village did not otherwise argue for judgment on that basis, and the circuit court did not grant judgment on that basis. Accordingly, there is no need to address governmental immunity in this case.

¶27 The Halls also fault the circuit court for changing their "Motion for Entry of Default" to a motion for summary judgment. However, this procedure was proper because the Halls' motion expressly relied on "the record in this case, the affidavit and exhibits submitted previously." "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by

the court, the motion shall be treated as one for summary judgment and disposed of as provided in s. 802.08." WIS. STAT. § 802.06(3).

¶28 Finally, the Halls argue the court erred by requiring them to pay the Village's costs upon judgment. The Halls appear to argue that the imposition of costs was not justified because the Village's answer, motions, and other filings were "frivolous" and "nothing more than a bulling [sic] tactic." The Halls also repeatedly assert the Board of Directors' and the Board of Review's actions were intended for "harassment, intimidation, and humiliation." Regardless of any merit, these contentions do not address the applicable law regarding the recovery of costs. The Halls, as plaintiffs, are not entitled to a recovery on their claims, and therefore the Village is entitled to judgment costs. *See* WIS. STAT. § 814.03(1). An award of judgment costs under § 814.03(1) is mandatory, not discretionary, and the circuit court would have erred by denying such costs to the prevailing Village. *See* ***Taylor v. St. Croix Chippewa Indians of Wis.***, 229 Wis. 2d 688, 695-96, 599 N.W.2d 924 (Ct. App. 1999).

¶29 To the extent the Halls raise issues we have not addressed, we deem their arguments on those topics incomprehensible and insufficiently developed to warrant consideration. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

By the Court.—Judgment affirmed.

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