

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2000

Cornelia G. Clark
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. 99-1843

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

JUANITA NEWMAN,

**PLAINTIFF-APPELLANT-
CROSS-RESPONDENT,**

V.

THE CITY OF DELAFIELD, A MUNICIPAL CORPORATION,

DEFENDANT,

**DELAFIELD-HARTLAND WATER POLLUTION CONTROL
COMMISSION, A MUNICIPAL CORPORATION,**

**DEFENDANT-RESPONDENT-
CROSS-APPELLANT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court
for Waukesha County: JAMES R. KIEFFER, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. Juanita Newman appeals from a judgment entered against her, and Delafield-Hartland Water Pollution Control Commission (hereinafter Dela-Hart) cross-appeals. Newman argues on appeal that the circuit court applied the wrong methodology and improperly determined that she did not suffer any damages as a result of Dela-Hart's trespass on her property. The issue presented by the cross-appeal is whether the circuit court applied the correct statute of limitations. We conclude that this case is a trespass case governed by the six-year statute of limitations, and consequently, Newman's action was barred. In the alternative, we conclude that the circuit court properly determined that Newman did not suffer any damages as a result of the trespass. Therefore, we affirm the judgment of the circuit court.

¶2 Newman owns a home located in Delafield, Wisconsin. In 1979, the City of Delafield granted Dela-Hart permission to excavate and place a sewer interceptor and sewer in the street by Newman's house. Newman's title to the property extended to the middle of the street. Dela-Hart had the sewer constructed and eventually Newman had her property connected to the sewer. Dela-Hart never obtained any authorization from Newman to come on her property to build the sewer.

¶3 In 1993, Newman experienced water problems on her property and filed a notice of claim against Dela-Hart for compensation for damages from the placement and maintenance of the sewer interceptor. This claim was disallowed by Dela-Hart. In 1995, Newman filed another notice of claim alleging that Dela-Hart had interfered with the quiet use and enjoyment of her property and that Dela-Hart had taken her property. This claim was also disallowed. Newman then

brought this action alleging a claim for trespass and for a violation of 42 U.S.C. § 1983 (1994).

¶4 Eventually, the circuit court determined that Dela-Hart had trespassed on Newman's property. Because the trespass claim left Newman with an adequate state remedy, the circuit court dismissed the § 1983 claim. The court then held a trial on the amount of damages to be awarded for the trespass. After hearing the testimony, the court concluded that Newman had not established that she was entitled to any damages.

¶5 As the respondent has noted in its brief, there has been confusion throughout this action about what cause of action has been asserted. Although the circuit court found that Dela-Hart had trespassed on Newman's property, the court apparently concluded that the twenty-year statute of limitations for adverse possession applied. *See* WIS. STAT. §§ 893.25, 893.28 (1997-98).¹ The essence of Newman's complaint, however, is that Dela-Hart intruded on her property by placing the sewer interceptor on her property. She asserted that this placement interfered with the quiet use and enjoyment of her property. This is a claim for trespass.

¶6 Because we conclude that the action was for trespass, we affirm the decision of the circuit court but for a different reason. We may affirm on grounds different than those relied on by the trial court. *See Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995). Newman asserted a claim for the interruption of the quiet use and enjoyment of her

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

property. This is, as the circuit court concluded, a claim for trespass. The trespass occurred when the sewer interceptor was placed on the property. This occurred in 1979-80. Under WIS. STAT. § 893.52, an action for trespass shall be commenced within six years. Newman began this action more than six years after the trespass occurred. Therefore, we agree with the position asserted by Dela-Hart in its cross-appeal that the statute of limitations has run on this claim.

¶7 Newman argues that she is not bound by the six-year statute of limitations because this is a continuing trespass. In support of her argument, she relies on the case of *Speth v. City of Madison*, 248 Wis. 492, 22 N.W.2d 501 (1946). In that case, the plaintiff asserted that the City of Madison had deprived her of the use of crypts in a mausoleum. The court concluded that because she was continuing to be deprived of the use, the trespass was continuing and the six-year statute of limitations did not apply. *See id.* at 499.

¶8 In this case, however, Newman alleged that the construction interrupted and deprived her of the use of her property. That interruption, however, ended when the construction was completed. This is not a continuing situation; trespass and the six-year statute of limitations apply.²

¶9 Even assuming that the circuit court applied the correct statute of limitations, we also conclude that the court correctly determined that Newman was not damaged in this case. “We sustain a trial court’s findings of fact unless they are clearly erroneous.” *Klinefelter v. Dutch*, 161 Wis. 2d 28, 33, 467 N.W.2d 192

² Because we conclude that the claim for trespass is barred by the six-year statute of limitations, we need not address the other issues raised in this appeal, with the exception of the issue of damages.

(Ct. App. 1991) (citation omitted). Newman has not established that the court's finding was clearly erroneous.

¶10 Newman first argues that the circuit court incorrectly applied WIS. STAT. § 32.09(6g). This statute establishes the method for determining damages in an easement condemnation case. The statute provides in relevant part that “the compensation to be paid by the condemnor shall be determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation” *Id.* The circuit court found that because this was not really an easement condemnation case, there was no definite date of evaluation. Newman's expert used present-day value. The court rejected this, finding that the proper date was 1979, the date that the interceptor was placed on the property. This finding is not clearly erroneous. Since Newman's expert did not offer any evidence of the value of the property in 1979, Newman did not establish that she had been damaged. The circuit court's finding was reasonable.

¶11 Newman also argues that the circuit court should not have used a condemnation methodology for determining damages in this trespass action. However, it was the parties' experts, including Newman's, who suggested this method of calculating damages. The court merely applied the methodology suggested by the experts' testimony and determined that Newman had not been damaged. Since she suggested the method of calculating damages, she cannot complain about it because the result was not favorable to her. The court's use of this method of calculating damages was reasonable based on the evidence before it.

¶12 For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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

