

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2004AP3116-FT

Cir. Ct. No. 2003CV151

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF AN APPLICATION FOR THE
VACATION OF PART OF A.A. CARLSON'S PLAT,
TOWN OF LIBERTY GROVE, DOOR COUNTY, WI,
PURSUANT TO WIS. STATS. SECTION 236.42:**

**CLARE B. WEBB, JAMES WEBB AND
JOHN D. BLOSSOM, JR.,**

APPLICANTS-APPELLANTS,

v.

LIBERTY PARK LODGE, LLC,

INTERESTED PARTY-RESPONDENT.

APPEAL from a judgment of the circuit court for Door County:
D. TODD EHLERS, Judge. *Affirmed.*

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

¶1 PER CURIAM.¹ John Blossom, Jr., Clare Webb and James Webb appeal a summary judgment denying their application, pursuant to WIS. STAT. § 236.43(1)(c), to vacate a platted lane.² Blossom argues that the trial court erroneously determined (1) the statutory requirements to vacate the lane were not met; (2) a platted lot did not lose its status as a separate and distinct entity when it was combined with other lots in a metes and bounds legal description and was identified under one tax parcel number; (3) the county zoning ordinance did not compel vacation of the lane; and (4) public policy and equity did not require the vacation of the lane. We reject these arguments and affirm the judgment.

FACTS

¶2 The underlying facts are undisputed. In 1908, A.A. Carlson's Plat (Carlson's Plat) was recorded with the Door County Register of Deeds. Carlson's Plat established the lot lines and the areas dedicated to the public. A twelve-foot wide lane, commonly known as "Pigeon Berry Lane," was dedicated for access to the Waters End Road from platted lots along the Green Bay shoreline. The lane extended along parcels owned by Blossom and Liberty Park Lodge. The lane has never been paved, developed or used for traffic beyond the edge of Blossom's property and is overgrown with brush.

¶3 Liberty Park owns a number of platted lots. Its Lot 11 is bordered by Blossom's property and the shoreline. Although Pigeon Berry Lane leads to Lot 11, the owner of Liberty Park conceded it does not use the lane to access

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² For ease of discussion, we refer to the appellants collectively as "Blossom."

Lot 11. It has access from a highway and Waters End Road by crossing over its own property.

¶4 When Blossom sought vacation of the lane pursuant to WIS. STAT. § 236.43, Liberty Park objected. Relying on Liberty Park’s deed, Blossom argued that Liberty Park combined its lots into one parcel and therefore owned just one lot that had highway access. While Liberty Park took title to a number of platted lots, its deed described the lots not only by lot number, but also by a single metes and bounds description. One tax parcel number was used to identify all of its platted lots. Blossom claimed therefore that vacating the lane did not deprive Liberty Park of access to any of its property.

¶5 The trial court denied Blossom’s petition. The court found that all of the requirements needed to satisfy WIS. STAT. § 236.43 to vacate the lane were met but one: subpara. (1)(c). It found that if the lane were vacated, Liberty Park’s Lot 11 would lose road access and become landlocked, contrary to subpara. (1)(c). Blossom appeals the judgment.

STATUTORY STANDARD

¶6 The parties agree that this action is governed by WIS. STAT. § 236.43(1), entitled “Vacation or alteration of areas dedicated to the public,” which reads:

Parts of a plat dedicated to and accepted by the public for public use may be vacated or altered as follows:

(1) The court may vacate streets, roads or other public ways on a plat if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) During all that period the areas dedicated for streets, roads or other public ways were not improved as streets, roads or other public ways; and

(c) Those areas are not necessary to reach other platted property; and

(d) All the owners of all the land in the plat or part thereof sought to be vacated and the governing body of the city, village or town in which the street, road or other public way is located have joined in the application for vacation.

¶7 The application of a statutory standard to a found set of facts is a question of law we review independently of the trial court's determination. *Schauer v. Baker*, 2004 WI App 41, ¶10, 270 Wis. 2d 714, 678 N.W.2d 258.

DISCUSSION

¶8 The dispute on appeal involves the application of WIS. STAT. § 236.43(1)(c). It is undisputed that subpara. (a) and (b) were satisfied. Also, with respect to (d), the court found:

All of the owners of Lot 10 and the westerly portion of Lot 5 which in my determination are the lots abutting or fronting on the portion of the 12 foot lane proposed to be vacated are in writing requesting that this portion of the lane be vacated. As such, I conclude that the Applicants have established that the fourth element of Wisconsin Statute Section 236.43(1)(d) has been established.^{3]}

¶9 However, the court found that WIS. STAT. § 236.43(1)(c) was not fulfilled. It determined that there was no other platted or dedicated access to Liberty Park's Lot 11 and, therefore, subpara. (c) was unsatisfied. The court stated:

³ Because our decision regarding WIS. STAT. § 236.43(1)(c) resolves this appeal, we do not address the court's holding with respect to § 236.43(1)(d).

An examination of A.A. Carlson's Plat results in the inescapable conclusion that the only access to Lot 11 is northerly through this 12-foot lane to Pigeon Berry Lane and then easterly on Waters End Road to State Highway 42. There is no other platted or dedicated access to Lot 11 other than by way of this 12-foot lane. Mr. Blossom in his June 22nd testimony admitted that this lane is the only dedicated access to Lot 11.

¶10 Blossom argues that the trial court erred when it determined the requisites of WIS. STAT. § 236.43(1)(c) were unmet. He claims Liberty Park's platted lots lost their individual identities and became one parcel when its deed used a metes and bounds description and when the property was assigned a single tax identification number. He contends:

When Liberty Park took ownership of its property by a metes and bounds description, the lots were combined by virtue of local zoning regulations ... for zoning purposes. Since it has acquired ownership of the lots, Liberty Park has also filed legal documents using the new, singular tax parcel number[,] which combined all lots in the Plat, which also is evidence that Lot 11 is part of the single parcel.

¶11 Blossom's contention is premised on the notion that Liberty Park may modify Carlson's Plat through accepting its deed with a metes and bounds description. We reject this contention for two reasons. First, Liberty Park's deed describes the land not just by a metes and bounds description, but also by reference to Lots 1, 2, 3, 6, 7, 11, and 12 of Carlson's Plat. Thus, we are satisfied that the additional reference to metes and bounds fails to obliterate the correct reference to the platted lots.

¶12 Second, Blossom provides no authority for its implicit proposition that a landowner may modify a registered plat through means other than provided by statute. WISCONSIN STAT. ch. 236 regulates the platting of lands and the vacation of plats. "In regulating the subdivision of lands and the sale thereof by

reference to plats, the legislature was attempting to provide for orderly urban development and to insure accurate and easy descriptions of land in the offices of the registers of deeds.” *Alan Realty v. Fair Deal Invest. Co.*, 271 Wis. 336, 340, 73 N.W.2d 517 (1955).

¶13 WISCONSIN STAT. § 243.36 lays out a statutory framework with which to modify platted lands. We conclude that altering the property’s legal description on a deed through the use of a metes and bounds description fails to modify the properly recorded plat description. Under WIS. STAT. § 236.28, “When a subdivision plat has been recorded ... the lots in that plat shall be described by the name of the plat and the lot and block in the plat for all purposes, including those of assessment, taxation, devise, descent and conveyance as defined in s.706.01(4).” We conclude that Liberty Park’s deed containing a metes and bounds description did not alter Carlson’s Plat.

¶14 Because there is no showing that Liberty Park employed the procedure under WIS. STAT. § 243.36 to modify Carlson’s plat to convert its several lots into one lot, Liberty Park’s land consists of several platted lots, not one lot. The plat plainly shows that the vacation of Pigeon Berry Lane would leave Liberty Park’s lot 11 without road access, thus contravening WIS. STAT. § 236.43(1)(c). Therefore, the court correctly determined that the requirement of § 236.43(1)(c) was unsatisfied.

¶15 Blossom also argues that the use of a single tax parcel identification number serves to combine all the platted lots into one single lot, thereby permitting access to Lot 11 from other lots. We disagree. The tax parcel identification number required for recording a conveyance is “for administrative

purposes only.” WISCONSIN STAT. § 59.43(7)(b). The use of one tax parcel identification number does not amend the plat.

¶16 Next, Blossom argues that the trial court “erred in failing to apply the Door County Zoning Ordinance to the undisputed facts in regards to the issue of necessity” and “in order to meet the requirement of a public or private road, Door County Zoning Ordinance Section 3.04(5) provides that a driveway width for a property of this nature must be 20 feet in width.” He contends that because Pigeon Berry Lane is only twelve feet wide, it does not comply with current zoning regulations and the use of the property is restricted.

¶17 We are unpersuaded. DOOR COUNTY, WIS., ZONING ORDINANCE § 3.04(5)⁴ makes no reference whatsoever to width requirements for road access.⁵ Thus, the terms of subsec. (5) do not support his argument.⁶

⁴ Blossom’s brief does not provide a specific date to the ordinance. He appends copies of portions of the ordinance in his appendix. The copies of the ordinance have the various dates of 1998, 2001 and 2002. Because Blossom does not specify a precise date to the sections he cites, we assume that the precise date is not relevant.

⁵ DOOR COUNTY, WIS., ZONING ORDINANCE § 3.04(5) reads:

(5) Lots created prior to the effective date of this Ordinance. Except as provided in par. (c), lots which were created before the effective date of this Ordinance shall be considered building sites provided they meet the criteria established in both pars. (a) and (b):

(a) They are of record in at least one of the following forms to establish the lot’s date of creation:

1. A recorded land subdivision or certified survey may on file in the Door County Register of Deeds Office showing the lot in its present form.

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2. A lot of record by means of a deed or land contract on file in the Door County Register of Deeds Office and which predates the effective date of this Ordinance.
 3. (Deleted: 23 June 1998, Ord. 11-98)
 4. A recorded condominium plat.
- (b) Minimum lot requirements for lots created prior to the effective date of this Ordinance.
1. Lots located in the Single Family Residential-20,000, High Density Residential, Commercial Center, Mixed Use Commercial, and Recreational Commercial districts may be used as buildings sites provided that the lot width is at least 50 feet and that the lot area is at least 7,500 square feet.
 2. Lots located in Wetland, Natural Area, Prime Agricultural, General Agricultural, Countryside, Heartland-3.5, Heartland-5, Heartland-10, Estate, Rural Residential, Single Family Residential-30,000, and Light Industrial districts may be used as building sites provided that the lot width is at least 90 feet and that the lot area is at least 18,000 square feet. (Amended: 25 June 1996, Ord. 16-96)
 3. Lots located in Small Estate Residential districts may be used as building sites provided that the lot width is at least 65 feet and that the lot area is at least 10,000 square feet.
- (c) Lots located in the Exclusive Agricultural district which are less than 35 acres shall be subject to s. 91.75, Wis. Stats.

⁶ In his reply brief, Blossom argues for the first time that DOOR COUNTY, WIS., ZONING ORDINANCE § 7.01 and WIS. STAT. § 82.50(1) require town roads be at least twenty feet wide. Blossom fails to cite any record reference to indicate that subsec. 7.01 of the zoning ordinance was made part of the record; *see* WIS. STAT. RULE 809.19(1)(e). Because these sections are
(continued)

¶18 Blossom also argues that DOOR COUNTY, WIS., ZONING ORDINANCE § 3.04(3) supports his argument. This section reads:

(3) Access to road. No lot shall hereafter be created nor any building placed on a lot which does not have an access to a public road or a private road which is described and recorded in the Door County Register of Deeds office. The property owner shall be responsible for securing such access.

¶19 This section does not state any width requirement. Also, the 1908 plat predates the Door County zoning ordinance, which provides that no lot “*shall hereafter be created*” that does not meet the ordinance requirements. DOOR COUNTY, WIS., ZONING ORDINANCE § 3.04(1) and (4) (emphasis added). By its terms, the ordinance is not applicable. Third, even if the terms were applicable, Blossom fails to provide any authority for its implicit premise that a local zoning ordinance could usurp state statutes regulating the modification of recorded plats. Consequently, Blossom fails to demonstrate error.

¶20 Finally, Blossom argues that the trial court erroneously based its decision on irrelevant factors of public policy and equity. We disagree. Blossom’s trial court brief argued: “Equitable considerations dictate that this section of the lane be vacated.” Thus, Blossom cannot now be heard to complain that the court considered equity in making its decision. In any event, the trial court plainly based its decision on the application of the relevant statutory elements contained in WIS. STAT. § 236.43(1). The court’s additional observation

argued for the first time in a reply brief, they are not considered. *Northwest Wholesale Lumber, Inc. v. Anderson*, 191 Wis. 2d 278, 294 n. 11, 528 N.W.2d 502 (Ct. App. 1995).

that it would be inequitable and, therefore, violate public policy to deprive Liberty Park of access to Lot 11 is not a ground for reversal.⁷

By the Court.—Judgment affirmed.

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

⁷ To the extent Blossom's brief can be construed to raise additional arguments, they are insufficiently developed and therefore rejected. See *Shannon v. Shannon*, 150 Wis. 2d 434, 446, 442 N.W.2d 25 (1989).

