COURT OF APPEALS
DECISION
DATED AND RELEASED

NOVEMBER 21, 1995

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1431-FT

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

ROBERT J. VANDEN HEUVEL, ROBERT SCHUMACHER and JOAN SCHUMACHER,

Petitioners-Appellants,

v.

LITTLE CHUTE AREA SCHOOL DISTRICT, KAUKAUNA AREA SCHOOL DISTRICT and SCHOOL DISTRICT BOUNDARY APPEAL BOARD,

Respondents-Respondents.

APPEAL from an order of the circuit court for Outagamie County: JOHN A. DES JARDINS, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Robert Vanden Heuvel, Robert and Joan Schumacher, and the Little Chute School District appeal a trial court order that upheld a decision of the School District Boundary Appeal Board. Originally, the Schumachers petitioned the Kaukauna and Little Chute School Districts to transfer some undeveloped real estate from the Kaukauna district to the Little Chute district. After the Kaukauna district denied the request, Vanden Heuvel purchased the Schumachers' real estate and continued the proceeding for redistricting. The trial court correctly upheld the board's decision as long as it was not arbitrary and capricious. ***Beloit v. State Appeal Bd.***, 103 Wis.2d 661, 663, 309 N.W.2d 392, 393 (Ct. App. 1981). Vanden Heuvel raises several arguments on appeal: (1) the board's decision was arbitrary and capricious; (2) the board misstated crucial facts; (3) it made inadequate findings; and (4) the Kaukauna district lost its right to oppose the proposed redistricting, by failing to give the Schumachers notice of the school district meeting and by failing to send a copy of the Schumachers' petition to the Little Chute district. We reject these arguments and affirm the trial court's order upholding the board.[1]

The trial court correctly ruled that the board's decision was not arbitrary and capricious. Section 117.15, STATS., recognizes that each redistricting proposal presents the board with a unique set of circumstances. Under the statute, the board had a duty to consider various factors as they affected the educational welfare of all children residing in both school districts, including estimated travel times for students, their educational needs, the districts' respective programs, the fiscal effect of the reorganization, the creation of noncontiguous school district territory, and the districts' respective socioeconomic levels and racial compositions. Section 117.15, STATS. Here, the board gave two reasons for its decision: (1) both school districts would adequately meet future students' educational needs; and (2) real estate development and financial profit did not furnish a persuasive basis for redistricting. These factors supplied a rational basis for the board's decision. The statute's primary concern is the students' educational best interests, and the board had the undeveloped real estate's future students in mind. Once the board concluded that both districts would provide them adequate education, it had no obligation to alter the existing districts solely in the interest of real estate development and financial gain.

[1] This is an expedited appeal under RULE 809.17, STATS.

Vanden Heuvel's other claims merit no relief. First, Vanden Heuvel correctly indicates that the board wrongly found the real estate not contiguous with the Little Chute district. This discrepancy, however, was not material, in light of the fact that Vanden Heuvel did not provide a compelling case for redistricting. Second, Vanden Heuvel maintains that the real estate is closer to Little Chute district schools than Kaukauna district schools, within walking distance of some; however, he provided no specific information on distances at the board hearing, and at any rate such geographic incongruities are not unique near the borders of school districts. Third, contrary to Vanden Heuvel's assertion, the board made adequate findings. It simply ruled that Vanden Heuvel had not made a compelling case for redistricting.

The Kaukauna district did not lose its right to oppose Vanden Heuvel's appeal to the board by failing to provide notice to the Schumachers or the Little Chute district of the district meeting. Under § 117.12(3), STATS., the Kaukauna district had no obligation to take any action on the petition. It could have let the petition lapse, leaving it denied by operation of law. *See* ***id.*** Judged in this context, the lack of notice was not material. Moreover, Vanden Heuvel received what amounted to a de novo hearing before the board. *See* ***Joint Sch. Dist. No. 2 v. State Appeal Bd.***, 83 Wis.2d 711, 720, 266 N.W.2d 374, 378 (1978). It permitted him to provide any information that he wished. Finally, Vanden Heuvel did not raise this issue before the board. He therefore waived the matter. ***Goranson v. DILHR***, 94 Wis.2d 537, 545, 289 N.W.2d 270, 274 (1980).

By the Court.—Order affirmed.

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