Appeal Nos. 2004AP2582
2005AP545

Cir. Ct. No. 2003CV3513

WISCONSIN COURT OF APPEALS
DISTRICT IV

JACKSON COUNTY,

PLAINTIFF-APPELLANT,

V.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES, JACKSON COUNTY SANITARY LANDFILL, INC. AND THOMAS MCNULTY,

DEFENDANTS-RESPONDENTS.

FILED

Oct. 13, 2005

Cornelia G. Clark
Clerk of Supreme Court

CERTIFICATION BY WISCONSIN COURT OF APPEALS

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

Pursuant to WIS. STAT. RULE 809.61 (2003-04)[1] this court certifies this appeal to the Wisconsin Supreme Court for its review and determination. The issue we certify is whether a county, after taking a tax deed to assume ownership of property on which taxes had not been paid, may rescind the tax deed and return the property to the original owner, without that owner's consent. The issue is sharpened by the fact that the property in question is a landfill and whoever owns it faces significant costs and potential liabilities.

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[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

The essential facts of the case are undisputed and easily stated. Jackson County Sanitary Landfill, Inc. (JCSL) operated a landfill in Jackson County. Thomas McNulty is JCSL's president and sole shareholder. JCSL stopped paying real estate taxes on the property in 1998. Jackson County pursued delinquency proceedings that culminated with the county clerk issuing a tax deed in 2002. In September and October 2003, the Jackson County board of supervisors adopted resolutions purporting to rescind the tax deed because the deed was "inadvertent, improvident and contrary to the public interest." Notwithstanding the attempt to return ownership of the property to JCSL, JCSL continued to claim the County now owned the landfill and was responsible for its care, maintenance and any subsequent liability. The County filed this declaratory judgment action seeking a declaration that the County does not own the property and, alternatively, even if it does own the landfill, the County cannot be held responsible for the landfill under state solid waste statutes. The circuit court concluded the County lacked authority to rescind the tax deed and that allowing rescission would be inequitable. The court further held that the County is responsible for the landfill in the same manner as any other owner.

On appeal, the County argues that it has broad and general statutory authority to act under provisions such as the home rule statute, WIS. STAT. § 59.03(1), which allows counties to "exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature." Therefore, according to the County, because there is no statute barring rescission of a tax deed, the County may rescind a tax deed. The County also finds support in a case involving a county's post-issuance ratification of a tax deed, ***Hayes v. Adams County***, 15 Wis. 2d 574, 582, 113 N.W.2d 407 (1962). The County appears to acknowledge that even if it has the statutory authority to

rescind, it may do so only if the action does not affect "vested rights" of others. The County argues that the vested rights of JCSL and McNulty are not affected because, during the period between the issuance of the tax deed and the attempted rescission, they did not take any action to their detriment in reasonable reliance on the deed, and that a "mere change in title" is not sufficient to invoke the vested rights doctrine.

In response, JCSL and McNulty argue that the County has no statutory authority to rescind a tax deed. They argue that rescission is proper only for an uncompleted act, whereas here the County's act of taking the landfill property was already completed when the rescission was attempted. They argue that the County is using too limited a concept of the vested rights doctrine, and that their vested rights would be affected by rescission.

The issue of whether a county may rescind a tax deed without the original owner's consent is one of first impression. In addition to involving considerations of county authority, the decision may explore questions of equity and public policy on environmental and fiscal issues. The decision may also have broad, statewide implications for counties' tax delinquency practices, and the results of those practices, that go beyond the specific context of this dispute. We conclude the supreme court is the appropriate court to resolve this issue.

In addition to disputing the validity of the tax deed rescission, the parties do not agree whether the circuit court erred in dismissing the County's remaining claims. The Department of Natural Resources (DNR) appears as a respondent on these claims, which involve the extent of the County's responsibilities as the present owner of a former landfill. Because the DNR did not file a cross-appeal, after reviewing arguments from the parties on the issue, we

have ordered stricken from the DNR's brief its requests in sections II and III for modifications to the appealed order. The landfill responsibility issues largely present questions of statutory interpretation, which, standing alone, we would not certify. If the supreme court certifies the tax deed rescission issue and concludes that the County is the owner of the landfill, the court may wish to address the proper disposition of the County's claims regarding its responsibility for landfill costs and liabilities, or it may remand those issues to this court for disposition.