COURT OF APPEALS
DECISION
DATED AND FILED

May 20, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2374 **Cir. Ct. No. 2009CV229**

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

WARREN SLOCUM,

PLAINTIFF-APPELLANT,

V.

TOWN OF STAR PRAIRIE BOARD OF REVIEW,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County: HOWARD W. CAMERON, JR., Judge. *Affirmed*.

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

¶1 PER CURIAM. Warren Slocum, pro se, appeals an order denying a motion to reopen his challenge to a 2008 property tax assessment. Slocum argues there is new evidence showing that his original challenge was not a certiorari

action but, rather, was timely commenced under WIS. STAT. § 74.37.[1] We reject Slocum's arguments and affirm the order.

¶2 On June 23, 2008, Slocum filed an objection to his 2008 property tax assessment with the Town of Star Prairie. After a hearing, the Board of Review sustained the tax assessment and issued its notice of the determination on June 26, 2008. On January 15, 2009, Slocum submitted a "Complaint and Summons Appeal of Property Tax Assessment" to the circuit court. Although that submission was not accepted for filing, his complaint and summons were ultimately filed on February 13, 2009. The court granted the Board's motion to dismiss the action as untimely and Slocum appealed.

¶3 In that appeal, we recounted that a property owner can appeal a decision of the Board of Review in three ways: (1) by certiorari review under WIS. STAT. § 70.47(13); (2) by filing a written complaint with the Department of Revenue pursuant to WIS. STAT. § 70.85; or (3) by paying the tax and filing a claim against the taxation district to recover any amount of property tax imposed as a result of the excessive assessment pursuant to WIS. STAT. § 74.37(2)(a).

¶4 Slocum argued his complaint was timely filed as an excessive assessment action under WIS. STAT. § 74.37 and the Board countered that the matter was properly dismissed as an untimely certiorari action. The Board pointed out that the record did not include any document establishing that Slocum filed a claim with the municipality under § 74.37. In his reply brief, Slocum asserted that he filed an excessive assessment claim with the Board of Review clerk on

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

September 20, 2008, and included a copy of the document in the appendix to his reply brief.

¶5 While acknowledging that we do not consider documents that are not included in the appellate record, we noted that, in any event, no claim or action for an excessive assessment may be brought or maintained under WIS. STAT. § 74.37 if the property assessment for the same year is contested under WIS. STAT. § 70.47(13). *See* WIS. STAT. § 74.37(4)(c). Slocum did not mention § 74.37 in his complaint, and on appeal, he repeatedly described his action as a "certiorari action." Because Slocum effectively conceded he filed a certiorari action, we concluded Slocum was precluded from seeking redress under § 74.37 for the same contested year and affirmed dismissal of Slocum's certiorari action as untimely filed under § 70.47(13). ***Slocum v. Town of Star Prairie Bd. of Review***, No. 2011AP2676, unpublished slip op. (WI App Oct. 16, 2012). Slocum then filed the underlying motion to reopen his challenge to the 2008 assessment, claiming new evidence showed that his original action was timely commenced under § 74.37. The circuit court denied the motion and this appeal follows.

¶6 We review the circuit court's decision whether to reopen a judgment under the standard for discretionary decisions, considering only whether the circuit court reasonably considered the facts of record under the proper legal standard. ***Nelson v. Taff***, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993). Further, a new trial shall be ordered on the grounds of newly discovered evidence if the court finds that:

> (a) The evidence has come to the moving party's notice after trial; and
>
> (b) The moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; and

(c) The evidence is material and not cumulative; and

(d) The new evidence would probably change the result.

WIS. STAT. § 805.15(3).

¶7 Here, the purported "new evidence" consists of the same September 20, 2008 document that Slocum relied on in his initial appeal. Moreover, Slocum prepared and signed the document himself. Thus, he was aware of its existence at the time he filed his summons and complaint. If Slocum felt the document constituted a "claim" under WIS. STAT. § 74.37, he should have advised the circuit court of that fact before his initial appeal, and he should not have described his claim as a certiorari action in this court. Because the document is not newly discovered evidence as defined by WIS. STAT. § 805.15(3), the circuit court properly denied Slocum's motion to reopen the judgment.[2]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12)

[2] For the first time in his reply brief, Slocum urges discretionary reversal in the interest of justice. This court generally does not consider arguments raised for the first time in a reply brief. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998).