COURT OF APPEALS
DECISION
DATED AND FILED

November 4, 2026

Samuel A. Christensen
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. 2025AP2094 **Cir. Ct. No. 2022CV320**

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

TOWN OF FOND DU LAC,

PLAINTIFF-APPELLANT,

V.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Fond du Lac County: LAURA J. LAVEY, Judge. *Affirmed.*

Before Lazar, P.J., Gundrum, and Grogan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. The Town of Fond du Lac (the Town) appeals from a circuit court order granting the Wisconsin Department of Transportation's

(the DOT) motion for summary judgment and denying the Town's summary judgment motion. The underlying dispute involves which entity—the Town or the DOT—has jurisdiction over a stretch of a public roadway pursuant to the terms of a jurisdictional transfer agreement between the parties (the JTA). For reasons set forth below, we conclude that the Town has jurisdiction over the disputed stretch and, accordingly, we affirm the order granting the DOT summary judgment.

BACKGROUND

¶2 The following facts are derived primarily from the parties' competing summary judgment submissions. The pertinent facts are undisputed.

¶3 Van Dyne Road is a two-lane road leading north out of the City of Fond du Lac and into the Town. In accordance with WIS. STAT. § 84.02(8) (1997-98),[1] the Town and the DOT entered into the above-referenced JTA in 1998. The JTA provided that jurisdiction over a portion of Van Dyne Road, which is also called "Old State Trunk Highway 175" (Old STH 175), and another stretch of roadway would transfer to the Town upon the completion of an extensive highway improvement project to create a new STH 175. The new STH 175 would be, and currently is, operating under the DOT's jurisdiction.

¶4 The JTA specifically refers to a stretch of approximately one-quarter of a mile on Van Dyne Road and a small portion of a newly-constructed road

[1] WISCONSIN STAT. § 84.02(8)(a) (2023-24) permits the DOT to "make additions or deletions to the state trunk highway system by entering into a jurisdictional transfer agreement with a municipality or county[,]" and such permissions date back to the 1970s.

All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

linking Lakeshore Drive to the new STH 175. As a result of the jurisdictional transfer, the Town would have "[t]he authority and obligation to administer, control, construct, maintain, and operate" the transferred roadways. The JTA contains one "Condition of Transfer." It provides: "The transfer of jurisdictional responsibility shall take place on November 15 of the year the improvement project is completed and open to traffic, which is anticipated to be November 15, 2001."

¶5 There were several modifications to the scope of the highway project between when the parties entered into the JTA and when the project was completed. In fact, DOT ended up making hundreds of modifications to finish the project, one of which was removing a culvert replacement over the Supple Creek from the plans, which occurred in February 2000. The JTA does not include the culvert replacement within its description of the routes subject to the conditional transfer. The new STH 175 was opened to traffic in September 2001.

¶6 From the DOT's perspective, the project was completed by November 15th of that year, as anticipated, and jurisdiction transferred to the Town on that day. The Town disagrees with this conclusion, as we discuss further below.

¶7 Starting in 2003, and continuing at least through the filing of this action, the Town has filed certifications with the DOT on an annual basis claiming jurisdiction over the challenged stretches of the roadways in question for purposes of receiving State transportation funding. In addition, the Town has been maintaining these stretches, including tasks such as snow removal, street sweeping, and sealing cracks, since the early 2000s. After completion of the

project, the Town contracted with the Village, paying the Village to plow the roadways at issue.

¶8 In September 2022, when a culvert on Van Dyne Road over the Supple Creek needed replacement, the Town filed a complaint seeking a declaratory judgment that the DOT has "jurisdictional responsibility for a bridge located on Van Dyne Road in the Town." The Town later filed an amended complaint adding a claim for rescission of the jurisdictional transfer. The Town asserted that jurisdiction over the roadway stretches described in the JTA did not ever transfer to it. It asserted that the "improvement project" referenced in the JTA needed to include the replacement of the culvert over Supple Creek on Van Dyne Road for jurisdiction to transfer; which never happened.[2]

¶9 As we have noted, the parties filed competing motions for summary judgment with the circuit court. Both disclaimed jurisdiction over the routes described in the JTA, with the Town taking a particular interest in jurisdiction specifically over the Supple Creek area of Van Dyne Road. After extensive briefing and oral arguments, the court granted summary judgment in favor of the DOT and denied the Town's motion.

¶10 The circuit court concluded that laches barred the Town's claim due to the passage of time between when work on the project was completed and the

[2] The parties both use the terms "bridge" and "culvert" to refer to that portion of Van Dyne Road that needs replacement and is the subject of this appeal. The Town "refer(s) to all of the improvements subject to transfer as the 'Supple Creek Bridge.'" The DOT notes that the JTA applied for a transfer broader than just "the culvert replacement" because "[i]t transfers jurisdiction over not only the portion of Van Dyne Road, but also a 'newly constructed connection to Lakeshore Drive.'" For the sake of simplicity, we will refer to that area at issue as "the culvert" going forward.

filing of its declaratory judgment action. However, despite the fact that its decision as to laches was a sufficient ground on which to dismiss the action, the court explained that the issue of jurisdiction over a stretch of roadway in need of repair still remained. Accordingly, the court proceeded to consider the parties' positions as to the interpretation of the JTA to determine which party is responsible for old STH 175. The court concluded that, pursuant to the terms of the JTA, the jurisdictional transfer from the DOT to the Town occurred on November 15, 2001. The Town appeals.

STANDARD OF REVIEW

¶11 We review summary judgment de novo, using the same methodology as the circuit court. ***Bauer v. Wisconsin Energy Corp.***, 2022 WI 11, ¶11, 400 Wis. 2d 592, 970 N.W.2d 243. Summary judgment is appropriate when the summary judgment materials "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2).

DISCUSSION

¶12 On appeal, the Town challenges both the circuit court's conclusion that its declaratory judgment action is barred under the doctrine of laches and its decision on the merits; namely, that the only reasonable interpretation of the JTA is that the jurisdictional transfer of the roadways at issue from the DOT to the Town took place on November 15, 2001. The Town first argues that laches does not apply because there is no alleged breach of the JTA or other past event alleged, and the Town's action seeks relief only regarding present and future events. It further asserts that if laches is applied, then the true controversy will never be

heard and the issue of jurisdiction over the crumbling culvert will remain unresolved.

¶13 As to the jurisdictional issue, the Town states: "[t]he narrow question on the merits in this case is whether the 'improvement project' was ever 'completed' as those terms are used in the JTA." The Town argues that the project was never "completed" because the DOT never replaced the culvert. Thus, the Town continues, "the only reasonable interpretation of the JTA" is that the sole condition of transfer was never met and, therefore, the DOT still has jurisdiction.

¶14 The DOT argues that quite the opposite is the case—the only reasonable interpretation of "improvement project" as used in the JTA refers to the entire project of relocating STH 175. It would be unreasonable, the DOT proceeds, to interpret "improvement project" in the JTA as "the project as planned when the [JTA] was signed, with no possible alterations[,]" particularly considering that the JTA contains no mention whatsoever of the Supple Creek or a culvert replacement.

¶15 We turn to basic principles of contract interpretation to resolve this dispute. The goal of contract interpretation is to "give effect to the parties' intentions." ***Tufail v. Midwest Hosp., LLC***, 2013 WI 62, ¶25, 348 Wis. 2d 631, 833 N.W.2d 586. If the contract is unambiguous—meaning its language is fairly susceptible to just one interpretation—the only evidence of the parties' intentions is the contractual language itself. ***Id.***, ¶¶26–27. "The interpretation of an unambiguous contract presents a question of law" that we review de novo. ***Town Bank v. City Real Est. Dev., LLC***, 2010 WI 134, ¶32, 330 Wis. 2d 340, 793 N.W.2d 476. "Only when the contract is ambiguous, meaning it is susceptible to

more than one reasonable interpretation, may the court look beyond the face of the contract and consider extrinsic evidence to resolve the parties' intent." ***Id.***, ¶33.

¶16 We first conclude that the JTA is unambiguous on its face.[3] The plain language of the agreement shows that jurisdiction over the former segments of old STH 175 transferred to the Town in November 2001, as one would expect when a state highway turns into a local road. Pursuant to WIS. STAT. § 84.02(8), the DOT was making a deletion to the state trunk highway system by removing a part of Van Dyne Road from the system and making an addition in the form of the new STH 175. The purpose of the JTA was to divest the DOT of jurisdiction over the former STH 175 to the Town once the new STH 175 was open to traffic because the former STH 175 would then no longer be part of the state trunk highway system. Accordingly, the only reasonable interpretation of the "improvement project," as used in the JTA, is the deletion of old STH 175 from the state system, the addition of the new STH 175 to the system, and the assumption of jurisdiction over the once-state-run roadways by the Town.

¶17 The parties' subsequent conduct illustrates our conclusion as to the unambiguous nature of the JTA. Both parties clearly understood that the "improvement project" in the JTA referred to creating a new STH 175 over which the DOT would take jurisdiction. The DOT did, in fact, assume jurisdiction over the new STH 175 upon its completion in November 2001, and has maintained jurisdiction since then. Simultaneously, the Town assumed jurisdiction over old

[3] Accordingly, we reject the Town's urging that we apply the canon of *contra proferentem*, which directs that only ambiguous contract language be construed against the drafter. *See* ***Walters v. National Props., LLC***, 2005 WI 87, ¶¶13-14, 282 Wis. 2d 176, 699 N.W.2d 71.

STH 175 and the connection to Lakeshore Drive pursuant to the plain terms of the agreement. The Town demonstrated this understanding by assuming financial and physical responsibility over these roadways since the date the new STH 175 was operational and open to traffic. It was only many years later, after the culvert needed to be replaced, that the Town objected to the transfer. The Town's recent claims that jurisdiction did not transfer because the "improvement project" referenced in the agreement needed to include a replacement of a culvert on Van Dyne Road are not reasonable.

¶18 Finally, the Town argues that if we conclude that the jurisdictional transfer was complete on November 15, 2001, we should rescind the JTA on the basis that the DOT breached its duty of good faith and fair dealing. As the DOT explains, "[a] party may not … employ the good faith and fair dealing covenant to undo express terms of an agreement." ***Beidel v. Sideline Software, Inc.***, 2013 WI 56, ¶29, 348 Wis. 2d 360, 842 N.W.2d 240. As shown above, jurisdiction over the roadways at issue transferred in 2001 under the plain terms of the JTA and the parties performed as intended under the contract. *See* ***id.***, ¶46.

¶19 The circuit court rejected the Town's good faith and fair dealing claim on summary judgment because of the lack of evidence "that the Town really cared or knew about the scope of the construction project at the time the JTA was entered into" or even kept tabs on the project. We agree with the circuit court and conclude that there was no breach of the covenant of good faith and fair dealing.[4]

[4] We do not discuss whether laches applies because our decision regarding when the jurisdictional transfer occurred is dispositive of this appeal.

By the Court.—Order affirmed.

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