COURT OF APPEALS DECISION DATED AND FILED

October 23, 1997

**Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin**

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* § 808.10 and RULE 809.62, STATS.

No. 97-0294

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

TOWN OF WAUTOMA,

PLAINTIFF-APPELLANT,

V.

CITY OF WAUTOMA,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Waushara County: RICHARD O. WRIGHT, Judge. *Reversed.*

Before Eich, C.J., Dykman, P.J., and Roggensack, J.

EICH, C.J. The Town of Wautoma appeals from a judgment dismissing its action seeking to invalidate a City of Wautoma ordinance that annexed a portion of the Town's land.

Among other things, the Town claimed that the annexation was invalid because procedural errors occurred in the annexation process—in particular, the annexation petitions had never been filed with either the Wautoma city clerk or the Wautoma town clerk, as required by statute. The trial court upheld the ordinance, concluding that the City had substantially complied with the applicable procedural statutes and that the ordinance did not violate the rule of reason.

We see the dispositive issue as whether the petitions were filed with the Wautoma town clerk as required by law. Because they were not, the annexation is void and the trial court's order must be reversed.

This is a "direct annexation" proceeding—one of two methods of annexation set forth in § 66.021(2), STATS., as follows:

> [T]erritory contiguous to any city … may be annexed thereto in the following ways:
>
> (a) *Direct annexation*. A petition for direct annexation may be filed with the city or village clerk if it has been signed by [a specified number of electors who are the owners of either one-half of the territory to be annexed or property comprising one-half of the assessed value of the territory to be annexed] ….
>
> (b) *Annexation by referendum*. A petition for a referendum on the question of annexation may be filed with the city or village clerk signed by a [specified percentage] of qualified electors residing in the territory ….

Succeeding subsections of § 66.021, STATS., deal with various procedures applicable to the two types of annexation. In particular, § 66.021(12) provides that in cases where—as here—a petition for direct annexation signed by *all* electors and *all* owners of real property in the territory to be annexed is "filed … with the town clerk of the town ... in which the territory is located," then an ordinance annexing the territory may be enacted by a two-thirds vote of the city

council without compliance with the notice requirements specified elsewhere in the annexation statutes.[1]

The area residents' annexation petition was not filed with the clerk of the Town of Wautoma. It was mailed to the town chairman. The trial court ruled, however, that while the mailing may not have been in "strict compliance" with the provisions of § 66.021(12), STATS., requiring filing with the town clerk, it substantially complied with the statute because it "serve[d] the purpose of the statut[e] … which [is] to give notice to the town."

The City argues on appeal that the trial court was correct: § 66.021(12), STATS., is simply a "procedural shortcut" and does not require the annexation petition to be filed with the town clerk. The City's position is that the word "may" in the general statute, § 66.021(2), controls and makes filing with the town clerk permissive, rather than mandatory. "Given that permissive language in subsection (2)," says the City, "subsection (12) can be read: 'If a petition for direct annexation … is [*on file*] with the … town clerk ….'"

The issue is one of statutory interpretation and application—an issue of law which we consider independently, owing no deference to the trial court's decision. ***State ex rel. Sielen v. Milwaukee Cir. Ct.***, 176 Wis.2d 101, 106, 499 N.W.2d 657, 659 (1993). Our primary purpose in interpreting a statute is "to ascertain and give effect to the intent of the legislature." ***DeMars v. LaPour,*** 123 Wis.2d 366, 370, 366 N.W.2d 891, 893 (1985). Our first resort, therefore, is to the language of the statute. ***State v. Rognrud***, 156 Wis.2d 783, 787-88, 457 N.W.2d

[1] Section 66.021(3), STATS., requires that detailed notices be published and served on various local officials.

573, 575 (Ct. App. 1990). If that language is clear and unambiguous, our inquiry ends and we "simply apply the statute to the facts of the case." ***Interest of Peter B.***, 184 Wis.2d 57, 71, 516 N.W.2d 746, 752 (Ct. App. 1994).

We disagree with the City's position that "[s]ection 66.021(12) [STATS.] is governed by the wording of [66.021](2)." Such an interpretation is inconsistent with the plain and unambiguous language of § 66.021(12)—as the City's attempt to rewrite the statute suggests. It is apparent to us that the "may" language in § 66.021(2) refers to the two types of annexation proceedings described in the statute. Section 66.021(2) tells how either type of annexation "may" be initiated by residents of the territory sought to be annexed: They "may … file[]" a petition for direct annexation, § 66.021(2)(a), or they "may … file[]" a petition seeking an annexation referendum, § 66.021(2)(b).

In either case, under § 66.021(3), STATS., the proceedings are initiated by publication of a "class 1" notice detailing the annexation proposal and service of the notice upon various governmental entities and area residents. And that brings us to § 66.021(12), which provides that: (1) if a direct-annexation petition is signed by *all* of the electors and *all* of the property owners in the territory to be annexed; and (2) if the petition is also filed with the clerk of the town in which that territory lies, then the annexation may proceed to completion without meeting the detailed notice and service requirements set forth in § 66.021(3).

We conclude, therefore that § 66.021(12), STATS., means what it says: when a direct annexation proceeds under the statute, based on the petition of all of the electors and landowners within the territory to be annexed, the petition must be filed with the town clerk where the territory is located. We disagree with

the trial court and the City of Wautoma that delivering the petition to the town chairman complies with this requirement.

Where, as here, the legislature has not defined a statutory term, we will accept its "common and approved usage"—its dictionary definition. ***State v. Gilbert,*** 115 Wis.2d 371, 377-78, 340 N.W.2d 511, 515 (1983). Webster defines "file" as "deliver[ing] (as a legal paper or instrument) … to the proper officer for keeping on file or among the records of his office." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 849 (1993). BLACK'S LAW DICTIONARY 628 (6th ed. 1990) provides essentially the same meaning.

It is well settled that annexation is a statutory proceeding, and that the power to annex land "'must be exercised in strict conformity with the statute conferring [that power].'" ***Town of Blooming Grove v. City of Madison***, 70 Wis.2d 770, 773-74, 235 N.W.2d 493, 496 (1975) (quoting ***Town of Greenfield v. city of Milwaukee***, 272 Wis. 610, 611-12, 76 N.W.2d 320, 321 (1955)).

> Annexation of a territory from a township may in fact have serious consequences to the town, not the least of which may be its tax base. In annexation cases we see no reason why the annexing municipality should not be required to comply strictly with the mandate of the statute.

Id. at 774, 235 N.W.2d at 496.

In ***Town of Washington v. Village of Cecil,*** 53 Wis.2d 710, 193 N.W.2d 674 (1972), the town sued to void its annexation to the village. The applicable statutes required that service of the summons and complaint was to be made on the village president or clerk "or left in the office of such officer." Sections 262.06(4)(a)4 and 262.06(4)(b), STATS., 1969-70. Instead, they were left with the village clerk's wife at his residence, and the court, emphasizing the need for strict compliance with the statutes, held that service had not been properly

made. ***Id***. at 712, 193 N.W.2d at 675. We agree with the City of Wautoma that ***Town of Washington*** involved a different statute and different proceedings. We consider the case instructive, however, because it dealt with a procedural requirement which, like the filing of an annexation petition with the town clerk under § 66.021(12), STATS., "must be strictly complied with."[2] ***Id***. Mailing a copy of the annexation petition to the town chairman does not, in our view, constitute strict compliance with the plainly worded requirement of § 66.021(12) that the petition be "filed with the … town clerk."

Finally, the City suggests in the conclusion to its brief that its failure to comply with § 66.021, STATS., should be excused because the Town had actual notice of the annexation proceedings—that Town officials were "intimately aware of every step of the annexation process" and thus, presumably, could not have been prejudiced by the failure to strictly comply with § 66.021(12). It is not a developed argument, however, and the City has offered no authority to back up its assertion. As we have said many times in the past, we do not consider arguments that are unexplained or undeveloped, or unsupported by citations to authority or references to the record. ***Lechner v. Scharrer***, 145 Wis.2d 667, 676, 429 N.W.2d 491, 495 (Ct. App. 1988).[3]

[2] We agree with the City that the purpose of the service-of-process statute—which exists, the City says, "to provide the court with personal jurisdiction"—may not be the same as the purpose of the filing requirements in § 66.021(12), STATS. The point is, as we note above, that the supreme court in ***Town of Washington*** was applying a statute which, like the one before us, must be strictly complied with; we see the situation as analogous in that sense.

[3] We also note in this regard the following statement by the supreme court in ***Town of Blooming Grove v. City of Madison***, 70 Wis.2d 770, 774, 235 N.W.2d 493, 496 (1975).

> The numerous cases coming to this court over the years reflect the difficulties annexation cases present to various governmental entities. The city argues that they have "substantially complied" with the statute, and [that] the town has shown "no prejudice" as

(continued)

By the Court.—Judgment reversed.

Not recommended for publication in the official reports.

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a result of the procedures followed by the city. To add such considerations to or substitute them for the established rule of strict conformity in annexation cases would only compound the already perplexing problems that exist among governmental units in this type of case.