COURT OF APPEALS
DECISION
DATED AND FILED

OCTOBER 6, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3547

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

TOWN OF VERNON,

PLAINTIFF-APPELLANT,

V.

VILLAGE OF BIG BEND,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. The Town of Vernon appeals from an order which dismissed its claim that the Village of Big Bend improperly annexed land within the Town's boundaries. The Town argues that the annexation petition was not

properly served on the Town and that the Village failed to present sufficient evidence to support annexation. We affirm the order.

¶2 The circuit court decided the case on the Village's motion for summary judgment. We review a summary judgment determination de novo, independent of the circuit court's decision and following the same methodology as the circuit court. *See* ***Stann v. Waukesha County***, 161 Wis.2d 808, 814, 468 N.W.2d 775, 778 (Ct. App. 1991). The methodology we apply in summary judgment analysis has been stated often and we need not repeat it. *See* ***Wegner v. Heritage Mut. Ins. Co.***, 173 Wis.2d 118, 123, 496 N.W.2d 140, 142 (Ct. App. 1992).

¶3 A petition for direct annexation of approximately seventy-nine acres from the Town was filed with the Village, pursuant to § 66.021(12), STATS. The petition, in an envelope addressed to the town clerk, was hand delivered to the Town of Vernon Town Hall. The envelope was left with an employee behind a glass office window in the office of the town treasurer. The Town argues that the petition was never filed with the town clerk as required by § 66.021(12), and, therefore, the annexation is invalid.

¶4 Section 66.021(12), STATS., requires that an annexation petition be "filed" with the town clerk. The Town attempts to impose a requirement that the petition be personally served on the town clerk. The requirement that a document be "filed" is different from a requirement that the document be personally served on the official. The Town's reliance on and discussion of ***Town of Washington v. Village of Cecil***, 53 Wis.2d 710, 711-12, 193 N.W.2d 674, 675 (1972), is misplaced. That case dealt with the service requirement of a summons and complaint. That personal service is not required by § 66.021(12) is demonstrated

by the fact that another subsection of that statute requires personal service. *See* § 66.021(5)(a). The requirement of personal service was not repeated in § 66.021(12).

¶5 The Town argues that because the offices of the town treasurer and the town clerk are separate and clearly marked, the petition was not filed with the town clerk when it was left in the office of the town treasurer. The envelope containing the petition was addressed to the town clerk. Although the town treasurer who took receipt of the envelope indicated that she did not deliver the petition to the town clerk, the cover letter to the petition bears the "received" stamp of the town clerk. There is no affidavit indicating that the person who placed the "received" stamp on the cover letter was not authorized to do so. The stamp reflects that the petition was received by the town clerk on the date it was delivered. Filing was complete. *See* ***Boston Old Colony Ins. Co. v. International Rectifier Corp.***, 91 Wis.2d 813, 822, 284 N.W.2d 93, 97 (1979).

¶6 The "rule of reason" applies to the determination of the validity of the Village's decision to annex the Town's territory. *See* ***Town of Lafayette v. City of Chippewa Falls***, 70 Wis.2d 610, 624, 235 N.W.2d 435, 443 (1975). Under the rule: "(1) Exclusions and irregularities in boundary lines must not be the result of arbitrariness; (2) some reasonable present or demonstrable future need for the annexed territory must be shown; and (3) no other factors must exist which would constitute an abuse of discretion." ***Id.*** at 625, 235 N.W.2d at 443. The annexation ordinance enjoys a presumption of validity, and review under the rule of reason does not permit the court to inquire into the wisdom of the annexation or whether it is in the best interests of the parties to the proceeding or the public. *See* ***Town of Pleasant Prairie v. City of Kenosha***, 75 Wis.2d 322, 327, 249 N.W.2d 581, 585 (1977).

¶7 The Town argues that the Village failed to present any evidence that it has a reasonable present or demonstrable future need for the annexed territory. The Village does not have to demonstrate a pressing, imperative need for the territory. *See* ***Town of Pleasant Prairie***, 75 Wis.2d at 335, 249 N.W.2d at 589. Factors relevant to the need question include the necessity for reasonable and orderly plans for municipal development and the desirability of extending services to adjacent areas. *See* ***id.*** at 335-36, 249 N.W.2d at 589. In cases such as this where direct annexation is sought by all the affected property owners, "absent unfair inducement or pressures [by the annexing municipality] upon the petitioners, a showing of benefits to the annexed land can be considered in the overall question of need under the rule of reason." ***Id.*** at 336, 249 N.W.2d at 589 (quoting ***Town of Lafayette***, 70 Wis.2d at 629-30, 235 N.W.2d at 445).

¶8 The circuit court is directed to be highly deferential to the annexation determination. *See* ***Town of Delavan v. City of Delavan***, 176 Wis.2d 516, 539, 500 N.W.2d 268, 276 (1993). The presumption of validity remains until overcome by proof produced by the party attacking it. *See* ***Town of Lyons v. City of Lake Geneva***, 56 Wis.2d 331, 339, 202 N.W.2d 228, 232 (1972). Because inquiries under the rule of reason are fact inquiries, we consider whether the findings of the circuit court are clearly erroneous. *See* ***Town of Delavan***, 176 Wis.2d at 539, 500 N.W.2d at 276; ***Town of Menasha v. City of Menasha***, 170 Wis.2d 181, 189-90, 488 N.W.2d 104, 108 (Ct. App. 1992). Here, the circuit court found that the Village annexed the territory to provide for village growth and to accommodate the wishes of the property owners.

¶9 We conclude that the circuit court's findings are supported by the undisputed facts. The minutes of the Village meeting reflect that factors considered which favor the annexation include the need for surplus land for

residential, commercial or industrial growth, that the territory is the only available land source for expansion of the adjacent industrial park, that the territory abuts Village lands on three sides, that the annexation permits the connection of existing areas and allows the Village to provide a continuity of services, uninterrupted development and consistent zoning, that the property owners agree to annexation and want to avail themselves of services the Village is ready to provide, and that the annexation permits a blending of land uses within the Village. The Wisconsin Department of Commerce issued an opinion letter that the annexation is not contrary to the public interest.

¶10 The annexation is supported by a sufficient showing of need. The property owners sought annexation. The property owners' desire to be located in a particular municipality is a relevant need factor. *See* ***Town of Delavan***, 176 Wis.2d at 539, 500 N.W.2d at 276. The affidavit of the Village president confirms that the industrial park can only expand with the annexed territory and that the territory lies within what the Village views as its logical growth area. Although the line between the Village's "desire" to expand and the "need" to expand may be fuzzy, a reasonable need exists as to satisfy the rule of reason.

By the Court.—Order affirmed.

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