**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

March 29, 2000

**Cornelia G. Clark**
**Acting Clerk, Court of Appeals**
**of Wisconsin**



**No. 99-0152**

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

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**TOWN OF TRENTON,**

**PLAINTIFF-APPELLANT,**

**V.**

**CITY OF WEST BEND, R.J. DAVENPORT, MARGARET AHLERS, MILDRED DARMODY, CLYDE DARMODY, JOANNE MOTHS AND JAMES AHLERS,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Washington County: ANNETTE K. ZIEGLER, Judge. *Affirmed.*

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

¶1 PER CURIAM. The Town of Trenton (Trenton) has appealed from a judgment dismissing its complaint against the City of West Bend, R.J.

Davenport, Joanne Moths, Margaret and James Ahlers, and Mildred and Clyde Darmody. We affirm the judgment of the trial court.

¶2 This appeal arises from proceedings to annex lands located in the towns of Trenton and West Bend to the City of West Bend (the city). A notice of intention to circulate a petition for annexation was published in a West Bend newspaper on July 23, 1997. A petition for annexation was filed with the city on July 31, 1997, signed by all the owners and residents of lands sought to be annexed, except for the Fox Valley Western Railroad (the railroad). The railroad's land was located in the town of West Bend, not Trenton. Based upon the petition, the city passed an ordinance on September 8, 1997, annexing the property.[1] In its complaint Trenton sought judgment declaring the annexation to be invalid. The town of West Bend neither objected to the annexation nor joined in this litigation.

¶3 Trenton's first argument on appeal is that the trial court erred in determining that it waived its right to challenge the ordinance based upon WIS. STAT. § 66.021(5)(a) (1997-98).[2] Trenton relies upon a stipulation filed by the parties at trial, indicating that the city clerk failed to give the Trenton town clerk written notice that the petition for annexation had been received and was for direct annexation, as required by § 66.021(5)(a). Trenton contends that the city's failure to comply with § 66.021(5)(a) renders the annexation ordinance null and void.

[1] A second and third petition for annexation were subsequently filed, leading to the passage of a second annexation ordinance by the city on March 16, 1998. However, the trial court granted summary judgment on November 2, 1998, determining that the second annexation was invalid. That portion of the trial court's order has not been challenged by any party in this court.

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶4 Trenton's argument that the annexation ordinance was invalid because the city clerk failed to give notice of the filing of the petition to the town clerk as required by WIS. STAT. § 66.021(5)(a) was first set forth in the trial brief filed by it on October 27, 1998. Trenton mentioned the argument again at the start of trial, stating that "we will be raising that one additional procedural error at the trial today." However, the trial dealt only with the reasonableness of the annexation, and the argument was not raised again until Trenton filed its posttrial brief on November 11, 1998.

¶5 The trial court concluded that Trenton waived this issue by failing to raise it in a motion before trial. No basis exists to disturb the trial court's determination. The trial court issued a scheduling order on April 10, 1998, which required that all pretrial motions, including summary judgment motions, be filed by July 15, 1998. That deadline was subsequently extended to October 16, 1998. Pursuant to that order, a summary judgment motion was heard by the trial court on October 16, 1998. Trenton raised various procedural defects which it alleged rendered the 1997 annexation proceedings void, but did not raise an issue based on WIS. STAT. § 66.021(5)(a).

¶6 The trial court permitted the filing of additional briefs in support of and in opposition to summary judgment after the October 16, 1998 hearing, and Trenton again failed to raise the issue. After considering those briefs, the trial court issued an order on November 2, 1998, denying Trenton's motion for summary judgment declaring void the 1997 annexation proceedings.

¶7 Holding that Trenton failed to show that it could not have brought a dispositive motion based upon WIS. STAT. § 66.021(5) in a timely manner, the

trial court determined that Trenton waived this issue.[3] Trenton contends that this ruling constitutes error because it prejudiced Trenton's rights under WIS. STAT. § 66.021(10)(a), which allows a town to bring an action to contest an annexation "on any grounds whatsoever, whether denominated procedural or jurisdictional." Trenton also argues that it was not required to raise this issue by summary judgment because WIS. STAT. § 802.08(1) permits a party to move for summary judgment, but does not require that it do so.

¶8 Trenton's contentions fail. Pursuant to WIS. STAT. § 802.10(3), a trial court may enter a scheduling order addressing, among other things, the time to file motions and the appropriateness and timing of adjudication by summary judgment. *See* § 802.10(3)(c), (h). Violations of a scheduling order are subject to WIS. STAT. §§ 804.12 and 805.03. *See* § 802.10(7). Pursuant to § 805.03, if a claimant fails to comply with an order of the court, the court "may make such orders in regard to the failure as are just, including but not limited to" orders under § 804.12(2)(a). Under § 804.12(2)(a)2, a trial court may issue an order refusing to allow a disobedient party to support a particular claim and may prohibit it from introducing designated matters into evidence.

¶9 Trial courts are vested with inherent discretionary authority to control their dockets. *See* ***Rupert v. Home Mut. Ins. Co.***, 138 Wis. 2d 1, 7, 405 N.W.2d 661 (Ct. App. 1987). The decision to impose sanctions under WIS. STAT. §§ 802.10(7) and 805.03 lies within the trial court's discretion. *See* ***Anderson v. Circuit Court***, 219 Wis. 2d 1, 9, 578 N.W.2d 633 (1998); ***Siker v. Siker***, 225

[3] The trial court also briefly addressed the merits of the claim and rejected it. It noted, among other things, that the Trenton property was owned by only one landowner, and he petitioned for annexation.

Wis. 2d 522, 535, 593 N.W.2d 830 (Ct. App. 1999). The trial court's decision will not be disturbed absent an erroneous exercise of discretion. *See* ***Anderson***, 219 Wis. 2d at 9. A proper exercise of discretion occurs when the trial court has examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *See* ***id.***

¶10 The trial court set forth a reasonable and detailed explanation for its decision, pointing out that it had been very lenient in extending the initial deadline for filing dispositive motions and even extended the October 16, 1998 date to permit all dispositive issues to be briefed and decided before trial. It further noted that although Trenton mentioned the issue at the start of trial, it did not pursue it until the closing arguments set forth in its posttrial brief. It noted that the purpose of summary judgment is to narrow the issues for trial and avoid unnecessary trials, and that Trenton could have and should have raised the issue before trial by a timely motion.

¶11 Nothing set forth in Trenton's briefs provides a basis for disturbing the trial court's exercise of discretion. While Trenton is correct in contending that WIS. STAT. § 802.08 permits rather than compels the filing of summary judgment motions, nothing precluded the trial court from requiring that procedural issues which did not necessitate a trial had to be raised by motion before trial in accordance with its scheduling order. Moreover, requiring that dispositive motions be filed by a certain deadline did not prevent Trenton from raising objections or making claims under WIS. STAT. § 66.021(10)(a), but merely regulated the trial court's calendar by setting limits on when motions could be

made.[4] Trenton's claim that discovery was not complete prior to trial also provides no basis for relief since its claim under WIS. STAT. § 66.021(5)(a) was premised on an allegation that its town clerk did not receive notice of the filing of the petition, information which would have been in its possession.

¶12 Trenton's next argument is that the annexation ordinance is invalid because the landowners failed to serve a copy of the notice of intention to circulate an annexation petition on the railroad by personal service or registered mail as required by WIS. STAT. § 66.021(3)(b), or to circulate the petition to the railroad within the time period set forth in § 66.021(4)(c).

¶13 Trenton's claim that the 1997 annexation ordinance is invalid based upon WIS. STAT. § 66.021(3)(b) is raised for the first time on appeal and therefore is waived. *See* ***Evjen v. Evjen***, 171 Wis. 2d 677, 688, 492 N.W.2d 361 (Ct. App. 1992). The burden is on the party alleging error to establish by reference to the record that the error was specifically called to the attention of the trial court. *See* ***Allen v. Allen***, 78 Wis. 2d 263, 270, 254 N.W.2d 244 (1977). A party must register an objection with sufficient prominence such that the trial court understands what it is asked to rule upon. *See* ***State v. Barthels***, 166 Wis. 2d 876, 884, 480 N.W.2d 814 (Ct. App. 1992), *aff'd*, 174 Wis. 2d 173, 495 N.W.2d 341 (1993). In the absence of a specific objection which brings into focus the nature of the alleged error, a party has not preserved its objections for review. *See* ***Air Wis., Inc. v. North Cent. Airlines, Inc.***, 98 Wis. 2d 301, 311, 296 N.W.2d 749 (1980).

[4] In its reply brief, Trenton argues that Wisconsin is a notice pleading state and that its pleadings adequately put the parties on notice that it would be raising procedural defects under WIS. STAT. § 66.021 at trial. However, regardless of whether its pleadings were adequate, it still was required to comply with the scheduling order.

¶14 In this case, Trenton filed a motion for summary judgment contending that the 1998 annexation ordinance was invalid because the notice of intent to circulate an annexation petition which was published on December 16, 1997, was not served as required by WIS. STAT. § 66.021(3)(b). However, as previously noted, summary judgment was granted declaring the 1998 annexation invalid. Because Trenton failed to raise § 66.021(3)(b) as a basis for challenging the 1997 annexation ordinance prior to appeal, that issue is waived.

¶15 Trenton's claim based on WIS. STAT. § 66.021(3)(b), as well as its claim based on § 66.021(4)(c), fails for lack of standing to raise the issues. The only landowner who did not sign the annexation petition was the railroad, and Trenton's claims under these provisions relate solely to service on the railroad. However, the railroad owned land only in the town of West Bend, not in Trenton. Because the railroad's land was not in Trenton, we agree with the trial court that Trenton cannot challenge the ordinance based on lack of circulation or inadequate service on the railroad.[5]

¶16 Standing requires a personal stake in the outcome of a controversy. *See* ***City of Waukesha v. Salbashian***, 128 Wis. 2d 334, 350, 382 N.W.2d 52 (1986). The plaintiff must show an injury that is related to its stake in the outcome of the controversy. *See* ***Sandroni v. Waukesha County Bd. of Supervisors***, 173 Wis. 2d 183, 188, 496 N.W.2d 164 (Ct. App. 1992). Because the railroad's land is not in Trenton, and no basis exists to believe that Trenton will be injured if land belonging to the railroad is annexed to the city rather than remaining in the town

[5] The trial court referred to "capacity to sue" on issues, while we refer to standing to raise issues. Our reasoning, however, is the same.

of West Bend, it has no standing to pursue issues relating to the adequacy of service on the railroad or circulation of the petition to the railroad.[6]

¶17 Trenton's final argument is that the trial court's judgment should be reversed and the annexation ordinance should be found to be invalid because the city failed to establish a reasonable present need or demonstrable future need for the annexed property. This argument relies on the "rule of reason" set forth in

[6] Trenton argues that WIS. STAT. § 66.029 entitles it to sue. While this is true, this statute does not confer a right to sue over any territory located outside of Trenton. Section 66.029 expressly provides that "[i]n proceedings whereby territory is attached to or detached from any town, the town is an interested party, and … may institute … an action brought to test the validity of such proceedings." The "proceedings" referred to are the detachment of property from the town. Thus, while Trenton may institute an action to challenge the detachment of property from itself, nothing in the statute affords it a right to challenge the detachment of property from another town.

Trenton also argues that because the annexation of land from both towns occurred pursuant to a single ordinance, it must be permitted to raise procedural defects challenging the ordinance regardless of whether the defects pertained to land within its own boundaries. Again, we disagree. Regardless of whether a single ordinance is involved, the only injury faced by Trenton is the loss of its own land. It therefore has standing to raise issues pertaining only to that loss.

***Town of Delavan v. City of Delavan***, 176 Wis. 2d 516, 538, 500 N.W.2d 268 (1993), and other cases discussed by the parties.

¶18 The trial court addressed this issue in a posttrial memorandum decision. Because that decision is well-reasoned, thorough and supported by the evidence, we adopt it by reference as the decision of this court. *See* WIS. CT. APP. IOP VI(5)(a) (June 13, 1994) (court of appeals may adopt trial court decision).

*By the Court.*—Judgment affirmed.

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