

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 19, 1999

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. 99-0764-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**CHARLES TERRY AND ANGEL TERRY, GERARD WAGNER
AND MARSHA PETERSEN, EDWARD FERO AND
CAROL FERO, DAVID KYLE AND JOANNE KYLE,
JEFF SONN AND TRACY SONN,**

PETITIONERS-APPELLANTS,

v.

**ROCK COUNTY BOARD OF ADJUSTMENT, AND
STANLEY JONES,**

RESPONDENTS-RESPONDENTS,

JAMES GRABOWSKI,

RESPONDENT.

APPEAL from an order of the circuit court for Rock County:
JAMES E. WELKER, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Charles and Angel Terry, and a number of their neighbors, (the appellants) appeal from an order dismissing their petition for certiorari review.¹ The trial court concluded that the petition was not timely filed. The court further concluded that the respondents were not estopped from asserting that delinquency. We affirm.

Stanley Jones, on behalf of James Grabowski, requested a variance from the Rock County Board of Adjustment. The board granted the request, over the appellants' objection, on September 30, 1998. Under § 59.694(10), STATS., the appellants had thirty days to commence an action for judicial review of that decision. However, the appellants did not file their petition until November 25, 1998. Consequently, Jones moved to dismiss the petition, and the appellants responded by asserting that he was estopped from doing so by his own conduct. The trial court rejected that assertion and dismissed the action, resulting in this appeal.

The appellants contend that they were misled about the deadline for filing their review petition because a Rock County ordinance provides for a sixty-day deadline for filing review petitions, notwithstanding the thirty-day statutory deadline. Furthermore, on September 22, 1998, at a meeting of the Rock County Planning and Development Committee that many appellants attended, members of the committee referred to a sixty-day deadline for judicial review.²

¹ This is an expedited appeal under RULE 809.17, STATS.

² The committee's minutes indicated that the committee intended to review the matter and "bring back alternatives and recommendations" within sixty days, based on the understanding that the committee had sixty days to institute a judicial review proceeding.

The appellants based their estoppel defense on the fact that counsel for Jones also attended the September 22 meeting, heard the references to the sixty day time to commence review, yet said nothing to correct that mistake. The appellants described that silence as “perhaps not technically fraudulent conduct but certainly inequitable.” However, they cite no authority for the proposition that opposing counsel has any duty to correct mistaken legal advice provided by third parties, for which counsel is blameless.³ The doctrine of estoppel may preclude the defendants’ assertion of a statute of limitation where the defendant is guilty of fraud or inequitable conduct that caused the plaintiffs untimely filing. *See State ex rel. Susedik v. Knutson*, 52 Wis.2d 593, 596-97, 191 N.W.2d 23, 25-26 (1971). Neither the requisite inequitable conduct nor its causative role has been shown here.

The appellants also contend that even if Jones was properly dismissed, the trial court should have allowed them to pursue the action against the board of adjustment. Because there was also no showing that the board of adjustment or its counsel fraudulently or inequitably induced the appellants’ delinquency, this argument also fails.

Finally, the appellants argue that the county ordinance gave them the right to seek review within sixty days, independent of the statutory thirty-day deadline. However, an ordinance cannot authorize what legislation has forbidden. *See Volunteers of America v. Brown Deer*, 97 Wis.2d 619, 625, 294 N.W.2d 44,

³ The appellants’ argument presumes without support in the record that counsel knew the statutory filing deadline and knew the appellants intended to appeal, and also assumes without evidence that the appellants relied on the misinformation received at the committee meeting.

47-48 (Ct. App. 1980). The appellants' remedy was that provided by statute, and they failed to timely seek that remedy.

By the Court.—Order affirmed.

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

