COURT OF APPEALS
DECISION
DATED AND FILED

August 30, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1702 **Cir. Ct. No. 2013CV303**

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

WARREN SLOCUM,

PLAINTIFF-APPELLANT,

V.

STAR PRAIRIE TOWNSHIP,

DEFENDANT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for St. Croix County: HOWARD W. CAMERON, JR., Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. This is another in a pattern of pro se litigation centered around the same basic contention: Warren Slocum's property tax assessments are too high. The present appeal involves Slocum's challenge to his 2012 tax assessments. We affirm.

¶2 Slocum filed a civil complaint for repayment of excess taxes levied against his real property for the tax year 2012, pursuant to WIS. STAT. § 74.37.[1] Slocum's entire complaint reads as follows:

> This is an objection to 2012 property tax assessments which have resulted in payment of excessive taxes.
>
> An [sic] s. 74.37 claim has been denied by the town board.
>
> The relief sought by this action is a refund of the excessive tax payments.

¶3 The circuit court granted Star Prairie Township's motion for summary judgment and a motion for reconsideration was also denied. Slocum appealed. We held Slocum's appeal in abeyance pending resolution of an "additional appeal" concerning a petition for waiver of transcript fees. We subsequently affirmed the circuit court's denial of transcript fees, and we turn now to the underlying appeal concerning summary judgment granted in the Town's favor.

¶4 We independently review summary judgment decisions applying the same methodology as the circuit court. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 401 N.W.2d 816 (1987). When a motion for summary judgment is made and supported by a prima facie case for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings. The adverse party's response by affidavits or otherwise as provided by statute must set forth specific evidentiary facts showing there is a genuine issue for trial. If the adverse

[1] Slocum first filed an appeal from his assessment to the Town's board of review, which denied the appeal. Thereafter, he filed a claim with the Town alleging excessive assessment. The Town Board denied the claim, setting the stage for his present complaint.

All references to the Wisconsin Statutes are to the 2013-14 version.

party does not so respond, summary judgment shall be entered against such party. WIS. STAT. § 802.08(3).

¶5 At the outset, we note this is not a certiorari review. While certiorari review is limited to a review of the board of assessment's record, a claim under WIS. STAT. § 74.37 allows the circuit court to proceed without regard to any determination made at an earlier proceeding. *See* ***Nankin v. Village of Shorewood***, 2001 WI 92, ¶25, 245 Wis. 2d 86, 630 N.W.2d 141. Moreover, the value of all real and personal property entered into assessment rolls to which such an affidavit is attached by the assessor shall be presumptive evidence that all such properties have been justly and equitably assessed in proper relationship to each other. WIS. STAT. § 70.49(2). It is the challenger's burden to present significant contrary evidence to rebut the presumption. *See* ***Bloomer Housing Ltd. P'ship v. City of Bloomer***, 2002 WI App 252, ¶11, 257 Wis. 2d 883, 653 N.W.2d 309.

¶6 Here, the Town established a prima facie entitlement to summary judgment. The affidavit and attached records of the Town's assessor demonstrated the following:

(1) The assessor filed the proper affidavit attesting that the properties entered on the Town's tax roll for 2012 were justly and equitably assessed in proper relation to each other;

(2) Real property in the Town was reassessed in 2011 and valuations of all properties were brought into compliance with the equalization standards of the Wisconsin Department of Revenue ("DOR");

(3) The Town's assessor followed statutory requirements and the property tax assessment manual in valuing Slocum's real estate for 2012;

(4) There was no recent arm's length sale of Slocum's real estate prior to the 2012 tax year; and

(5) Using appropriate assessment methodology, the assessor found reasonably comparable property sales for purposes of confirming valuation of Slocum's property for tax year 2012.

¶7 In addition, the Town submitted evidence establishing Slocum challenged his 2012 assessment in a WIS. STAT. § 70.75 action before the DOR. The basis of the action was that the assessment of his property, and others, was not in substantial compliance with the law. Slocum requested a reassessment of all the parcels in the municipality. His challenge was denied by the DOR, which sustained the valuation and concluded assessment methods were utilized that conformed to the statutory requirements outlined in the property assessment manual.[2]

¶8 In the present case, the circuit court properly concluded Slocum failed to contravene the Town's affidavits establishing prima facie entitlement to judgment. The court stated:

> [Slocum] did not contradict the [Town's] affidavits. [Slocum] filed two responses entitled, "Response to Motion and affidavit." Those responses filed by [Slocum] on January 16, 2014 and January 30, 2014 did not contain any affidavits in opposition to the [Town's] motion for summary judgment but just argument. [Slocum] then filed on February 20, 2014 "a notarized signature for affidavits" that contained a notarized signature … in which he signed it on January 15, 2014 and the signature was notarized on

[2] In his briefs to the circuit court, Slocum argued the Wisconsin Department of Revenue "ignored extensive evidence presented to it that identified and exposed widespread, fraudulent assessment practices throughout the municipality."

> February 19, 2014. Additionally the submission did not contain anything other than the last page of an earlier submission that contained [Slocum's] signature. That notarization of his signature is not sufficient under the [statutes] for an affidavit. [Slocum's] affidavits do not contain any statement that what he is saying is the truth. Thus, they are just statements and not affidavits and are not sufficient to show that there is a dispute of facts.

¶9 Slocum also argued in the circuit court, "Many of the assertions in the assessor's affidavit … are contradicted by evidentiary documents that the assessor has attached to his affidavit." He complained the assessor's approach to valuation was "fraudulent," and stated the assessor was "lying" in his affidavit. Without proper authentication, Slocum reproduced what he purported were portions of the property assessment manual and argued in the most general of terms that the assessor violated the manual's procedures. In addition to being underdeveloped, Slocum's arguments were improperly premised upon asserted facts not properly attested to in the record on appeal. Slocum's bare arguments cannot stand as "significant contrary evidence" to the prima facie factual compliance established by the Town's affidavits in support of summary judgment. *See* ***Nankin***, 245 Wis. 2d 86, ¶25. In addition, although Slocum insisted the assessor's valuation was too high, Slocum had no recent appraisals of his property, and he was not a professional appraiser.

¶10 Slocum also insisted in response to the motion for summary judgment that "additional violations of law are easily proven with the evidence from the municipal board and the boards of review." Slocum argued this evidence included board of review transcripts, which he insisted the Town was obligated to produce in accordance with WIS. STAT. § 70.47(8)(e), which provides as follows:

> All proceedings shall be taken in full by a stenographer or by a recording device, the expense thereof to be paid by the district. The board may order that the notes be transcribed,

> and in case of an appeal or other court proceedings they shall be transcribed.

¶11 WISCONSIN STAT. § 70.47 is entitled "Board of review proceedings," and subsection (8) is entitled "Hearing." Slocum's complaint under WIS. STAT. § 74.37 is not an appeal from a board of review hearing, but rather a civil action. In a claim for excessive assessment under § 74.37, the circuit court makes its determination without regard for any determination made at any prior proceeding. When the court makes a determination under § 74.37, it reviews the record made before the circuit court, not a board of review. *See* ***Nankin***, 245 Wis. 2d 86, ¶25.

¶12 Furthermore, WIS. STAT. § 70.47(8)(f) provides:

> The clerk's notes, written objections and all other material submitted to the board of review, tape recordings of the proceedings and any other transcript of proceedings shall be retained for at least 7 years, shall be available for public inspection and copies of these items shall be supplied promptly at a reasonable time and place to anyone requesting them at the requester's expense.

¶13 Read together, WIS. STAT. § 70.47(8)(e) and (f) logically produce the conclusion that "in the case of an appeal of other court proceedings" the "notes of the proceedings" held by the board of review be transcribed, but that "transcripts of proceedings" shall be supplied to anyone requesting them "at the requester's expense." We are not convinced that § 70.47(8)(e) compelled the board of review to produce a transcript of its proceeding at its own expense in order to facilitate Slocum's WIS. STAT. § 74.37 civil action.

¶14 Slocum also alleges circuit court bias. However, he fails to provide record support for this serious accusation. In any event, our independent review of the record belies Slocum's assertion.

¶15 Finally, we note the circuit court stated:

> [Slocum] is not a novice at litigating because a review of the Wisconsin Circuit Court Access shows that [Slocum] has filed 19 cases in the Court of Appeals since 2007 and 18 cases in the Circuit Court since 2003. The Court did not count any family law cases. [Slocum] is experienced and thus, even if pro se, is knowledgeable about Wisconsin law and civil procedure.

¶16 In conclusion, the Town presented a prima facie case for summary judgment. The circuit court correctly determined Slocum had the opportunity to file proper counter affidavits based on personal knowledge to create a dispute of material fact, if indeed such facts existed, but he failed to present significant contrary evidence within the time set forth in the court's scheduling order. The motion for summary judgment was properly granted.[3]

By the Court.—Judgment and order affirmed.

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

[3] We also conclude the circuit court properly denied Slocum's motion for reconsideration. As the court noted, Slocum

> fails to state what exactly these Court errors are as to its reasoning and understanding of the evidence in reaching its decision on summary judgment. The motion consists of allegations, but fails to state grounds with particularity …. As the motion fails to state what this Court is to review, there is nothing to review and the motion to reconsider is denied.