COURT OF APPEALS
DECISION
DATED AND FILED

March 2, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP3206 **Cir. Ct. No. 2004CV34**

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

DESIGN SERVICES, INDUSTRIAL SERVICES AND WILLIAM WELLS,

PETITIONERS-APPELLANTS,

V.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Iron County: PATRICK J. MADDEN, Judge. *Affirmed*.

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

¶1 PER CURIAM. Design Services, Industrial Services and William Wells appeal an order affirming an administrative decision of the Department of Natural Resources. The appellants raise a number of evidentiary and procedural issues regarding the proceedings. We affirm.

¶2 In 1995, Wells enrolled property in the Department's managed forest land (MFL) program. By quit claim deed dated January 7, 2003, Wells transferred a portion of this property to Design Services, a corporation which shares his address and for which he is secretary. The deed was recorded exactly one year later, on January 7, 2004.

¶3 WISCONSIN STAT. § 77.88(2)(e) (2003-04)[1] provides that when MFL land is transferred to a new owner, the land remains in the MFL program upon certification to the Department, within thirty days after the transfer, that the new owner intends to comply with the program requirements. Section 77.88(2)(f) provides that if the new owner does not provide the required certification, the Department shall issue an order withdrawing the land from the MFL program.

¶4 In this case, Design Services, by Wells, submitted the certification of intent on January 30, 2004, within thirty days of recording the transferred deed but more than one year after the date on the deed. Consequently, the Department issued an order finding that the deed transfer occurred in January 2003, and withdrawing the property from MFL status because of the delinquent certification. Wells petitioned for judicial review, and he now appeals the circuit court's order affirming the Department's order.

¶5 Wells first challenges the Department's finding of fact that the deed was delivered in January 2003. The Department based this finding on the fact that January 7, 2003, is the date that appears on the deed just above Wells' signature as the transferor. On a challenge to the Department's finding of fact, we review

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

whether substantial evidence supports it. WIS. STAT. § 227.57(6). Substantial evidence is such that a reasonable person acting reasonably could rely on it to reach the decision in question. *See* ***Sterlingworth Condominium Ass'n v. DNR***, 205 Wis. 2d 710, 727, 556 N.W.2d 791 (Ct. App. 1996). Here a reasonable person could reasonably find that Wells, the owner, delivered the deed to himself, as the transferee's agent, on the date appearing on the deed.

¶6 Wells contends that he has evidence proving that he did not sign the deed until January 2, 2004, notwithstanding the fact that the date accompanying his signature is January 7, 2003. The evidence he cites is not within the administrative record, nor did Wells make the necessary showing in the circuit court proceeding to add it to the record. *See* WIS. STAT. § 227.57(1) (court may authorize supplemental evidence upon showing of irregularities in agency procedure). Consequently, we do not consider Wells' evidence because our review is limited to the record before the agency. ***Id.*** In any event, the evidence in question is nothing more than a document showing that on January 2, 2004, a notary validated the undisputed fact that Wells' signature appears on the deed. The document does not state that the notary witnessed Wells signing the deed or otherwise show that Wells signed it on a date other than January 7, 2003. It would not support reversing the Department's finding of fact even if we were to consider it in our review.

¶7 WISCONSIN STAT. § 77.88(1) provides that the Department may investigate whether MFL land should be withdrawn from the program and must notify the owner of any investigation. Here Wells contends that Design Services was never notified under this provision. However, nothing of record indicates that the Department conducted an investigation in connection with the withdrawal notice. Section 77.88(2) does not mandate an investigation when a new owner

fails to provide the required certification, nor was any investigation necessary given that the certification default spoke for itself.

¶8 The order withdrawing the property stated as a finding of fact that "the MFL transfer form was missing the signature of the president of the corporation and was filed over 330 days after it was due under Section 77.88(2)(e), Stats." Wells contends that there is no requirement in the applicable statutory provisions requiring the president of a landowning corporation to sign the certification of intent. Accepting that as true, it has no bearing on the Department's decision. The delinquency, rather than any missing signature, was the justification for withdrawal, as the Department's conclusions of law expressly and unambiguously state.

¶9 Wells next contends that the Department violated his statutory and due process rights by issuing the withdrawal order without prior notice to him or an opportunity to be heard on the matter. There is no statutory right to notice prior to the order that WIS. STAT. § 77.88(2)(f) provides "shall" issue upon failure to provide the required certification. WISCONSIN STAT. § 77.90 provides that an MFL owner adversely affected by a departmental decision is entitled to a contested case hearing. However, § 77.88(2)(f) provides that "[n]otwithstanding s. 77.90, the transferee is not entitled to a hearing on an order withdrawing land under this paragraph."

¶10 As for Wells' due process claim, the supreme court has held that due process is satisfied in certain situations by a statutory warning that sua sponte governmental action may adversely affect a party's interests when there are procedural safeguards that protect against erroneous sua sponte action. ***State ex rel. Schatz v. McCaughtry***, 2003 WI 80, ¶2, 263 Wis. 2d 83, 664 N.W.2d 596.

We conclude this situation is one of those. The statute plainly states what will happen if the certification is not filed as required by WIS. STAT. § 77.88(2)(e). In addition, Wells had the opportunity to be heard in review proceedings in the circuit court and this court. *See* WIS. STAT. § 227.53.

¶11 Wells next contends that the untimely filing of the certification of intent does not provide grounds to withdraw land because WIS. STAT. § 77.88(2)(f) makes no reference to the deadline contained in § 77.88(2)(e). Statutes addressing the same subject matter are read together and harmonized when possible. ***State v. Cole***, 2003 WI 59, ¶13, 262 Wis. 2d 167, 663 N.W.2d 700. Section 77.88(2)(e) requires certification within thirty days after transfer. Section 77.88(2)(f) provides for withdrawal if the certification required under § 77.88(2)(e) is not received. The only reasonable interpretation of these sections, when read together, mandates withdrawal in the absence of a timely certification.

¶12 The Department's order also contains, as a conclusion of law, the statement that Wells, as the transferor of the land, violated WIS. STAT. § 77.88(2)(d) and (e) by failing to file a transfer report and pay a $20 fee within ten days after transferring the land. Wells challenges this conclusion, but did not raise this issue in the circuit court. It is therefore waived. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.

By the Court.—Order affirmed.

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