COURT OF APPEALS
DECISION
DATED AND FILED

December 20, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP314 **Cir. Ct. No. 2005CV704**

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

MATT OSTRANDER, MARIA OSTRANDER, BRADLEY BOYLE, RENEE BOYLE, MARK ROSZKO, BERNADETTE ROSZKO AND TOWN OF RANDALL,

PLAINTIFFS-APPELLANTS,

V.

VILLAGE OF GENOA CITY,

DEFENDANT-RESPONDENT,

PRIME-GENOA PROPERTIES, LLC,

INTERVENING DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Kenosha County: WILBUR W. WARREN III, Judge. *Affirmed*.

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

¶1 PER CURIAM. Matt Ostrander, Maria Ostrander, Bradley Boyle, Renee Boyle, Mark Roszko, Bernadette Roszko ("the residents") and the Town of Randall ("the Town") appeal from the judgment of the circuit court that dismissed their complaint against the Village of Genoa City and Prime-Genoa Properties, LLC. They argue on appeal that the circuit court erred when it found that they did not have standing to challenge the Village of Genoa City's annexation of certain territory. Because we conclude that the circuit court properly found that the residents and the Town lacked standing to challenge the annexation, we affirm.

¶2 The annexed territory was formerly part of the Town of Randall. The annexation was accomplished by the submission of a Petition for Direct Annexation by Unanimous Approval under WIS. STAT. § 66.0217(2) (2003-04), followed by the Village of Genoa City adopting Ordinance No. 02-10-05.[1] The Wisconsin Department of Administration reviewed and approved the annexation under § 66.0217(6).

¶3 In this action, the residents and the Town sought a declaratory judgment invalidating the annexation of territory by the Village of Genoa City. They also raised an issue about the constitutionality of WIS. STAT. § 66.0217(11)(c). The residents, all of whom live in the Town of Randall, asserted the same basis for standing in their complaint: they reside and own property in the Town, they pay taxes to the Town, and they have children in the Randall School District. The Town alleged that the annexation would frustrate the purpose of its land use planning process. Prime-Genoa intervened because of its ownership

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

interest in the territory and then moved to dismiss the complaint on the grounds that none of the plaintiffs had standing to challenge the annexation. The circuit court granted the motion, finding that none of the residents had standing because they did not reside within the annexed territory, they did not allege any injury peculiar to themselves, and the alleged injuries were speculative. The court also held that the Town did not have standing to challenge the annexation under § 66.0217(11)(c).

¶4 On appeal, the residents and the Town first argue that they have standing to challenge the annexation. We review de novo whether a party has standing to seek declaratory relief. ***Lake Country Racquet & Athletic Club, Inc. v. Village of Hartland***, 2002 WI App 301, ¶13, 259 Wis. 2d 107, 655 N.W.2d 189. "In order to have standing to bring an action for declaratory judgment, a party must have a personal stake in the outcome and must be directly affected by the issues in controversy." ***Id.***, ¶15 (citing ***Village of Slinger v. City of Hartford***, 2002 WI App 187, ¶9, 256 Wis. 2d 859, 650 N.W.2d 81). "A taxpayer does not have standing to challenge an ordinance merely because he or she disagrees with the legislative body." ***Slinger***, 256 Wis. 2d 859, ¶10. A party must show that he or she has sustained or will sustain a pecuniary loss or other substantial injury to his or her interests. ***Lake Country***, 259 Wis. 2d 107, ¶17. When a party does not claim that the action affects property they own, or is not able to show a "risk of pecuniary loss or substantial injury" to themselves, then they do not have a personal stake in the outcome. ***Id.***, ¶23. Specifically, a resident's concern about the future development of annexed neighboring property does not give them standing to challenge an ordinance allowing annexation. ***Slinger***, 256 Wis. 2d 859, ¶17.

¶5 In this case, the residents do not own property within the annexed territory, nor do they allege an injury peculiar to them. The basis of their claim is, in essence, that they are taxpayers and that the tax base will be affected by the annexation and future development of the territory.

¶6 The residents also allege that they have children attending the Randall School District and that the development of the annexed territory will overburden that District. This, however, is a challenge to the development of the territory and not the annexation. *See* ***id.***, ¶¶16-17. A neighbor may not oppose the development of adjoining property simply because it may affect property values. *See* ***id.***, ¶17. This does not create standing for the residents to challenge annexation. *See* ***id.*** While the residents attempt to distinguish their case from ***Slinger*** and ***Lake Country***, we are not convinced by this attempt. We conclude that these cases control, and that the circuit court properly found that the residents do not have standing to challenge the annexation.

¶7 Further, the residents and Town do not dispute that WIS. STAT. § 66.0217(11)(c) specifically prohibits the Town from challenging a direct annexation by unanimous consent under § 66.0217(2). They argue, however, that since the statute prohibits a town from challenging annexation, the legislature must have intended to allow individuals not living in the territory to challenge the annexation. In support of this, they also argue that if individuals and the Town are not allowed to challenge the annexation, then no one can.

¶8 We reject this argument in its entirety. If the legislature had intended to allow individuals such as the residents to challenge an annexation, the statute would have so provided. Further, as Prime-Genoa points out in its brief, the residents themselves identify an entity that may be adversely affected by the

annexation and consequently may have had standing to challenge it: the Randall School District. The District, however, evidently decided not to participate in this action. The legislative prohibition against the Town challenging the annexation does not give the residents standing.

¶9 The residents and the Town also argue that they did not waive the issue of whether WIS. STAT. § 66.0217(11)(c) is constitutional. We have reviewed the record, however, and we conclude that they did waive the constitutionality issue. Because they waived this issue in the circuit court, we will not consider it on appeal. *See* ***State v. Rogers***, 196 Wis. 2d 817, 828-29, 539 N.W.2d 897 (Ct. App. 1995). For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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