

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2008

David R. Schanker
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. 2006AP3075

Cir. Ct. No. 2006CV959

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**RUDY NEDVIDEK, COMMANDER OF VFW POST 1530 AND TOM HUNDT,
INDIVIDUALLY, AND AS PRESIDENT OF VIETNAM ERA VETERANS,**

PLAINTIFFS-APPELLANTS,

v.

**JUDITH L. KUIPERS, EX-CHANCELLOR OF U.W.L., DOUGLAS N. HASTAD, EX-
CHANCELLOR OF U.W.L., KATHERINE LYALL, EX-PRESIDENT OF U.W.
SYSTEM AND EX OFFICIO MEMBER OF THE BOARD OF REGENTS AND
UNIVERSITY OF WISCONSIN BOARD OF REGENTS,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County:
JOHN C. ALBERT, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Rudy Nedvidek, Commander of VFW Post 1530, and Tom Hundt, President of Vietnam Era Veterans, appeal from a judgment that dismisses their complaint against two ex-chancellors of the University of Wisconsin-La Crosse, the ex-president of the University of Wisconsin System, and the University of Wisconsin Board of Regents. Nedvidek and Hundt sought judgment declaring void a University decision to rename the football stadium at UW-La Crosse. The trial court concluded that Nedvidek and Hundt lacked standing to challenge the decision to rename the stadium and that the question was moot. We affirm.

¶2 In 1945 the City of La Crosse named the football facility Veterans Memorial Stadium. In 1987 the city quitclaimed the facility to the UW Board of Regents. In 2000 Roger Haring resigned as the UW-La Crosse football coach. A week later the UW-La Crosse chancellor, Judith Kuipers, renamed the facility the Roger Haring Veterans Memorial Stadium. In 2001, Kuipers' successor, Douglas Hastad, renamed the stadium Veterans Memorial Stadium and named the field within the stadium Roger Haring Field.

¶3 In November, 2005 the UW Board of Regents adopted a resolution renaming the stadium Roger Haring Stadium and renaming the field and the surrounding athletic areas Memorial Field. Nedvidek and Hundt responded by commencing this action for a judgment declaring the three name changes void. They alleged that the 2000 and 2001 renaming decisions were void because they (1) violated Wisconsin's open meetings and public records laws, (2) violated UW policies and regulations regarding the naming of UW facilities, and (3) were the product of malfeasance by the Board of Regents and Lyall in supervising Kuipers and Hastad. They alleged that the 2005 decision was void because the Board of

Regents violated UW procedures, set forth in Board Resolution 96.1, for naming UW property.

¶4 The defendants moved to dismiss, and the trial court granted the motion on standing and mootness. However, in reaching its decision the court considered facts outside of the pleadings. We therefore review the case using summary judgment methodology. *See* WIS. STAT. § 802.06(2)(b) (2005-06)¹ (if a party moves to dismiss a complaint, and the court considers matters outside the pleading, the motion is treated as one for summary judgment). Our review is therefore de novo. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Linville v. City of Janesville*, 184 Wis. 2d 705, 714, 516 N.W.2d 427 (1994).

¶5 Nedvidek and Hundt have no standing to challenge the Board of Regents' 2005 decision. Standing requires that a party has suffered or is threatened with an injury. *Norquist v. Zeuske*, 211 Wis. 2d 241, 247-48, 564 N.W.2d 748 (1997). Stated otherwise, "standing require[s] a personal stake in the outcome of a controversy." *City of Waukesha v. Salbashian*, 128 Wis. 2d 334, 350, 382 N.W.2d 52 (1986) (citation omitted). Here, Nedvidek and Hundt failed to allege any direct personal injury or personal stake in the controversy nor offered proof of any in subsequent factual submissions. "Abstract injury is not enough. The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

the injury or threat of injury must be both ‘real and immediate,’ not ‘conjectural’ or ‘hypothetical.’” *Fox v. DHSS*, 112 Wis. 2d 514, 525, 334 N.W.2d 532 (1983) (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983)). Put simply, Nedvidek’s and Hundt’s concern that the Board of Regents’ decision insufficiently honors veterans is not a direct personal injury that conveys standing to them as individuals.

¶6 Standing also requires that the injury be to a legally protectable interest. See *City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 228, 332 N.W.2d 782 (1983). A legally protectable interest is one arguably within the zone of interests that the law under which the claim is brought seeks to protect. See *Henequen Land Conservancy, Inc. v. Village of Hartland*, 2004 WI App 144, ¶16, 275 Wis. 2d 533, 685 N.W.2d 573. Here, even if Nedvidek and Hundt had alleged or demonstrated a direct personal injury, they have not shown that their injury is one that Board of Regents Resolution 96.1 seeks to protect.²

² We held in abeyance, pending our decision, the respondents’ motion to strike portions of the non-party brief filed by Family Radio, Inc. We have not considered the specified portions of the non-party brief in deciding the appeal. We therefore deny the motion as unnecessary.

In an unrelated matter, the appellant has filed a document entitled, “Motion That Board of Regents Brent Smith Acted as a Proponent of UWL Chancellor Hastad’s Renaming of Veterans Memorial Stadium.” The document seeks a ruling concerning the conduct of Regent Brent Smith. The respondents oppose the motion because Smith is not a defendant in this action and the motion relies on items that are not part of the circuit court record. For the reasons explained by the respondents, we deny the motion.

On February 25, 2008, the appellants filed an additional document they entitled a “motion” but which is actually a supplemental brief containing additional arguments on the merits of their appeal. The respondent opposes the appellant’s argument concerning Robert’s Rules of Order because it was not made in the circuit court. We have not considered this document in deciding the appeal because it is not timely and not authorized by our briefing rules.

¶7 Because Nedvidek and Hundt have no standing to challenge the 2005 decision, all claims concerning the 2000 and 2001 decisions are moot. The present names attached to the UW-La Crosse facilities derive from the 2005 decision of the Board of Regents. Consequently, a judgment declaring the earlier decisions void serves no purpose in resolving the naming controversy. The stadium would continue to be called Roger Haring Stadium. *See State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. (issues are moot when their resolution would have no practical effect on the underlying controversy).

By the Court.—Judgment affirmed.

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

