

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 20, 2002

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. 01-2622

Cir. Ct. No. 01-CV-3

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**TERRY KINDERMAN, GV&W MOTORCYCLES, A
PARTNERSHIP CONSISTING OF BOB WEMMER AND RON
GUIFFRE, DONALD R. SCHRAVER D/B/A GORILLA'S
BAR, JANE A. BURMAN, SHIRLEY GEOFFROY D/B/A
LELA'S BEVERAGE, ANTHONY SANTUCCI, PATRICIA A.
BURG, CRAIG J. BURMAN AND MOSIER SPORTING
GOODS, INC.,**

PLAINTIFFS-RESPONDENTS,

V.

THE VILLAGE OF REDGRANITE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waushara County:
RICHARD O. WRIGHT, Judge. *Reversed and cause remanded with directions.*

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

¶1 PER CURIAM. The Village of Redgranite appeals an order denying its motion for summary judgment. A group of business owners sued the Village after the Village removed parking spaces from a downtown business district. We conclude that the Village is entitled to summary judgment, and therefore reverse the order of the circuit court and remand with instructions to grant summary judgment in favor of the Village.

¶2 The following facts are undisputed. On or about November 17, 1998, the Village adopted a resolution to initiate a traffic signal installation project in a downtown business district. Several business owners in the area objected to the plan because it would eliminate approximately twenty parking spaces. At an April 6, 1999, village meeting, a motion carried to postpone the traffic signal installation project until the parking issue could be resolved. However, by June 29, 1999, the stall markings had been eliminated, the curb had been painted yellow, and “no parking” signs had been erected. On March 6, 2000, the Village received claims for damages from nine downtown business owners indicating they had lost profits and that their property value had diminished due to the loss of the parking spaces. The Village denied their claims, notifying the plaintiffs of the denial by certified mail, return receipt requested. According to the return receipts, the latest any plaintiff received notice was March 29, 2000. Plaintiffs filed suit on October 4, 2000, alleging nuisance, inverse condemnation, improper eminent domain taking, and civil rights violations under the state and federal constitutions.

¶3 The Village moved for summary judgment, and the circuit court denied its motion. We granted the Village’s petition for leave to appeal.

¶4 Our review of the grant or denial of summary judgment is *de novo*, and we apply the same methodology as the circuit court. See ***Green Spring***

Farms v. Kersten, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). First, we examine the complaint to determine if it states a claim for relief. *Id.* at 317. In doing so, we take all facts as pleaded by the plaintiffs as true, along with any reasonable inferences that could be drawn from those facts. *Id.* “The complaint should be dismissed as legally insufficient only if it is quite clear that under no circumstances can plaintiffs recover.” *Id.*

¶5 We need not further set forth summary judgment methodology because we conclude that the plaintiffs did not state a claim upon which relief could be granted. We first explain our reasoning with respect to plaintiffs’ state law claims and then turn to their federal civil rights claim.

¶6 Plaintiffs’ state law claims are barred because plaintiffs did not file suit within the six months allowed under the notice of claim statute, WIS. STAT. § 893.80 (1999-2000).¹ Subsection (1g) of § 893.80 requires those asserting a claim against a municipality to bring an action on the claim within six months of receiving notice of disallowance of the claim. The plaintiffs do not dispute that they received the notice of disallowance of the claim in late March 2000. The plaintiffs filed suit on October 4, 2000. Because the plaintiffs did not file their suit within six months, their state law claims are barred under § 893.80(1g).

¶7 The plaintiffs argue that they complied with the six-month limit because the Village did not mail the notice of disallowance to the plaintiffs’ attorney until April 3, 2000. The earliest their attorney could have received the notice, the plaintiffs assert, was on April 4, 2000. That would make their

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

October 4, 2000, lawsuit timely. The statute says that “[n]otice of disallowance of the claim ... shall be served *on the claimant*.” WIS. STAT. § 893.80(1g) (emphasis added). The statute does not speak to service on counsel. Furthermore, the plaintiffs have cited no authority for the proposition that the six-month limit begins to run with service of the disallowance of notice of claim on counsel. *See Borsellino v. DNR*, 2000 WI App 27, ¶11, 232 Wis. 2d 430, 606 N.W.2d 255 (“We will not consider arguments unsupported by reference to legal authority.”). We measure the time limit from the date on which the last claimant was served: March 29, 2000.

¶8 While the plaintiffs’ state law claims are barred by the notice of claims statute, their federal civil rights claim is not. *Felder v. Casey*, 487 U.S. 131, 153 (1988). In their complaint, the plaintiffs allege that

they have been deprived of their rights, privileges and immunities granted by the Constitution and laws of the United States and the State of Wisconsin by an official act beyond the bounds of authority of the Village; by the Village abusing and misusing its authority; affecting property rights, rights to earn a living, and rights of egress and access within the Village. That these actions were further taken without due process of law.

¶9 As a threshold matter, we note that the plaintiffs repeatedly allege that the Village violated its own procedures when it proceeded with the parking space removal after passing a resolution to defer the project. However, nowhere do the plaintiffs show us which rules, regulations, or procedures the Village violated. We therefore do not consider this point. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not address issues inadequately briefed).

¶10 Regarding the plaintiffs’ due process claim, “[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” *Vorwald v. Sch. Dist. of River Falls*, 167 Wis. 2d 549, 552-53, 482 N.W.2d 93 (1992) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972)). The plaintiffs have no cause of action regarding lost property rights because they do not own the property on which the parking spaces were located. The Village has not taken their property or prevented them from running their businesses. The reduction in parking is less convenient for some customers, but that does not give the plaintiffs a viable claim that they are being deprived of a property interest.

¶11 Projects such as the one at issue here are everyday occurrences in growing municipalities, and the loss of parking is often a collateral effect of traffic growth. To allow any business owner affected by changes in parking regulations to proceed against the municipality for lost profits would “open the floodgates of litigation to all who live [or run businesses] on streets where traffic has been controlled subsequent to the original taking of the property for public purposes.” *Yegen v. City of Bismarck*, 291 N.W.2d 422, 427 (N.D. 1980) (holding that business owner suffered no compensable damage when city prohibited curbside on-street parking in front of her business); *see also Sussex Tool & Supply, Inc. v. Mainline Sewer & Water, Inc.*, 231 Wis. 2d 404, 605 N.W.2d 620 (Ct. App. 1999) (denying businesses’ negligence claim against municipal contractor for lost profits during road construction on public policy grounds).

¶12 Accordingly, we reverse the circuit court and remand with instructions to grant summary judgment in favor of the Village.

By the Court.—Order reversed and cause remanded with directions.

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

