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DISTRICT II

February 16, 2022

To:

Hon. Lloyd Carter
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County
Electronic Notice

Remzy D. Bitar
Electronic Notice

Joseph Cincotta
Electronic Notice

Sadie Ramona Zurfluh
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2021AP69-FT Greenwald Family Limited Partnership v. Village of Mukwonago
(L.C. #2020CV494)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Darwin Greenwald and Greenwald Family Limited Partnership (hereafter, Greenwald) appeal an order granting the Village of Mukwonago's motion to dismiss Greenwald's appeal from special assessments levied against Greenwald's property. Pursuant to a presubmission conference and this court's order of February 5, 2021, the parties submitted memorandum briefs. *See* WIS.

STAT. RULE 809.17(1) (2019-20).¹ Upon our review of those memoranda and the record, we summarily affirm the order.

The facts are undisputed. Greenwald filed a Complaint in the circuit court appealing special assessments levied by the Village Board. The Village's attorney admitted service of the Complaint. Greenwald subsequently provided notice of the appeal to the Village's attorney, but not to the Village clerk. The Village moved to dismiss on grounds that WIS. STAT. § 66.0703(12)(a) required Greenwald to serve its notice on the Village clerk, and that Greenwald's failure to do so within ninety days was fatal to its appeal. The circuit court agreed with the Village and dismissed Greenwald's action with prejudice. Greenwald appeals.

WISCONSIN STAT. § 66.0703(12)(a) provides:

A person having an interest in a parcel of land affected by a determination of the governing body, under sub. 8(c), (10) or (11), may, within 90 days after the date of the notice or of the publication of the final resolution under sub. (8)(d), appeal the determination to the circuit court of the county in which the property is located. The person appealing *shall serve a written notice of appeal upon the clerk of the city, town or village* and execute a bond to the city, town or village in the sum of \$150 with 2 sureties or a bonding company to be approved by the city, town or village clerk, conditioned for the faithful prosecution of the appeal and the payment of all costs that may be adjudged against that person.

(Emphasis added.) Greenwald acknowledges that the plain language of § 66.0703(12)(a) requires service upon the Village clerk, but argues that this conflicts with WIS. STAT. § 801.14(2), which requires service upon a represented party's attorney "unless service upon the party in person is ordered by the court."

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

This case involves the interpretation of a statute, which is a question of law; our review is de novo. See *Emjay Inv. Co. v. Village of Germantown*, 2011 WI 31, ¶24, 333 Wis. 2d 252, 797 N.W.2d 844. The plain text of WIS. STAT. § 66.0703(12) requires a party to accomplish service of a written notice of appeal upon the *clerk* within ninety days. It is undisputed that Greenwald did not do so. Greenwald’s failure to comply with the statute required dismissal of his Complaint. “[A]n appeal under WIS. STAT. § 66.0703(12) is the ‘sole remedy’ of a property owner aggrieved by a special assessment[,]” *Emjay*, 333 Wis. 2d 252, ¶¶31, 36, and our cases require strict compliance with the terms of § 66.0703(12)(a), see *id.*, ¶30 (citation omitted). Further, the Village clerk is not and never was a party to Greenwald’s action. As such, Greenwald’s reliance on WIS. STAT. § 801.14(2) is misplaced. Accordingly, the circuit court correctly dismissed the action.

Therefore,

IT IS ORDERED that the order of the circuit court is affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals