

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 6, 2011

A. John Voelker
Acting 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. 2011AP93
STATE OF WISCONSIN**

Cir. Ct. No. 2010CV1434

**IN COURT OF APPEALS
DISTRICT III**

TOWN OF BUCHANAN,

PLAINTIFF-RESPONDENT,

V.

VILLAGE OF KIMBERLY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. The Village of Kimberly appeals a judgment declaring that an intermunicipal agreement it entered into with the Town of Buchanan was not a “boundary agreement” for purposes of WIS. STAT. §§ 66.0217(14)(a)2. and 66.0301. The Village argues: (1) the circuit court

erroneously applied the 2007-08 version of § 66.0301, instead of the 2005-06 version; and (2) the intermunicipal agreement qualifies as a boundary agreement under the 2005-06 version of the statute. We conclude that, even under the 2005-06 statute, the intermunicipal agreement is not a boundary agreement. We therefore affirm.

BACKGROUND

¶2 In 2000, the Village and the Town negotiated an agreement that designated certain areas located within the Town as a Village growth area. The Town agreed not to oppose the Village's attempts to annex land within the Village growth area, and in return the Village agreed not to accept any petition for annexation of land outside the growth area. In 2006, the Village annexed property outside the Village growth area, known as the Emons Farm annexation. The Town believed the Emons Farm annexation breached the 2000 agreement and therefore filed a notice of claim against the Village.

¶3 To settle their dispute over the Emons Farm annexation, the Village and Town executed an "intermunicipal agreement" in March 2007. The agreement stated that its purpose was to "provide for the orderly development of the entire area encompassed by [the Village and the Town]." The Town agreed to withdraw its notice of claim, and in exchange the Village agreed to pay the Town \$25,000. The agreement also contained provisions related to current and future municipal boundaries:

1. Current Municipal Boundaries. Attached hereto, identified as Exhibit A, is a current map indicating the existing municipal boundaries of Village and Town. This map includes the property recently annexed to Village from Town, commonly referred to as the Emons Farm annexation.

2. Future Boundary Changes. It is agreed by the parties that Village shall not encourage nor entice property owners to annex property within Town. However, it is also acknowledged by the parties that Village cannot abrogate its statutory obligations, in the event that a unanimous petition for annexation is presented. Under such circumstances, it is agreed that Town shall not oppose nor challenge any such annexation based upon its size, shape or configuration.

The Village also agreed not to oppose any future incorporation petitions filed by the Town, and the parties agreed to “meet regularly to discuss ... matters of mutual municipal concern”

¶4 In 2009, the Village annexed 15.88 acres of property within the Town. The Town did not object to the annexation, but it claimed the Village was required to make five annual payments to the Town pursuant to WIS. STAT. § 66.0217(14)(a)1.,¹ which states:

Except as provided in subd. 2., no territory may be annexed by a city or village under this section unless the city or village agrees to pay annually to the town, for 5 years, an amount equal to the amount of property taxes that the town levied on the annexed territory, as shown by the tax roll under s. 70.65, in the year in which the annexation is final.

The Village contended it did not have to pay the Town because of the payment exception in WIS. STAT. § 66.0217(14)(a)2., which provides that “[n]o payments under subd. 1. must be made if the city or village, and the town, enter into a boundary agreement under s. 66.0225, 66.0301, or 66.0307.”² The Village argued

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted. WISCONSIN STAT. § 66.0217(14)(a)1. has not changed since 2005-06. *See* WIS. STAT. § 66.0217(14)(a)1. (2007-08); WIS. STAT. § 66.0217(14)(a)1. (2009-10).

² Again, WIS. STAT. § 66.0217(14)(a)2. has not changed since the 2005-06 version. *See* WIS. STAT. § 66.0217(14)(a)2. (2007-08); WIS. STAT. § 66.0217(14)(a)2. (2009-10).

that the intermunicipal agreement signed in March 2007 constituted a “boundary agreement” for purposes of § 66.0217(14)(a)2.

¶5 The Town sued the Village, seeking a declaratory judgment that the intermunicipal agreement did not qualify as “a boundary agreement under s. ... 66.0301[.]” *See* WIS. STAT. § 66.0217(14)(a)2. The Town then moved for summary judgment, relying on the 2007-08 version of § 66.0301.³ In response, the Village contended that the 2005-06 version of the statute applied because that version was in effect at the time the intermunicipal agreement was executed. The Village argued the intermunicipal agreement was a valid boundary agreement under the 2005-06 version of § 66.0301.

¶6 The circuit court granted summary judgment in favor of the Town, concluding as a matter of law that the intermunicipal agreement was not a boundary agreement. The court reasoned:

It is nonsensical and, therefore, illogical to conclude that a one-time annexation boundary determination and agreement entered into in response thereto would govern all future boundary decisions between two municipalities. And that’s what’s really being argued here that this document does; and it doesn’t, especially in light of the agreement being made in response to a specific litigation as it was in this case. There was specific litigation done here based on the failure to pay the taxes and the issue that arose there, and this is the agreement that was forthcoming to resolve that litigation. If an agreement made specific to resolve a particular dispute in small scale as opposed to a grand boundary scheme were allowed to bar all future use of [WIS. STAT. §] 66.0217(14)(a)[1.], it would render

³ In its summary judgment brief, the Town also argued that the intermunicipal agreement did not qualify as a boundary agreement under WIS. STAT. §§ 66.0225 or 66.0307. *See* WIS. STAT. § 66.0217(14)(a)2. In response, the Village apparently conceded that § 66.0225 and § 66.0307 were inapplicable.

meaningless the statute. And our statutory construction laws do not allow such a result.

Here the intermunicipal agreement does not establish any future boundaries and, as such, is only an agreement specific to the contested claim for the five years['] worth of taxes. That is all that this resolved. The language contained in that agreement regarding future annexations is not specific to any boundaries and is not a boundary agreement.

The court did not explicitly state whether it was applying the 2005-06 version of WIS. STAT. § 66.0301 or the 2007-08 version. The court subsequently entered a judgment declaring that the intermunicipal agreement was not a boundary agreement for purposes of the payment exception in WIS. STAT. § 66.0217(14)(a)2.

DISCUSSION

¶7 We review a grant of summary judgment independently, using the same methodology as the circuit court. *Mullen v. Walczak*, 2003 WI 75, ¶11, 262 Wis. 2d 708, 664 N.W.2d 76. Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* Here, the pertinent facts are undisputed, leaving only an issue of law for our consideration. Specifically, we must determine whether the intermunicipal agreement constitutes a boundary agreement under WIS. STAT. § 66.0301 for purposes of the payment exception in WIS. STAT. § 66.0217(14)(a)2. Construction of a statute and its application to undisputed facts are questions of law that we review independently. *Ansani v. Cascade Mountain, Inc.*, 223 Wis. 2d 39, 45, 588 N.W.2d 321 (1998). Construction of an unambiguous contract also presents a question of law subject to independent appellate review. *Jones v. Jenkins*, 88 Wis. 2d 712, 722, 277 N.W.2d 815 (1979).

¶8 The Town and Village disagree about which version of WIS. STAT. § 66.0301 applies in this case. The Village contends the 2005-06 version of § 66.0301 applies, which states in relevant part:

(2) In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities ... for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal ... parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. This section shall be interpreted liberally in favor of cooperative action between municipalities ... in this state.

¶9 The Town argues that the 2007-08 version of WIS. STAT. § 66.0301 applies. Subsection (2) of the 2007-08 version of § 66.0301 is identical to subsection (2) of the 2005-06 version. However, the 2007-08 version of the statute contains an additional subsection, subsection (6), which specifically addresses written agreements “determining all or a portion of the common boundary line between [two] municipalities.” *See* WIS. STAT. § 66.0301(6)(a) (2007-08). The statute states that such agreements may only include “the provisions authorized under this section [shared services agreements] and s. 66.0305 [revenue sharing agreements], and one or more of the following:”

1. That specified boundary lines apply on the effective date of the agreement.
2. That specified boundary line changes shall occur during the term of the agreement and the approximate dates by which the changes shall occur.
3. That specified boundary line changes may occur during the term of the agreement and the approximate dates by which the changes may occur.

4. That a required boundary line change under subd. 2. or an optional boundary line change under subd. 3. is subject to the occurrence of conditions set forth in the agreement.

5. That specified boundary lines may not be changed during the term of the agreement.

Id. The Town argues that, under the 2007-08 version of § 66.0301, “boundary agreements are agreements that establish specified future boundaries.” Because, as the Village concedes, the intermunicipal agreement does not establish any fixed future boundaries, the Town contends the intermunicipal agreement cannot qualify as a boundary agreement under the 2007-08 version of the statute.

¶10 We need not resolve the parties’ dispute about which version of WIS. STAT. § 66.0301 applies because, even assuming the 2005-06 version applies, the intermunicipal agreement does not qualify as “a boundary agreement under s. ... 66.0301[.]” *See* WIS. STAT. § 66.0217(14)(a)2. When we interpret a statute, we begin with the language of the statute and give that language its common meaning. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, and we interpret it reasonably to avoid absurd or unreasonable results. *Id.*, ¶46. If, employing these principles, we can discern the statute’s plain meaning, we apply that plain meaning and our analysis goes no further. *Id.*, ¶¶45-46.

¶11 WISCONSIN STAT. § 66.0217(14)(a)2. states that a village can avoid making annual payments to a town in the event of an annexation if the village and town “enter into a boundary agreement *under* s. ... 66.0301[.]” (Emphasis added.) The 2005-06 version of WIS. STAT. § 66.0301 addresses shared services agreements between municipalities. The statute, which is entitled “Intergovernmental cooperation,” provides that a municipality “may contract with other municipalities ... in this state, for the receipt or furnishing of services or the

joint exercise of any power or duty required or authorized by law.” *See* WIS. STAT. § 66.0301(2). Pursuant to § 66.0301’s plain language, an agreement only falls under § 66.0301 if it contains an arrangement between two municipalities to share services or jointly exercise power. Thus, an agreement that does not provide for shared services or a joint exercise of power simply does not fall under § 66.0301. The intermunicipal agreement between the Village and the Town does not contain any provision regarding shared services or a joint exercise of power. Accordingly, the intermunicipal agreement does not constitute an agreement—boundary or otherwise—“*under* s. ... 66.0301[.]” *See* § 66.0217(14)(a)2. (emphasis added).

¶12 The Village contends that the intermunicipal agreement necessarily qualifies as a boundary agreement under WIS. STAT. § 66.0301 because the agreement “complies with the requirements under § 66.0301” and “contemplates the areas and borders of the two ... municipalities[.]” However, the Village does not explain how the intermunicipal agreement can comply with the requirements of § 66.0301 when it does not contain any provisions regarding shared services or a joint exercise of power, which are clearly necessary for an agreement to fall under that statute. Because the intermunicipal agreement does not contain any such provisions, it does not qualify as a boundary agreement under § 66.0301.⁴ On appeal, the Village does not contend that the intermunicipal agreement qualifies as a boundary agreement under WIS. STAT. §§ 66.0225 or 66.0307. *See*

⁴ We do not determine what sort of provisions an agreement that clearly falls under WIS. STAT. § 66.0301—that is, an agreement that provides for shared municipal services or a joint exercise of power—must also contain to be considered a “boundary agreement under s. ... 66.0301” for purposes of the payment exception in WIS. STAT. § 66.0217(14)(a)2. For purposes of this appeal, it is sufficient for us to conclude that the intermunicipal agreement does not fall under § 66.0301.

WIS. STAT. § 66.0217(14)(a)2. Consequently, the payment exception in § 66.0217(14)(a)2. does not apply.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

