COURT OF APPEALS
DECISION
DATED AND RELEASED

October 3, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0734

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

IRVING G. WENZEL and MARJORIE E. WENZEL,

Plaintiffs-Respondents-Cross Appellants,

v.

WASHBURN COUNTY,

Defendant-Appellant-Cross Respondent,

JOHN SABBATH, AN INDEPENDENT CO-EXECUTOR OF THE ESTATE OF GAIL G. BONNESON, LEON SKUBINNA, AS INDEPENDENT CO-EXECUTOR OF THE ESTATE OF GAIL G. BONNESON and DAVID WIEST,

Defendants.

APPEAL and CROSS APPEAL from a judgment of the circuit court for Washburn County: WARREN E. WINTON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

MYSE, J. Washburn County appeals a judgment ordering it to pay the respondents' attorney fees and costs because the county corporation counsel failed to conduct a reasonable inquiry under § 802.05, STATS., before answering the respondents' complaint. The County contends that corporation counsel's actions did not constitute a violation of § 802.05 because his inquiry was reasonable and the answer was appropriate. On cross appeal, the respondents contend that the trial court erroneously exercised its discretion by disallowing fees and costs attributable to depositions of county employees. Because we conclude the trial court did not err when it concluded that corporation counsel failed to conduct a reasonable inquiry before answering the complaint or when it disallowed fees and costs associated with the depositions, we affirm the judgment.

Irving and Marjorie Wenzel own lot 25 of block 2, Belvidere Park section 20, township 38 North, range 10 West, which is a lot along the shore of Long Lake where they built their vacation home. The home was built on a portion of the adjacent lot (lot 24 of block 2 of Belvidere Park), which was owned by Gail Bonneson and subsequently by his estate. This encroachment was on 18.76 feet of lot 24 and had existed for a sufficient period of time to enable the Wenzels to claim title by adverse possession.

When the owner of lot 24 failed to pay real estate taxes, the County took a tax deed. Approximately two months after the County took the tax deed, the Wenzels showed the County a survey as proof of adverse possession and demanded the tax deed be amended to reflect their ownership. A month later, lot 24 was sold at the County sheriff's sale without amending the tax deed. The Wenzels subsequently filed a complaint against the County seeking to set aside the sheriff's sale of lot 24 and to set aside and declare the tax deed null and void because the County failed to give them proper notice under § 75.12, STATS.[1]

[1] Section 75.12, STATS., provides in part:

(1) No tax deed shall be issued on any ... land ... unless ... notice ... shall have been served upon ... one of the owners of record .... If such lot ... be

Paragraph 13 of the complaint alleged that the Wenzels occupied their dwelling on lot 24 during the six months immediately preceding the date of application for a tax deed and had actually occupied the home for thirty days prior to the date of the issuance and service of the notice of application for a tax deed. Paragraph 31 of the complaint alleged that the Wenzels had shown the County a survey of the property, which documented the plaintiffs' "occupancy in adverse possession of lot 24 of the first addition of Belvidere Park."

The County answered paragraph 13 of the complaint by stating that the County did not have adequate information upon which to either admit or deny the allegations. Further, the County denied paragraph 31 and affirmatively alleged that the survey was unrecorded and that the proper description of the property was lot 25 of block 2, Belvidere Park.

The trial court granted the Wenzels' motion for summary judgment, finding that the tax deed was void because the Wenzels were occupants of the lot and the County had not given them proper notice under § 75.12, STATS. The court subsequently awarded the Wenzels attorney fees and costs under § 802.05, STATS., because corporation counsel failed to conduct a reasonable inquiry to determine that the answer was well grounded in fact before answering the complaint and because the answer was not warranted by existing law nor a good faith argument for the extension, modification or reversal of existing law. The court ordered an assessment of costs 50% against corporation counsel and 50% against Washburn County.

Section 802.05(1)(a), STATS., provides:

> Every pleading, motion or other paper of a party represented by an attorney shall contain the name ... of the attorney .... The signature of an attorney ... constitutes a certificate that the attorney or party has read the

(..continued)

> improved by a dwelling house ... and ... such building has been actually occupied for the purpose specified for 30 days immediately prior to the date of service of the notice of application for tax deed ... then notice of application for tax deed shall be served upon the occupant ....

> pleading ... that to the best of the attorney's ... knowledge, information and belief, formed *after reasonable inquiry*, the pleading ... is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that the pleading ... is not used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ... *If the court determines that an attorney ... failed to read or make the determinations required under this subsection before signing any petition, motion or other paper, the court may, upon motion or upon its own initiative, impose an appropriate sanction on the person who signed the pleading ... or on a represented party, or on both. The sanction may include an order to pay to the other party the amount of reasonable expenses incurred by that party because of the filing of the pleading ... including reasonable attorney fees.* (Emphasis added.)

Section 802.05(1)(a), STATS., is composed of three prongs. ***Riley v. Isaacson***, 156 Wis.2d 249, 256, 456 N.W.2d 619, 621 (Ct. App. 1990). First, the attorney certifies that the paper was not interposed for any improper purpose. ***Id.*** Second, the attorney certifies that after reasonable inquiry the paper is well grounded in fact. ***Id.*** Third, the attorney certifies that after reasonable inquiry "the paper is warranted by existing law or a good faith argument for a change in it." ***Id.*** Sanctions must be imposed if any of these prongs are violated. ***Id.*** at 256, 456 N.W.2d at 621-22.

We review a determination of whether an attorney violated § 802.05(1)(a), STATS., under a deferential standard. ***Gardner v. Gardner***, 190 Wis.2d 217, 248, 527 N.W.2d 701, 712 (Ct. App. 1994). Determining how much investigation is necessary to constitute "reasonable inquiry" under § 802.05(1)(a) is a matter within the trial court's discretion. ***Riley***, 156 Wis.2d at 256, 456 N.W.2d at 622; *see also* ***Gardner***, 190 Wis.2d at 248, 527 N.W.2d at 712. We will affirm the trial court's discretionary decision as long as the court examined the relevant facts, applied a proper standard of law and reached a conclusion that a reasonable judge could have reached. ***Riley***, 156 Wis.2d at 256, 456 N.W.2d at 622. We are bound by the trial court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS.

The trial court concluded that corporation counsel, in answering paragraphs 13 and 31 of the complaint, did not make a reasonable inquiry to determine the answer was well grounded in fact before signing it. Corporation counsel contends that his inquiry was reasonable because he was advised that a survey was needed to determine occupancy and he ordered a survey approximately two weeks after the complaint was filed and it was not finished until three months later. However, the trial court found that corporation counsel should have been put on notice of the claimed occupancy, when the Wenzels represented to the County that they had occupied and adversely possessed a portion of lot 24 and provided corporation counsel with the survey over two months before he filed the answer and before the sheriff's sale. Accordingly, the trial court found that corporation counsel should have arranged for an inspection of the premises when he was put on notice, and if corporation counsel determined that an additional survey was needed to determine occupancy, he should have had the survey completed before signing the answer.

Corporation counsel further contends that he was not sure of the validity of the survey referenced in paragraph 31 of the complaint because he thought the rectangle indicating the home was drawn in by someone other than the surveyor. However, the trial court determined that he could have easily contacted the county surveyor who had conducted the Wenzels' survey, although not in his official capacity, to determine the validity of the survey.

After considering the relevant facts before it and applying the proper law, the trial court reasonably concluded that the County's answer was made without a reasonable inquiry to determine whether it was well grounded in fact. A reasonable person would expect counsel to inquire whether the Wenzels had occupied and adversely possessed the land when he was put on notice of the claim over two months before he filed the answer and before the sheriff's sale. Therefore, we conclude that the trial court did not abuse its discretion in determining that corporation counsel violated the second prong of § 802.05(1)(a), STATS., and that sanctions were appropriate.

Corporation counsel further contends that the answer was warranted by existing law because reading §§ 75.12 and 75.114, STATS., together indicate that unnoticed adverse possession claims survive the tax deed process. Because we conclude that the trial court did not erroneously exercise its discretion in determining that the second prong of § 802.05(1)(a), STATS., was

violated and that sanctions were appropriate, we need not address this issue. *See* ***Gross v. Hoffman***, 227 Wis 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).[2]

On cross appeal, the Wenzels contend that the trial court erred by not awarding them costs and fees associated with the depositions of county employees they claim were necessary to prove the § 802.05, STATS., violation. The trial court's award of attorney fees and costs will be upheld unless the court erroneously exercised its discretion. ***Michael A.P. v. Solsrud***, 178 Wis.2d 137, 153, 502 N.W.2d 918, 923 (Ct. App. 1993).

The trial court, after considering the evidence and reviewing the case file, concluded that the depositions were superfluous and therefore denied the fees and costs attributable to them. The trial court considered appropriate factors, and we see no error in its determination that the depositions were superfluous.

Because we conclude that the trial court did not erroneously exercise its discretion by finding that corporation counsel did not conduct a reasonable inquiry before answering the complaint or by disallowing fees and costs associated with the depositions of county employees, we affirm the trial court's judgment.

By the Court.—Judgment affirmed. No costs on appeal.

Not recommended for publication in the official reports.

[2] We do not address the issue of whether the Wenzels' appropriate remedy was to collaterally attack the tax deed or file a quiet title action. The court's determination was based on the failure to make a reasonable inquiry and not on the remedy requested by the Wenzels' complaint.