



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT II

July 15, 2026

To:

Hon. Steven M. Cain
Circuit Court Judge
Electronic Notice

Nicholas Steven Cerwin
Electronic Notice

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Rhonda K. Gorden
Electronic Notice

Samuel C. Hall Jr.
Electronic Notice

Nathan Bayer
Electronic Notice

Hanna R. Kolberg
Electronic Notice

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

2025AP1472

Frankard Lands, LLC v. Ozaukee County (L.C. #2024CV295)

Before Gundrum, Grogan, and Lazar, 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).

Frankard Lands, LLC (Frankard) appeals from a judgment of the circuit court denying its motion for declaratory judgment, granting summary judgment to Ozaukee County, and concluding the County's easement on Frankard's property, obtained for the purpose of managing water flows through the use of a "dry basin," does not oblige the County to maintain that basin.

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21 (2023-24).¹ We affirm.

In 2010, the Wisconsin Department of Transportation (DOT), the City of Mequon, and the County initiated a joint project to reconstruct a section of Port Washington Road. As part of a stormwater management plan, the County acquired easements to accommodate runoff during periods of excessive rain. One of these easements was obtained along the south side of Frankard's property for the purpose of accommodating a dry basin, a storm management system that temporarily stores and conveys water during periods of heavy rain. While the County constructed the basin area with a gentle slope that allowed for Frankard to mow the area as it would the rest of its property, Frankard eventually ceased mowing the area and had a pond installed within it.

Then, in 2024, Frankard filed this action against the County, alleging the easement area "ha[d] become overgrown with vegetation and ha[d] flooded" and "the County ... refused to acknowledge its responsibilit[y]" to maintain the area. Frankard attached to the complaint the "Award of Damages," a document describing the easement on its property. The relevant language states as follows:

Also, Permanent Limited Easements for the *right* to construct and maintain drainage facilities, including for such purpose the *right* to operate the necessary equipment thereon and the right of ingress and egress as long as required for such public purpose, including the *right* to preserve, protect, remove or plant thereon any vegetation that the highway authorities may deem necessary or desirable in and to the following tract of land in the City of

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Mequon, Ozaukee County, State of Wisconsin, described as follows ...

(Emphasis added.) Frankard sought a declaratory judgment that this language *obligates* the County to maintain the easement area, including cutting the overgrown vegetation. It also sought payment of its legal fees and costs incurred with this action.

The parties filed cross-motions for summary judgment. The circuit court denied Frankard’s motion, granted summary judgment to the County, and declined to order the County to cut the vegetation on Frankard’s property or pay its legal fees. The court explained that the “Award of Damages” “gives the [C]ounty certain rights to do certain things but does not obligate it to do anything,” adding “there’s [no] positive obligation for the [C]ounty to do anything under the plain language of the easement.” The court further declined to award Frankard attorney fees and costs, seeing “no scenario” under which such an award would be appropriate. Frankard appeals.

“The grant or denial of a declaratory judgment is addressed to the circuit court’s discretion. However, when the exercise of such discretion turns upon a question of law, we review the question independently of the circuit court’s determination.” **Bohm v. Leiber**, 2020 WI App 52, ¶9, 393 Wis. 2d 757, 948 N.W.2d 370 (citation omitted). Appellate review of a court’s decision on summary judgment is also de novo, and “[s]ummary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” **Id.**, ¶8.

“An easement ‘is a permanent interest in another’s land, with a right to enjoy it fully and without obstruction.’” **Konneker v. Romano**, 2010 WI 65, ¶25, 326 Wis. 2d 268, 785 N.W.2d 432 (citation omitted). “The proper construction of an easement is a question of law that we

review de novo.” ***Garza v. American Transmission Co. LLC***, 2017 WI 35, ¶19, 374 Wis. 2d 555, 893 N.W.2d 1 (citation omitted).

Frankard argues the circuit court erred in determining the easement did not impose an obligation on the County to maintain the dry basin area on its property. Specifically, as to the language granting the County “Permanent Limited Easements for the right to construct and maintain drainage facilities,” Frankard contends the words “right to” relate only to the word “construct” and do not also relate to the word “maintain.” Not surprisingly, Frankard makes no attempt to parse through the actual language to show how its reading of the easement might work grammatically. That is no doubt because it does not work.

The sentence only works grammatically if “right to” relates to both “construct” and “maintain.” The sentence would make grammatical sense if “and maintain” was removed and the sentence read just as “Permanent Limited Easements for the right to construct ... drainage facilities” or if “construct and” was removed and read just as “Permanent Limited Easements for the right to ... maintain drainage facilities.” However, the sentence would not work grammatically if “right to” is read as not relating to “maintain”, i.e., if “the right to construct and” was removed. Despite Frankard’s implicit suggestion, “Permanent Limited Easements for ... maintain drainage facilities” does not work. Moreover, there is, quite plainly, zero language suggesting an *obligation* of the County to maintain the easement area. Thus, the easement language, just as the circuit court stated, “[G]ives the [C]ounty certain rights to do certain things but does not obligate it to do anything ... there’s [no] positive obligation for the [C]ounty to do anything under the plain language of the easement.”

Citing WIS. STAT. § 806.04(8) and a 2009 indemnification agreement between itself and the County, Frankard also asserts it is entitled to attorney's fees and costs it has incurred with this action *that it filed against the County*. We are unpersuaded.

While Frankard cites WIS. STAT. § 806.04(8) as “one statutory mechanism for recovery of attorney's fees,” it fails to develop an argument as to how the circuit court may have erred in declining to award fees or costs in light of this statute. As a result, we discuss no further its position as it relates to § 806.04(8). See ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992) (“We may decline to review issues inadequately briefed.”).

As to the impact of the indemnification agreement, the relevant language states that the County “indemnifies[] and will defend and hold harmless indemnitee [Frankard] from and against any and all damages, losses, liabilities, claims, actions, suits, demands, judgments, costs, expenses and attorney fees which arise from the [easement] on the Property, *except for any act or acts of indemnitee.*” (Emphasis added.) Frankard takes the position that it is entitled to fees and costs even though it brought this action and even if it is unsuccessful in the action, as it is.

There is no reasonable reading of this indemnification language that would make the County responsible for Frankard's costs and fees, as any losses Frankard has incurred are those that arise from its own act of filing this action against the County. Frankard has not had a claim filed against it by a third party nor has it otherwise claimed any loss here that was not of its own making. The easement itself did not cause any loss to Frankard as it was plainly written to afford the County only the right to maintain the easement area, with no obligation to do so. It was Frankard's unsupportable reading of the easement, desiring to create an obligation on the County

that simply is not there, and its desire to press that issue via litigation from which Frankard's litigation losses arise.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals