WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
JANUARY 2021

NOTICE: Due to the COVID-19 pandemic, oral arguments during January will be conducted via video/audio conferencing. The Supreme Court Hearing Room will not be open to the public. The media and public may view the proceedings live on WisconsinEye or on www.wicourts.gov.

The cases listed below originated in the following counties:

Dane
Kenosha
Lincoln
Marinette
Milwaukee
Walworth

MONDAY, JANUARY 11, 2021

9:45 a.m.	19AP411-CR	State v. Decarlos K. Chambers
10:45 a.m.	18AP2383	United America, LLC v. Wis. Department of Transportation

WEDNESDAY, JANUARY 13, 2021

9:45 a.m.	19AP130	Southport Commons, LLC v. Wis. Department of Transportation

TUESDAY, JANUARY 19, 2021

9:45 a.m.	18AP2318-CR	State v. Alan M. Johnson
10:45 a.m.	18AP1782	Francis G. Graef v. Continental Indemnity Company

THURSDAY, JANUARY 21, 2021

9:45 a.m.	19AP1767-CR	State v. Mitchell L. Christen
10:45 a.m.	18AP669	Ronald L. Collison v. City of Milwaukee Board of Review *(Synopsis revised 1/20/21)*

Note: The Supreme Court calendar may change between the time you receive these synopses and when a case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. The synopses provided are not complete analyses of the issues.

WISCONSIN SUPREME COURT
January 11, 2021
9:45 a.m.

2019AP411-CR State v. Decarlos K. Chambers

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), that affirmed Decarlos Chambers' conviction, entered after a jury trial, of second-degree reckless homicide with a dangerous weapon, as a party to a crime, and unlawful possession of a firearm, and affirmed the denial of Chambers' postconviction motion for a new trial. Judge Jeffrey A. Wagner presided over the Milwaukee County Circuit Court proceedings.

Decarlos K. Chambers was charged with first-degree reckless homicide and unlawful possession of a firearm. Chambers maintained his innocence throughout the prosecution and rejected several plea offers. The case went to jury trial, and the jury convicted Chambers of the lesser-included offense of second-degree reckless homicide, along with unlawful possession of a firearm.

Chambers filed a post-conviction motion for a new trial, arguing that his trial counsel conceded his guilt during closing argument without his permission, in violation of his Sixth Amendment right "to insist that counsel refrain from admitting [his] guilt." In support of his argument, Chambers cites a recent United States Supreme Court decision, McCoy v. Louisiana, 138 S. Ct. 1500, 1508-09 (2018), which held that the decision whether to assert innocence as a defense must be made by the defendant, not counsel.

The U.S. Supreme Court case, McCoy, was a triple homicide case. Over McCoy's repeated objection, his attorney told the jury McCoy was the killer, but urged mercy in view of McCoy's mental and emotional issues. The U.S. Supreme Court held that a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that admitting guilt offers the defendant the best chance to avoid the death penalty. The Court ruled that it is the defendant's prerogative, not counsel's, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.

In Chambers' case, the post-conviction court and the Court of Appeals both rejected Chambers' argument that his counsel conceded Chambers' guilt without his permission. The postconviction court found, and the Court of Appeals affirmed, that trial counsel's closing argument did not rise to the level of admitting guilt, and therefore McCoy did not apply. The Court of Appeals also affirmed Chambers' conviction for second-degree reckless homicide with a dangerous weapon, as a party to a crime, and unlawful possession of a firearm.

Chambers petitioned the Supreme Court for review. Citing McCoy, Chambers continues to argue that a lawyer's concession of guilt without a defendant's permission is a structural error that entitles a defendant to a new jury trial. Chambers maintains that his trial counsel's statements at closing argument were inconsistent with Chambers' posture of absolute innocence, and falls within the realm of structural error identified in McCoy. He presents the issue for the court's review as follows:

Whether the Court of Appeals had erred in affirming the trial court's Decision and Order in denying Defendant's Motion for Postconviction Relief.

WISCONSIN SUPREME COURT
January 11, 2021
10:45 a.m.

2018AP2383 United America, LLC v. Wis. Dept. of Transportation

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), that reversed a Lincoln County Circuit Court decision, Judge Jay R. Tlusty, presiding, that entered a money judgment in favor of United America, LLC.

This case arises from a dispute about the interpretation of Wis. Stat. § 32.18, which provides that when a governmental entity exercises its police power to change the grade of a street or highway, and it does so without also taking any land, an owner of land abutting the street or highway project may make "a claim for any damages to said lands occasioned by such change of grade." The parties, property owner, United America, and the Wisconsin Department of Transportation ("DOT"), disagree as to whether § 32.18 allows a qualifying landowner to recover damages for the reduction in a property's commercial value resulting from a change-of-grade project or whether only structural (i.e., physical) damage to lands is compensable under the statute.

The facts of the case are as follows. In 2004, United America purchased a parcel of land in Lincoln County ("the Property"). The Property directly abuts U.S. Highway 51 on its eastern boundary and Northstar Road on its northern boundary. The Property has no means of directly accessing Highway 51; it has direct vehicular access only to Northstar Road. Until 2013, United America operated a gas station and convenience store on the Property. In May 2013, the DOT began a highway safety improvement project ("the Project") at the intersection of Highway 51 and Northstar Road. Before the Project, Highway 51 and Northstar Road met at an at-grade intersection. This intersection allowed vehicular traffic to directly transition from one roadway to the other.

After the Project was completed in October 2013, Northstar Road crossed Highway 51 at a "grade-separated crossing" (i.e., via an overpass). As a result, the direct flow of traffic from Highway 51 to Northstar Road ceased. United America lost approximately 90% of its business.

United America made an administrative claim for damages under Wis. Stat. § 32.18. Wisconsin Stat. § 32.18 provides, in relevant part:

> Where a street or highway improvement project undertaken by the department of transportation . . . causes a change of the grade of such street or highway . . . but does not require a taking of any abutting lands, the owner of such lands at the date of such change of grade may file with the department of transportation . . . a claim for any damages to said lands occasioned by such change of grade.

The DOT denied United America's claim. United America then brought a civil claim in the circuit court for damages under the same statute. Prior to trial, United America submitted a report from its expert appraiser. The appraiser concluded that "as a result of the construction of the bypass and of the resultant loss of ready accessibility from [Highway 51]," the Property's value had been reduced by $528,500. The DOT moved to exclude the appraiser's report. It argued that "damages based on a theory [of] lost profits should not be recoverable in a claim for

damages under Wis. Stat. § 32.18." The circuit court denied this motion, and the matter proceeded to a bench trial.

The parties submitted briefs after trial. The DOT again argued that United America was not entitled to any damages under Wis. Stat. § 32.18. The circuit court rejected this argument, concluding that "[b]y using the word 'any' in defining damages, the enactment of § 32.18 appears to allow for comprehensive damages and does not restrict the type of damages that can be claimed by the select type of property owner to which § 32.18 is applicable." The circuit court entered judgment in favor of United America in the amount of $528,500, plus costs.

The DOT appealed. The DOT argued that, under the plain language of Wis. Stat. § 32.18, only physical or structural damage to land itself is compensable. United America argued that "'any damages' means 'any damages'" and that "[t]he word 'Any' does not lend itself to being read and applied as [only] 'any structural damages.'" The Court of Appeals agreed with the DOT's argument and reversed the circuit court's decision. The Court of Appeals concluded that United America's proposed interpretation would "completely ignore our legislature's use of the words 'to said lands' in Wis. Stat. § 32.18." In order to give meaning to each word the legislature chose to use in the statute, the Court of Appeals concluded that the only damages compensable under the statute are damages to land. The Court of Appeals ruled that the "legislature explicitly chose to make 'any damages to said *lands*' compensable under the statute; it did not choose to make 'any damages to said *landowner'* compensable."

United America maintains that the Court of Appeals' decision is incorrect. United America presents this issue for the Supreme Court to review:

> The issue presented is the interpretation and scope of the statutory language in Wis. Stats. § 32.18, "any damages to said lands."

WISCONSIN SUPREME COURT
January 13, 2021
9:45 a.m.

2019AP130 Southport Commons, LLC v. Wisconsin Department of Transportation

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), that affirmed a Kenosha County Circuit Court order, Judge David M. Bastianelli, presiding, that granted the Wisconsin Department of Transportation's motion for judgment on the pleadings.

The statute at issue in this case is Wis. Stat. § 88.87(2)(c), which states, in relevant part:

> If . . . [DOT] constructs and maintains a highway . . . not in accordance with par. (a), any property owner damaged by the highway . . . may, ***within 3 years after the alleged damage occurred***, file a claim with the appropriate governmental agency.

The facts of the case are as follows. Southport Commons, LLC ("Southport") owns about 45 acres of undeveloped land near Interstate 94 in Kenosha County. During approximately 2008 through 2009, the Wisconsin Department of Transportation (DOT) relocated an I-94 frontage road so that it bisects Southport's property.

In July 2016, Southport received a survey and wetland delineation of its property, which, when compared to a similar 2007 survey and delineation, allegedly identified a significant increase in the size and amount of wetlands on the property as a result of DOT's construction project. Southport claims that before it received this 2016 survey and wetland delineation, it had no knowledge of the wetland increase and the alleged resulting damage to its property.

In March 2017, Southport filed a notice of claim against DOT. DOT did not respond to the notice of claim, and therefore it was disallowed by inaction. Southport then filed an inverse condemnation lawsuit.

DOT moved for judgment on the pleadings on the basis that Southport filed its notice of claim more than three years after the damage occurred, and thus its action was barred by Wis. Stat. § 88.87(2)(c). Southport argued that the requirement that a claim be filed within three years after the alleged damage "occurred" really means, under Pruim v. Town of Ashford, 168 Wis. 2d 114, 483 N.W.2d 242 (Ct. App. 1992), the three-year limitation period did not begin to run until Southport discovered the damage, which was when it received the 2016 survey and delineation. The circuit court agreed with the DOT and granted DOT's motion, concluding that: (1) Pruim did not control; (2) the damage to Southport occurred at the latest in 2009; (3) under § 88.87(2)(c) Southport had three years to file its claim; and (4) Southport did not file its claim until March 2017.

Southport appealed. On appeal, Southport continued its argument that the claim must be filed within three years after the alleged damage is "discovered." The Court of Appeals rejected Southport's argument that damage "occurs" when someone discovers it. The Court of Appeals observed that when the legislature intends to have a statutory limitation period begin to run when damage is discovered, as opposed to when it occurs, the legislature is perfectly capable of explicitly stating so. In Wis. Stat. § 88.87(2), the legislature chose the term "occurred" and not "discovered." This phrasing, the Court of Appeals concluded, signifies the legislature chose to

not make the trigger for the statutory limitation period dependent upon someone's discovery of the damage.

Southport petitioned the Supreme Court for review, arguing that the lower courts' decisions converted Wis. Stat. § 88.87(2)(c) into a statute of repose; i.e., a statute that sets an outer time limit unaffected by what the plaintiff knows. This is an unreasonable outcome, Southport says, because certain types of damage——wetlands creation, for example——take years to develop. Southport presents the following issue for Supreme Court review:

> Should [the Supreme] Court grant review of the Court of Appeals' decision because it misconstrued Wis. Stat. § 88.87(2)(c)?

WISCONSIN SUPREME COURT
January 19, 2021
9:45 a.m.

2018AP2318 State v. Alan M. Johnson

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), that reversed Alan M. Johnson's conviction of first-degree reckless homicide with a dangerous weapon and remanded with directions for a new trial. Judge Kristine E. Drettwan presided over the Walworth County Circuit Court proceedings.

In 2016, Alan M. Johnson was charged with first-degree intentional homicide and armed burglary. It is undisputed that Johnson shot and killed his brother-in-law, K.M. K.M. was married to Johnson's sister, Kim. Johnson testified at trial that, going back to his youth, he was repeatedly physically abused by K.M. and on one occasion he was sexually abused. Johnson said he also witnessed K.M. physically abuse his youngest sister, Nicole, as well as Kim and K.M.'s son, Tyler. Johnson said that years before K.M.'s death, Johnson found child pornography on K.M.'s computer. He said he later reported it to police but was told the evidence was "stale" and that police would need recent evidence of K.M.'s possession of child pornography in order to do anything.

Johnson testified at trial that on Oct. 24, 2016, he decided to go to K.M.'s home to see if there was still child pornography on the computer so he could notify police. He obtained a gun and ammunition from his father's safe because he wanted to feel safe. Johnson arrived at K.M.'s house around 11:45 p.m. Johnson knew K.M. did not lock his home, so he entered through a back door and worked quietly in the dark in K.M.'s computer room for approximately two and a half hours. He claimed he found child pornography on K.M.'s computer.

Johnson heard a noise, closed down the computer, grabbed his gun, and went towards the door. K.M. opened the door, naked from the waist up, and unarmed. Johnson said, K. M. "looked right at me. He knew who I was." Johnson testified that K.M. knew that "I had the pornography, that I – that he was – he was going to prison, that I had him." K.M. closed the door to the computer room. Johnson said "the door flew open and [K.M.] attacked me." Johnson testified that after K.M. attacked or lunged at him that he could not remember what happened. Johnson also said he didn't remember leaving the residence and panicked when he was driving home and noticed blood on his clothes. K.M. was shot five times: three times in the front, once in the back, and once in the head. K.M. died from his injuries.

After receipt of Johnson's testimony, defense counsel asked, outside the presence of the jury, for a ruling that Johnson had met his burden of proof for self-defense. The circuit court said he had and allowed Johnson to admit McMorris[1] evidence.

[1] "When the accused maintains self-defense, he should be permitted to show he knew of specific prior instances of violence on the part of the victim. It enlightens the jury on the state of his mind at the time of the affray, and thereby assists them in deciding whether he acted as a reasonably prudent person would under similar beliefs and circumstances." McMorris v. State, 58 Wis. 2d 144, 151, 205 N.W.2d 559 (1973).

The defense asked the circuit court to instruct the jury on first- and second-degree intentional and reckless homicide and perfect self-defense, as well as homicide by negligent handling of a dangerous weapon. The parties agreed that it was appropriate to instruct the jury on second-degree intentional homicide. The circuit court also agreed to instruct on first-degree reckless homicide, but denied Johnson's requests to instruct on second-degree reckless homicide and homicide by negligent use of a firearm.

As to the self-defense instructions, although the circuit court had found Johnson presented sufficient evidence to assert self-defense, at the close of the evidence the court refused to instruct the jury on perfect self-defense. The court said the castle doctrine was not directly applicable since it would apply if K.M. had used lethal force on Johnson, but it was relevant for consideration of "self-defense" and "provocation." The circuit court found that Johnson did not have a reasonable belief that K.M. was unlawfully interfering with Johnson as a trespasser in his home, so it could not be said that Johnson was preventing an unlawful interference.

The jury was instructed on burglary, first-degree intentional homicide, second-degree intentional homicide, first-degree reckless homicide, and imperfect self-defense. The jury found Johnson guilty of first-degree reckless homicide while armed and not guilty of armed burglary. He was sentenced to twenty-five years of initial confinement and ten years of extended supervision.

Johnson appealed. On appeal, Johnson argued that the circuit court erred in refusing to instruct the jury on perfect self-defense. The Court of Appeals agreed and reversed and remanded for a new trial on the first-degree reckless homicide conviction, with instructions for the submission of second-degree reckless homicide and perfect self-defense.

The Court of Appeals noted that in order to raise the issue of perfect self-defense, a defendant must present sufficient evidence to show: (1) a reasonable belief in the existence of an unlawful interference; and (2) a reasonable belief that the amount of force the person intentionally used was necessary to prevent or terminate the interference. The Court of Appeals also noted that the right to assert the privilege of perfect self-defense is a statutory right under Wis. Stat. § 939.48(1), which provides that a person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person "reasonably believes" to be an "unlawful interference" with his or her person by the other person.

The Court of Appeals considered the application of the castle doctrine. The doctrine, which is codified in Wis. Stat. § 939.48(1m), is intended to provide a homeowner a privilege to use lethal force in defending against an unlawful and forcible entry into the homeowner's dwelling, automobile, or place of business. The castle doctrine provides that a court or jury may not consider if a homeowner had "an opportunity to flee or retreat" before using force, and whether a trespasser can ever have a reasonable belief that a homeowner is engaging in unlawful interference with the trespasser. The circuit court rejected Johnson's theory that the castle doctrine did not apply because K.M. was engaged in illegal activity, i.e. possessing child pornography. The Court of Appeals queried whether a trespasser can ever have a reasonable belief that a homeowner is engaging in unlawful interference with the trespasser. It concluded the answer to that question is "yes."

The Court of Appeals also found that the circuit court erred in refusing to instruct on second-degree reckless homicide. It reversed and remanded Johnson's conviction because the circuit court erred in denying Johnson's request to instruct the jury on perfect self-defense and second-degree reckless homicide and failed to allow into evidence that child pornography was found on K.M.'s computer.

The State petitioned the Supreme Court for review, arguing that this case presents a matter of first impression – the interaction between the "castle doctrine" and perfect self-defense to a charge of first-degree intentional homicide. The State presents the following issues for review:

1. Was Johnson entitled to a jury instruction for perfect self-defense based on his testimony concerning his motivation for trespassing with a loaded firearm in K.M.'s house, despite the fact that K.M. was unarmed, shot five times, and Johnson could not recall anything about the shooting other than that K.M. "lunged" at him?
2. Was Johnson entitled to submission of the lesser-included offense of second-degree reckless homicide under the above circumstances?
3. Did the circuit court erroneously exercise its discretion in excluding evidence of alleged child pornography[2] Johnson found on K.M.'s computer before he killed K.M.?

[2] The State disputed that there actually was pornography on K.M.'s computer.

WISCONSIN SUPREME COURT
January 19, 2021
10:45 a.m.

2018AP1782 Francis G. Graef v. Continental Indemnity Company

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), that reversed a Marinette County Circuit Court order, Judge James A. Morrison and Judge David G. Miron, presiding, that denied Continental Indemnity Company's summary judgment motion against Francis Graef's personal injury lawsuit.

This case concerns the exclusive remedy provision of Wisconsin's Worker's Compensation Act. The Worker's Compensation Act represents the legislative compromise between the competing interests of employers, employees, and the general public in resolving compensation disputes regarding work-related physical or mental harms arising in our industrial society. The terms of this compromise are that employees are statutorily guaranteed compensation for their work-related injuries in exchange for their relinquishment of common-law tort remedies. Part of the Act's compromise is the exclusive remedy provision, which states, in relevant part, that where the conditions for liability under the Act exist, "*the right to the recovery of compensation under this chapter shall be the exclusive remedy against* the employer, any other employee of the same employer and *the worker's compensation insurance carrier*." Wis. Stat. § 102.03(2) (emphasis added).

In November 2012, Francis G. Graef was gored by a bull while working in the livestock yard of his employer, Equity Livestock. As a result of this workplace accident, Graef suffered pain and depression. Continental Indemnity Company was Equity Livestock's worker's compensation insurance carrier. Continental authorized and approved multiple payments for Graef to receive duloxetine, an antidepressant.

On May 12, 2015, Graef picked up his duloxetine prescription at a local pharmacy. Continental initially rejected the pharmacy's request for payment, but ultimately approved payment after receiving a call from the pharmacy inquiring about payment. Then, on June 23, 2015, Graef asked the pharmacy to refill his duloxetine prescription. As had happened before, Continental refused to approve payment. Graef left the pharmacy without the duloxetine prescription because he could not afford to purchase the medication on his own.

On August 9, 2015, Graef shot himself. He survived.

Graef filed a tort action in Marinette County Circuit Court, alleging that Continental was negligent in failing to continue to authorize and pay for his duloxetine prescription. He alleged his suicide attempt would not have occurred had Continental approved and paid for the prescription, because the duloxetine had been effective in treating the depression caused by the workplace injury. He therefore sought to recover compensatory damages associated with his suicide attempt, including "past and future medical expenses, personal injuries, pain, suffering, [and] disability."

Continental moved for summary judgment, seeking dismissal of Graef's claim without prejudice. Continental argued that Graef had brought his claim in the wrong forum, asserting that Wisconsin's worker's compensation law provided the exclusive remedy for Graef's claim, and therefore he should bring a worker's compensation claim, not a tort claim.

Graef filed a motion to amend his complaint to add allegations against Applied Underwriters, an entity, Graef alleged, that assisted Continental Indemnity in processing Graef's claim. Applied Underwriters filed a motion to dismiss the amended complaint. The circuit court subsequently entered a written order, which identified Continental and Applied Underwriters as parties and denied Continental's summary judgment motion, but did not address Applied Underwriters' motion to dismiss.

Continental and Applied Underwriters petitioned the Court of Appeals for interlocutory review. The Court of Appeals granted the petition.

On appeal, Continental argued that there are no conditions under which Graef can recover on his negligence claim because the Worker's Compensation Act's exclusive remedy provision bars Graef from recovering damages in tort that he could recover under the Act.

The Court of Appeals agreed with Continental, holding that the Worker's Compensation Act provides the exclusive remedy for his claim.

Graef petitioned the Supreme Court for review. Graef defends his right to seek the tort action because, he says, there is a possibility that a worker's compensation claim would not succeed. Graef presents the following issue for review:

> Does the exclusive remedy statute (Wis. Stat. § 102.03(2)) bar a claim for severe injury resulting from an attempted suicide against a worker's compensation insurer which wrongfully withheld depression-curing medication when the insurer denies all liability for compensating that injury under the worker's compensation act?

WISCONSIN SUPREME COURT
January 21, 2021
9:45 a.m.

2019AP1767-CR State v. Mitchell L. Christen

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), that affirmed a judgment of conviction entered against Mitchell L. Christen, on charges that included operating or going armed with a firearm while under the influence of an intoxicant. The Dane County Circuit Court case was presided over by Judge Nicholas McNamara.

After consuming four beers and a shot of liquor, Mitchell Christen got into a dispute with his roommates and their friends, after which he picked up his handgun, went into his room, and told someone trying to enter his room to get out of the room. Not long thereafter, Christen decided to go to the kitchen for a snack. He tucked his handgun into his waistband, went into the kitchen, and reached for a snack, at which point someone hit him in the chest and grabbed his handgun. Christen went back into his room, retrieved his secondary weapon, and called 911.

The State charged Christen with operating or going armed with a firearm while under the influence of an intoxicant, in violation of Wis. Stat. § 941.20(1)(b). This section is located in a statute entitled "Endangering safety by use of dangerous weapon" and criminalizes at the misdemeanor level the following conduct, without regard to the location of the conduct: "[o]perat[ing] or go[ing] armed with a firearm while . . . under the influence of an intoxicant."

Christen moved the circuit court to dismiss this charge on the premise that Wis. Stat. § 941.20(1)(b) violates his right to bear arms when it is applied to him, or any other citizen, while he is present within his own home. The circuit court disagreed, reasoning that Christen's constitutional argument cannot succeed in light of the decision of the U.S. Supreme Court in District of Columbia v. Heller, 554 U.S. 570, 574-75 (2008), which recognizes "the right of *law-abiding, responsible* citizens to use arms in defense of hearth and home." (Emphasis added.)

On appeal, Christen asserted that he was presenting an "as applied" constitutional challenge to Wis. Stat. § 941.20(1)(b). The Court of Appeals noted that in an as-applied challenge, the merits of the challenge are assessed by considering the facts of the particular case, not hypothetical facts in other situations. Under such a challenge, the challenger must show that their constitutional rights were actually violated.

The Court of Appeals held that this standard was fatal to Christen's appeal because Christen relied on hypothetical facts, did not address the facts of his own case, and failed to explain why, based on the facts of his case, Wis. Stat. § 941.20(1)(b) violated his Second Amendment rights.

Christen petitioned the Supreme Court for review on the following issue:

> Does the consumption of a legal intoxicant void the Second Amendment's guarantee of the right to carry a firearm for the purpose of self-defense?

WISCONSIN SUPREME COURT
January 21, 2021
10:45 a.m.

2018AP669 Ronald L. Collison v. City of Milwaukee Board of Review

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), that affirmed a Milwaukee County Circuit Court order, Judge Glenn H. Yamahiro, presiding, affirming a 2016 property tax assessment on land owned by Ronald L. Collison.

In 2016, property owned by Ronald L. Collison in the City of Milwaukee was assessed at $31,800. He filed an objection with the City of Milwaukee Board of Review, claiming that the market value of the property was zero because environmental laws made him liable for remediation costs on the property. His objection was virtually identical to one he had unsuccessfully pursued in 2012.

Collison had purchased the property in 1979, before the passage of environmental laws making owners of contaminated properties liable for remediation costs. The City of Milwaukee subsequently developed a "do not acquire" list including properties that the City will not acquire due to knowledge of contamination, and his property is on the list. In 2012, two real estate brokers testified that they would not list the property, which includes a two-story commercial building, as well as an asphalt parking lot for approximately 15 cars, due to the contamination and due to the inclusion of the property on the "do not acquire" list. A potential buyer testified that he was interested in purchasing Collison's property, but ultimately did not do so due to the contamination.

The 2016 assessment was not based on any recent sale of the property, because there had been no sale since Collison's purchase in 1979. Nor was the 2016 assessment based on comparable sales, since the assessor was unable to identify any. Instead, the assessor determined the best way to determine the 2016 assessment was based on the income approach, using the value of rent obtained from the parking lot. The Board voted to sustain the $31,800 assessment.

Collison sought certiorari review. The circuit court affirmed.

Collison appealed, continuing to argue that the value of his property is zero. The Court of Appeals noted that its scope of review is identical to that of the circuit court and it conducts its review of the Board's decision independent of the circuit court's conclusions. Finding that the Board was within its jurisdiction and acted according to law, and that the Board's judgment was reasonable and not arbitrary or oppressive, the Court of Appeals affirmed.

Collison petitioned the Supreme Court for review. Collison argues that "because the board of review is quasi-judicial, it does not offer the owner of contaminated property a forum whereby he can rebut the legality of the assessor's valuation."

The petition raises these issues:

1. Whether the policy used by the city of Milwaukee in valuing contaminated property, "City of Milwaukee Environmental Contamination Standards (CMECS)", conforms to statute.

2. Whether the assessor for the city of Milwaukee considered the impairment of the properties market value due to the presence of contamination as required by statute § 70.32(1m).
3. Whether the assessment in the instant action conforms to Wisconsin statutes.