

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 31, 1997

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. 96-1147

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

WILLIAM MUNZ AND DIANE MUNZ,

PLAINTIFFS-RESPONDENTS,

V.

PLEASANT SPRINGS SANITARY DISTRICT,

DEFENDANT-APPELLANT.

JAMES CARRANO AND VIRGINIA CARRANO,

PLAINTIFFS-RESPONDENTS,

V.

PLEASANT SPRINGS SANITARY DISTRICT,

DEFENDANT-APPELLANT.

HENRY KOSHOLLEK AND LOUISE KOSHOLLEK,

PLAINTIFFS-RESPONDENTS,

V.

PLEASANT SPRINGS SANITARY DISTRICT,
DEFENDANT-APPELLANT.

JAMES SHOLTS AND TERESA SHOLTS,
PLAINTIFFS-RESPONDENTS,

V.

PLEASANT SPRINGS SANITARY DISTRICT,
DEFENDANT-APPELLANT.

WILLIAM MCCAIN, AND VERA MCCAIN,
PLAINTIFFS-RESPONDENTS,

V.

PLEASANT SPRINGS SANITARY DISTRICT,
DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
MARK A. FRANKEL, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Pleasant Springs Sanitary District appeals an order dismissing its attempted appeal of five condemnation commission awards. The District concedes that it did not timely serve notices of appeal on the property owners, but it argues that the owners waived the defense of lack of personal

jurisdiction by appearing in the action and participating in various proceedings. We disagree and affirm the dismissal order.

The District filed the five condemnation appeals on November 15, 1995. Counsel for the property owners appeared at scheduling conferences in four of the cases in early January 1996. The trial court consolidated the five appeals at a scheduling conference held on January 17, 1996. On January 19, 1996, the property owners demanded a jury trial and paid jury fees. The owners were not served with the notices of appeal, however, until January 26, 1996. That same day, they moved to dismiss the actions for untimely service.¹ The trial court granted the motion.

The District describes the issue on appeal as:

[W]hether [the property owners'] actions in appearing in four separate cases, jointly requesting the nonconsolidating courts not to schedule cases for trial until the consolidation motion could be heard, joining appellant's motion for consolidation, agreeing to a trial date and discovery deadlines and requesting and paying for a six person jury constituted a waiver of objections to personal jurisdiction.

We independently review this question as a matter of law. *Dietrich v. Elliott*, 190 Wis.2d 816, 824, 528 N.W.2d 17, 20 (Ct. App. 1995).

We conclude that the owners did not waive the untimely service defense. Section 802.06(8)(a), STATS., provides that this defense is waived only if

¹ Section 801.02(1), STATS., provides in relevant part:

(1) A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 60 days after filing.

it is omitted from a consolidation of defenses motion made under § 802.06(7), or if the defense is neither made by motion nor included in a responsive pleading. Here, the owners did not file a § 802.06(7) motion, and they were not required to file responsive pleadings to the notices of appeal. The time for raising the jurisdictional defense by motion under § 802.06(2)(b), extended until trial, without regard to other participation in the proceedings.

We have recognized a waiver of personal jurisdiction where an unserved party has appeared and requested affirmative relief. *Artis-Wergin v. Artis-Wergin*, 151 Wis.2d 445, 453, 444 N.W.2d 750, 753 (Ct. App. 1989). However, stipulating to scheduling and consolidation matters, and requesting a jury are routine procedural steps that are not comparable to requesting affirmative relief, such as the stay of proceedings sought in *Artis-Wergin*. The owners' actions in this case did not constitute a waiver of their jurisdictional defense.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

