COURT OF APPEALS
DECISION
DATED AND FILED

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Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-1058

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

ARMIN NANKIN, TRUSTEE OF THE GERTRUDE H. WEISS REVOCABLE TRUST,

PLAINTIFF-APPELLANT,

V.

VILLAGE OF SHOREWOOD,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: DIANE S. SYKES, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Armin Nankin, trustee of the Gertrude H. Weiss Revocable Trust, appeals from a judgment of the circuit court denying his request

that WIS. STAT. § 74.37(6) (1997-98)[1] be declared unconstitutional. Nankin claims the circuit court erred when it upheld the statute. He argues that the statute violates: (1) the equal protection clause of both the Wisconsin and the United States Constitutions; (2) Article IV, § 31(6) of the Wisconsin Constitution; and (3) Article IV, § 18 of the Wisconsin Constitution. Because the challenged statute does not violate equal protection, Article IV, § 31(6) or § 18, we affirm.

I. BACKGROUND

¶2 Nankin is the trustee of a trust, which owns a parcel of real property in the Village of Shorewood. In 1998, the property was reassessed at $2,202,300. Nankin challenged the assessment before the Shorewood Board of Review, which sustained the assessment. Instead of pursuing a *certiorari* review in circuit court, Nankin filed a declaratory judgment action seeking a ruling that WIS. STAT. § 74.37(6) is unconstitutional.

¶3 WISCONSIN STAT. § 74.37 provides in pertinent part:

> **Claim on excessive assessment.…**
>
> **(2)** CLAIM. (a) A claim for an excessive assessment may be filed against the taxation district, or the county that has a county assessor system, which collected the tax.
>
> ….
>
> **(3)** ACTION ON CLAIM. (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.
>
> ….
>
> (d) If the taxation district or county disallows the claim, the claimant may commence an action in circuit court to

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

> recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by registered or certified mail that the claim is disallowed.
>
> **(4)** CONDITIONS. (a) No claim or action for an excessive assessment may be brought under this section unless the procedures for objecting to assessments under s. 70.47 … have been complied with.…
>
> ….
>
> **(6)** EXCEPTION. This section does not apply in counties with a population of 500,000 or more.

This statute creates an alternative method of judicial review from the traditional *certiorari* review contained in WIS. STAT. § 70.47(13). Section 74.37 provides a taxpayer, who is unhappy with the Board of Review's decision on a property tax assessment, the opportunity for a *de novo* circuit court review. Subsection (6) of the statute, however, excepts taxpayers who reside in counties with a population of 500,000 or more.

¶4 Nankin claims this exception violates the equal protection clause, and Article IV, §§ 31 and 18 of the Wisconsin Constitution. The trial court concluded that Nankin failed to prove beyond a reasonable doubt that WIS. STAT. § 74.37(6) was unconstitutional. It also pointed to a recent opinion from this court, which held that § 74.37(6) does not violate the equal protection clause. *See* ***S.C. Johnson & Son, Inc. v. Town of Caledonia***, 206 Wis. 2d 292, 307-08, 557 N.W.2d 412 (Ct. App. 1996). In addition, the trial court found a rational relationship between the classification created by the "500,000 or more" language and a legitimate government purpose:

> It is perfectly reasonable for the legislature to conclude that complete de novo review of municipal board of appeals decisions on tax assessments would be unworkable in populous counties, so that such counties (although at present, only Milwaukee meets the "500,000 or more" threshold) should be exempt from this type of judicial

> review. Certiorari review of municipal board of review decisions remains available anywhere in the state and, while obviously far narrower than de novo review, provides a meaningful opportunity for judicial correction of municipal tax assessment errors.

The trial court also rejected Nankin's argument that the statute violates Article IV, § 31(6)'s prohibition against enacting "any special or private laws" for the "assessment or collection of taxes." The trial court reasoned that § 74.37 does not implicate § 31(6) because it does not establish a new form or type of taxation, or set up a method or system for assessment and collection of taxes. Rather, it establishes an alternative method of judicial review for municipal tax assessments.

¶5 Finally, the trial court also rejected Nankin's claim that the statute violates Article IV, § 18's proscription that "[n]o private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title." The trial court reasoned that:

> [The statute] in its current form [was enacted] in 1987 as part of a comprehensive overhaul of Chapter 74 relative to property tax law.... The legislative council committee notes indicate that it was drafted by a special study committee which was directed to "(a) organize related provisions in a coherent pattern; (b) remove archaic and obsolete language; (c) resolve statutory ambiguities; and (d) make any revisions necessary to recognize the contemporary needs of local units of government and of the taxpayers." The fact that the law contains an exemption for populous counties does not make it a "private or local bill" within the meaning of Article IV § 18.

(Citations omitted.) The trial court denied Nankin's motion for summary judgment requesting that WIS. STAT. § 74.37(6) be declared unconstitutional. Judgment was entered for the Village of Shorewood. Nankin now appeals.

II. DISCUSSION

¶6 Nankin makes three constitutional challenges to WIS. STAT. § 74.37(6). We reject each in turn.

A. Equal Protection.

¶7 Nankin's first challenge to the statute is that it violates the equal protection clause. He contends that it is unfair to provide taxpayers everywhere in Wisconsin—except Milwaukee County—the opportunity for a *de novo* review of a local assessment board's decision, and limit Milwaukee County residents to a *certiorari* review.

¶8 The constitutionality of a statute presents a question of law which this court considers independently. *See* ***State v. McManus***, 152 Wis. 2d 113, 129, 447 N.W.2d 654 (1989). "Legislative enactments are presumed constitutional, and this court has stated it 'will sustain a statute against attack if there is any reasonable basis for the exercise of legislative power.'" ***Id.*** (citation omitted). The party bringing the challenge must show the statute to be unconstitutional beyond a reasonable doubt. *See* ***Mulder v. Acme-Cleveland Corp.***, 95 Wis. 2d 173, 187, 290 N.W.2d 276 (1980).

¶9 The test to be applied in analyzing an equal protection challenge has been stated often: unless the challenged statute affects a "fundamental right" or creates a classification based on a "suspect criterion," the standard used in reviewing the constitutionality of the statutory classification is the "rational basis" test. *See* ***Treiber v. Knoll***, 135 Wis. 2d 58, 70, 398 N.W.2d 756 (1987).

¶10 This court has previously concluded that there is a rational basis for the exception located in WIS. STAT. § 74.37(6). In ***S.C. Johnson***, we concluded

that the exception does not violate the equal protection clause. *See* ***id.*** at 307-08. Nankin criticizes the ***S.C. Johnson*** holding, arguing that the equal protection argument was raised by an amicus brief, not by the appealing party and, therefore, the ***S.C. Johnson*** discussion on equal protection should not be controlling here. We disagree with Nankin's characterization. This court embraced the equal protection challenge precisely so that the issue would be resolved for the benefit of future cases. *See* ***id.*** at 305. ***S.C. Johnson*** is controlling and disposes of Nankin's equal protection challenge.[2]

B. Article IV, § 31(6), Wisconsin Constitution.

¶11 Nankin also challenges WIS. STAT. § 74.37(6) under Article IV, § 31 of the Wisconsin Constitution. This section prohibits "[a]ny special or private laws … [f]or assessment or collection of taxes." WIS. CONST. Art. IV, § 31(6). Nankin argues that the trial court erred in summarily concluding that § 74.37(6) does not involve the assessment or collection of taxes. Citing ***Pedro v. Grootemaat***, 174 Wis. 412, 183 N.W. 153 (1921), he argues that Article IV, § 31(6) was intended to "embrace all the proceedings for raising money by the exercise of the power of taxation, from the inception of the proceedings to its conclusion." ***Id.*** at 420.

[2] Nankin contends that ***S.C. Johnson***'s equal protection analysis was contrary to our supreme court's holding in ***Milwaukee Brewers Baseball Club v. DHSS***, 130 Wis. 2d 79, 387 N.W.2d 254 (1986). We disagree. ***Brewers*** addressed the differences between a contested case and an informational hearing before the Department of Revenue. *See* ***id.*** at 95-96. The instant case involves alternate forms of judicial review in the circuit court after exhausting the administrative review process.

¶12 We cannot conclude that WIS. STAT. § 74.37(6) violates Article IV, § 31(6). In order to determine whether legislation constitutes a private or general law, we apply five criteria:

> First, the classification employed by the legislature must be based on substantial distinctions which make one class really different from another.
>
> Second, the classification adopted must be germane to the purpose of the law.
>
> Third, the classification must not be based on existing circumstances only. Instead, the classification must be subject to being open, such that other cities could join the class.
>
> Fourth, when a law applies to a class, it must apply equally to all members of the class.
>
> ….
>
> [Fifth,] the characteristics of each class should be so far different from those of the other classes so as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation.

Libertarian Party v. State, 199 Wis. 2d 790, 803, 546 N.W.2d 424 (1996) (citation omitted). If all of these criteria are satisfied, the law is general in nature and, therefore, proper. *See* ***id.*** In ***Libertarian Party***, our supreme court held that the "500,000 or more" limitation within a statute does not mean that the subject matter of the statute is not general. *See* ***id.*** at 804. We reach the same conclusion here.

¶13 Nankin only challenges the first and second criteria. The first factor addresses whether there is a substantial distinction between the classes. The distinction here is that many more people live in a county of "500,000 or more," than in less populated counties. Population has frequently been upheld as a relevant ground upon which to create legislative distinctions. *See* ***id.*** Accordingly, the first factor is satisfied.

¶14 The second factor involves whether the classification is germane to the purpose of the law. We conclude that it is. One reasonable purpose of the classification is to limit the strain *de novo* reviews would create in more populous counties. Largely populated counties create an increase in the level of judicial resources that must be provided. The greater population creates the potential for a larger number of assessment challenges and a greater strain on the judicial resources if a *de novo* review was permitted. Therefore, the exclusion of the more populous counties is germane to that purpose.

C. Article IV, § 18, Wisconsin Constitution.

¶15 Nankin also challenges the statute under Article IV, § 18, which provides: "No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title." We reject his challenge.

¶16 The same test applied to the Article IV, § 31 challenge that it utilized for an Article IV, § 18 challenge. We have already concluded that the test is satisfied. As noted above, WIS. STAT. § 74.37 was not a private or local bill. It was a statewide measure with a carve-out for densely populated areas. *See* ***City of Oak Creek v. DNR***, 185 Wis. 2d 424, 439, 518 N.W.2d 276 (Ct. App. 1994). It was general legislation for the entire state, with an exception for counties with populations of 500,000 or more. Further, the statute was specifically concerned with the statewide interest of judicial review of property tax assessments.

¶17 Based on the foregoing, we conclude that Nankin failed to prove beyond a reasonable doubt that WIS. STAT. § 74.37(6) is unconstitutional. Because of this conclusion, it is unnecessary for us to address Nankin's claim that subsection (6) should be severed from the remainder of the statute.

By the Court.—Judgment affirmed.

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