COURT OF APPEALS
DECISION
DATED AND FILED

June 13, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-2478

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

VILLAGE OF CAMERON,

PLAINTIFF-APPELLANT,

V.

CITY OF BARRON,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Barron County: FREDERICK A. HENDERSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 HOOVER, P.J. The Village of Cameron appeals a summary judgment dismissing its action seeking a declaration that it had the right to acquire certain sewage capacity at a set price from the City of Barron. The circuit court determined that Cameron had failed to comply with the requirements of the notice

of claim statute, WIS. STAT. § 893.80.[1] Cameron contends that summary judgment should not have been granted because it substantially complied with the statutory requirements necessary to bring an action against Barron. In particular, it claims that it presented a claim to Barron on several instances and that Barron disallowed the claim before Cameron initiated this action. We reject Cameron's arguments. It filed suit four days after first presenting a claim that substantially complied with § 893.80. Because written disallowance of a claim is a prerequisite to commencing a circuit court action and Barron had not disallowed the claim before Cameron filed suit, we affirm the judgment.

BACKGROUND

¶2 The relevant facts are not in dispute. Cameron and Barron jointly built a sewage treatment facility that was governed by the Joint Sewage Treatment Commission. Under an agreement, both municipalities and Wisconsin Dairies Cooperative were allocated certain amounts of sewage treatment capacity.[2] In the fall of 1997, Cameron learned that the co-op intended to close its Barron operations. Cameron desired to purchase some of the co-op's capacity because Cameron had exceeded its allocated capacity for several months.

¶3 In late December 1997, the co-op ceased operations. Barron purchased all of the co-op's capacity rights for $110,000 in an agreement between Barron and the co-op dated December 23, 1997. Before and after the sale, Barron and Cameron exchanged a series of letters concerning the co-op’s capacity, among

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

[2] The co-op had a plant in Barron. Although Foremost Farms took over operation of the plant in 1995 we shall refer to the plant operator as the co-op.

other issues. The correspondence reflected Cameron's position that it had a right to acquire up to one-half of the co-op's allotted sewerage capacity. Barron denied Cameron's alleged entitlement, but was willing to sell Cameron some capacity.

¶4 On May 15, 1998, Cameron submitted to Barron a document entitled "Notice of Claim" advising Barron that "Cameron is entitled to acquire one-half of [the co-op's] capacity by payment to the City of Barron ... of $55,000.00." Shortly thereafter, Cameron president Tom Hall and Barron mayor Bard Kittleson had a conversation during which Kittleson "did not agree" to sell Cameron one-half of the co-op's capacity. Cameron then filed its complaint on May 19. Barron disallowed the claim by letter on June 11.

¶5 Barron moved for summary judgment because Cameron had not complied with WIS. STAT. § 893.80(1)(b). The circuit court agreed and granted summary judgment dismissing Cameron's lawsuit. It concluded that Cameron did not present a claim until May 1998 and filed suit before the claim was disallowed. The court determined that Cameron's earlier writings, individually or cumulatively, did not constitute a notice of claim because they were not the "functional equivalent of an itemized statement of relief sought." Cameron appeals the circuit court's decision. Additional facts will be set forth in our analysis.

DISCUSSION

¶6 We review a motion for summary judgment using the same methodology as the trial court. *See* WIS. STAT. RULE 802.08(2); ***M & I First Nat'l Bank v. Episcopal Homes Mgmt.***, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology is well known, and we will not repeat it here except to observe that summary judgment is appropriate when there is no genuine

issue of material fact and the moving party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08(2); ***M & I First Nat'l Bank***, 195 Wis. 2d at 496-97. As the material facts are not contested, only issues of law remain to be determined.

1. *Compliance with WIS. STAT. § 893.80(1)(b) presentation of claim requirements*

¶7 Cameron contends that several of its writings, independently or read together, substantially met WIS. STAT. § 893.80(1)(b)'s requirements.[3] It claims that it repeatedly informed Barron of the relief Cameron sought and provided Barron with the information it needed to determine whether it should settle or litigate the claim. Barron concedes that Cameron's May 15 notice of claim presented a claim under § 893.80(1)(b). It asserts, however, that none of the earlier communications either individually or collectively fulfilled the statutory conditions.[4]

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[3] Cameron directs us to Barron and Cameron officials' depositions and affidavits that it contends demonstrate that Cameron had made a claim and Barron disallowed it. We disagree with Cameron's focus. Whether a city official understands a communication to make claim is not dispositive. The issue is whether Cameron presented a claim that substantially complied with the statute.

Actual knowledge on Barron's part would satisfy the notice of circumstances requirement contained in WIS. STAT. § 893.80(1)(a). Subsection (1)(a) provides in part:

> Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the [municipality].

Subsection (1)(b) contains no such provision.

[4] Barron suggests that Cameron's writings should have borne "hallmarks or markings" to identify them as a claim under the statute. The statute does not require such markings. We observe, however, that the use of such markings could assist a municipality identify when a claim is actually being presented and may obviate the need for costly litigation on an issue tangential to the parties' dispute.

¶8 To present a claim under WIS. STAT. § 893.80(1)(b), a writing must: (1) identify the claimant's address; (2) contain an itemized statement of the relief sought; and (3) be submitted to the city clerk.[5] The statute "applies to all causes of action, not just those in tort and not just those for money damages."[6] ***DNR v. City of Waukesha***, 184 Wis. 2d 178, 191, 515 N.W.2d 888 (1994). Only substantial compliance with subsec. (1)(b) is required. *See* ***id.*** at 198. In ***City of Waukesha***, the supreme court announced:

> Two basic principles guide this court's determination of whether a notice of claim is sufficient under sec. 893.80(1)(b), Stats. First, the written claim must be definite enough to fulfill the purpose of the claim statute - to provide the municipality with the information necessary to decide whether to settle the claim. The municipality must be furnished with sufficient information so that it can budget accordingly for either a settlement or litigation. Second, notices of claim should be construed so as to preserve bona fide claims. In furtherance of this policy, only substantial, and not strict, compliance with notice statutes is required.

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[5] WISCONSIN STAT. § 893.80(1)(b) provides in relevant part:

> [N]o action may be brought or maintained against any [municipality] unless:
>
> (b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the [municipality] and the claim is disallowed.

[6] In ***DNR v. City of Waukesha***, 184 Wis.2d 178, 515 N.W.2d 888 (1994), the court did not address actions under 42 U.S.C. § 1983. We note that the Supreme Court has held that WIS. STAT. § 893.80's notice of claim provisions do not apply to such actions. *See* ***Felder v. Casey***, 487 U.S. 131, 138 (1988). Other isolated exceptions exist under state law. *See, e.g.,* ***State ex rel. Auchinleck v. Town of LaGrange***, 200 Wis. 2d 585, 547 N.W.2d 587 (1996) (open records request), and ***Gamroth v. Village of Jackson***, 215 Wis. 2d 251, 571 N.W.2d 917 (Ct. App. 1997) (WIS. STAT. § 66.60 assessment appeals).

Id. (citation omitted). With these principles in mind, we examine whether Cameron's writings presented a claim.

¶9 The parties do not dispute that Cameron's writings satisfy the first requirement that a notice of claim contain the claimant's address. Cameron's communications contain either its address or the address of its attorney. "The attorney's address is considered the equivalent of the claimant's address for the purpose of the notice of claim statute." ***Id.***

¶10 The first writing Cameron directs us to is its attorney's December 9, 1997, letter to Barron's clerk. In relevant part, the letter states:

> While the Village is entitled to acquire up to one-half of the excess sewage treatment capacity … the Village would like to cooperate with the City of Barron with respect to this issue. At the last two Joint Sewer Commission Meetings, request has been made that the City of Barron consider its needs and interests with respect to the sewage treatment capacity abandoned by the Wisconsin Dairy Cooperative, but to date the City of Barron has not taken a position. Accordingly, the Village of Cameron is hereby requesting that this matter be placed on the agenda for discussion and action at the December Joint Sewer Commission Meeting.
>
> In addition, in light of the abandonment of sewage treatment capacity by the Wisconsin Dairy Cooperative, the Village of Cameron would like to address the issue of 1996 and 1997 allocation of operating costs, as well as the position of the City of Barron on the allocation of operating costs for 1998. Please place this matter on the agenda for the upcoming meeting as well.

This writing does not substantially comply with the requirement that the claim be submitted to the city clerk. Although the letter was addressed "Tony Slagstad, City Clerk/Treasurer, City of Barron," Slagstad is also the secretary of the commission and was responsible for preparing its agenda. The only relief

explicitly sought was that two items be placed on the commission's meeting agenda. As such, it appears that the letter was addressed to Slagstad in his capacity as the secretary of the commission, not as the clerk of Barron.

¶11 We also cannot conclude that this letter contains an itemized statement of the relief sought from Barron. Again, the only explicit request was to place items on the commission agenda. The letter does not provide sufficient or meaningful information to Barron to enable it to even determine that Cameron presented a claim, much less whether to settle or litigate that claim.

¶12 Moreover, even if we assume that the letter can be read to be directed to Barron and to seek to purchase the co-op's capacity rights, Cameron failed to inform Barron of the amount of capacity it desired. A request for up to one-half of the co-op's capacity is equivocal. It states only a maximum amount that Cameron might seek from Barron and is therefore insufficient to comply with the statute. *See* ***Patterman v. City of Whitewater***, 32 Wis. 2d 350, 358, 145 N.W.2d 705 (1966) (A demand for damages not to exceed $25,000 does not present a claim.).

¶13 Similarly, Cameron did not notify Barron of the price it was willing to pay.[7] Our supreme court has "consistently held that a notice of claim must state a specific dollar amount." ***City of Waukesha***, 184 Wis. 2d at 199. This letter did not substantially comply with the requirements of the statute.

[7] At the time this letter was sent, Barron did not even own the co-op's capacity. Cameron's letter does not inform Barron that it desired to be involved in negotiations to purchase the co-op's capacity or that it would contribute to the purchase price.

¶14 Cameron next directs us to its December 29, 1997, letter to Barron's attorney. Cameron reiterated its position that it was entitled to a share of the capacity abandoned by the co-op and stated that "Cameron anxiously awaits the prompt receipt of the proposal [for the sale of the co-op capacity] from the City of Barron." Barron responded that the City was working on a proposal to sell capacity to Cameron. Barron also asserted its belief that Cameron was not entitled to any of the capacity, but asked to be informed of the basis of Cameron's position. Barron also suggested that Cameron could submit its own proposal to Barron to purchase capacity.

¶15 This letter cannot be read to present a claim under WIS. STAT. § 893.80. The only relief Cameron requested of Barron was that Barron promptly submit a proposal to sell the co-op's capacity. The letter informs of neither the amount of capacity that Cameron sought nor the price it was willing to pay. It merely states that Cameron is entitled to certain capacity and was awaiting Barron's proposal. Barron's response is instructive: While acknowledging that it was working on a proposal, Barron suggested that Cameron could make its own. It was clear to Barron, as it is to us, that Cameron's letter did not present an itemization of the relief sought that would enable Barron to determine whether to settle or litigate the claim.

¶16 Cameron's next writing is entitled "Notice and Proposal" (notice). The writing was not addressed to anyone, but notified the reader of Cameron's position that it was entitled to one-half of the co-op's capacity rights and was willing to pay $55,000 for those rights. The notice was presented to the commission at its January meeting. Barron's mayor and clerk were in attendance as members of the commission. There was a motion to approve the notice, but it was ruled out of order because it was not on the agenda.

¶17 Cameron asserts that the notice provided Barron with an itemized statement of the relief it sought. We disagree and conclude that the document is immaterial to our inquiry because it was not directed to Barron. It was presented to members of the commission and was the basis of a motion before the commission. That some members of the commission are also Barron officials is irrelevant. While serving on the commission, they were acting in the capacity of sewerage commissioner, not as city officials.

¶18 Moreover, Barron informed Cameron by letter that its notice was directed to the wrong body; that it should have been directed to Barron instead of the commission. Barron indicated that capacity issues were appropriately resolved by informal negotiations. Despite this letter, Cameron failed to issue the notice and proposal to Barron, nor did it inform Barron that it should consider the notice and proposal as being directed to it. It was simply never directed to Barron. Given these circumstances, we cannot say that this document presented a claim to Barron.

¶19 Cameron's next letter of February 2, 1998, threatened legal action against Barron if necessary "to protect its rights." Cameron did not specifically identify what these rights were. Later in the letter, Cameron spoke of its interest in having Barron's attorney withdraw from the case and its interests that Barron not “obtain a windfall [for the co-op capacity] and/or seek[] to impose an unfair and unreasonable burden on the Village … for operating costs ….”

¶20 Cameron claims that because this letter threatened litigation, it presented a claim to Barron. We are unpersuaded. This writing suffers from the same deficiencies as Cameron's other communications with Barron. The references to the relief Cameron sought are, at best, vague. Cameron did not state

what relief it sought other than that Barron "act fairly and reasonably." Although the letter reasserts a right to one-half of the co-op's capacity, it does not identify the amount of capacity actually sought or the price Cameron would pay. Further, it does not refer to any other writing that provided this information. Barron was provided insufficient information to determine what Cameron's claim was, much less whether to settle it.

¶21 Thus, individually, none of these writings presented a claim to Barron that satisfied WIS. STAT. § 893.80(1)(b), nor do they cumulatively satisfy the statute's requirements. If the relevant writings are merged, they do not contain an itemized statement of the relief sought. Cameron did not provide Barron with sufficient information to determine the amount of capacity that Cameron specifically sought, or the price it would pay for the capacity. We cannot say that Barron was in a position to settle or disallow the claim because Cameron had not made a specific claim.

¶22 Cameron's "Notice of Claim," dated May 15, 1998, stands in marked contrast to its earlier writings. The title of the document, while not dispositive, indicates that Cameron was making a claim against Barron. The notice specifically demands that Barron sell Cameron one-half of the co-op's capacity for $55,000. The notice was clearly directed to Barron and did not intermix the claim with other issues. There is no dispute that the notice of claim satisfied the WIS. STAT. § 893.80(1)(b) claim presentation requirements. It was sent to Barron's clerk and contained the claimant's address and an itemized statement of the relief sought.

¶23 We decide that Cameron did not present a claim to Barron until it submitted its notice of claim to Barron on May 15. Because Cameron failed to

comply with the requirements of WIS. STAT. § 893.80(1)(b), there was no claim before Barron to deny before May 15. Thus, Barron's correspondence before that date could not disallow Cameron's claim.

2. *Disallowance of the claim*

Cameron claims that Barron orally disallowed its claim in a conversation between Cameron president Tom Hall and Barron mayor Bard Kittleson.[8] Cameron contends that Barron's previous actions and statements, combined with this statement, disallowed the claim before suit was filed. We hold that Barron did not disallow Cameron's claim by Kittleson's oral statement because an affirmative disallowance must be in writing.

¶24 A claimant must wait until a municipality disallows a claim before an action can be commenced in circuit court. *See* WIS. STAT. § 893.80(1)(b). "Failure of the [municipality] to disallow a claim within 120 days after presentation of the written notice of the claim is a disallowance." WIS. STAT. § 893.80(1g). A municipality may also disallow a claim by affirmatively rejecting it. *See* ***id.*** "The statute specifically provides that actual disallowance must be in writing."[9] ***Schwetz v. Employers Ins.***, 126 Wis. 2d 32, 35, 374 N.W.2d 241 (Ct. App. 1985), *overruled in part on other grounds by* ***Colby v. Columbia County***,

[8] The oral conversation consisted of Kittleson informing Hall that he "did not agree" to sell one-half of the co-op's capacity to Cameron. Kittleson also said he "could never understand why [Cameron was] entitled to half of [the capacity] because they've never been [at] 20 percent …. So I didn't know where they come up with half." Hall then informed Kittleson that Cameron would file suit. Kittleson expressed surprise that Cameron was going to initiate litigation because he thought they were going to sit down and discuss the issue and they had not yet done so.

[9] WISCONSIN STAT. § 893.80(1g) provides in pertinent part:

> Notice of disallowance of the claim submitted under sub. (1) shall be *served on the claimant by registered or certified mail* and the receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service. … No action on a claim under this section against any [municipality], may be brought after 6 months from the date of service of the notice of disallowance, and the *notice of disallowance shall contain a statement to that effect.* (Emphasis added.)

202 Wis. 2d 342, 363 n.11, 550 N.W.2d 124 (1996)). Comments made by officials are not sufficient to disallow a claim. *See* ***id.***

¶25 Barron did not disallow the claim in writing before Cameron filed suit on May 19. The only communication between Barron and Cameron after the notice of claim was presented and before suit was filed was the conversation between Kittleson and Hall. Because Kittleson's statement was oral, it was insufficient to disallow Cameron's claim.

¶26 Nevertheless, relying on ***State v. Town of Linn***, 205 Wis. 2d 426, 441, 556 N.W.2d 394 (Ct. App. 1996), Cameron asserts that Kittleson's oral statement constituted a disallowance. Cameron's reliance on ***Linn*** is misplaced. In ***Linn***, this court stated that certain actions and statements on behalf of the Village of Williams Bay collectively made it clear that the village did not intend to resolve the matter before litigation and thereby disallowed the claim. *See* ***id.*** at 440-41. The "statements" referred to included a letter.[10] *See* ***id.*** ***Linn*** therefore

[10] In ***State v. Town of Linn***, 205 Wis. 2d 426, 440-41, 556 N.W.2d 394 (Ct. App. 1996), we said:

> The State contends that certain actions and letters by the Village made it clear that the Village had disallowed the claim. The State points to:
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> (1) [t]he Village's continued enforcement of its illegal parking restrictions in June;
> (2) the Village of Williams Bay's president's May 17, 1994, letter demanding [r]ecognition of noninterference with the ability of municipalities to reserve and allocate parking spaces … for residents;
> (3) the Village president's testimony that the Village would continue to maintain the parking restrictions in the face of the state's objections.
>
> We agree. Although these actions and statements do not expressly disallow the state's claim, collectively they make it clear that the Village did not intend to resolve the matter before litigation.

required a writing to disallow a claim. That writing post-dated the state's claim. *See* ***id.*** at 439, 441. Thus, ***Linn*** does not support Cameron's position that an oral statement alone can constitute a disallowance under the statute.

¶27 Cameron also asserts that Kittleson's comment must be viewed in connection with Barron's other actions, which pre-date the notice of claim. It argues that together these established that Barron did not intend to resolve the claim short of litigation. We are unpersuaded.

¶28 Barron's earlier actions and writings did not address Cameron's claim for one-half the co-op's capacity at a cost of $55,000. Cameron had not put that claim before Barron. Barron was therefore never in a position before May 15 to decide whether to settle or disallow Cameron's claim.

¶29 Moreover, Barron had never indicated that it would not sell Cameron the co-op's capacity. Kittleson's statement to Hall is instructive. Kittleson told Hall that he thought Cameron and Barron were going to sit down and discuss the issue and that they had not yet done so. His comment does not reflect that Barron did not intend to resolve the matter before litigation. It was unreasonable for Cameron to conclude that Barron had disallowed its claim until it received the written disallowance. Because Cameron did not comply with the notice requirements of WIS. STAT. § 893.80 prior to initiating this action, summary judgment was properly granted.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.