COURT OF APPEALS
DECISION
DATED AND FILED

June 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1349 **Cir. Ct. No. 2002CV2388**

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

CITY OF LA CROSSE,

PLAINTIFF-APPELLANT,

V.

DOUGLAS N. HASTAD AND BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM,

DEFENDANTS-RESPONDENTS.

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

Before Deininger, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. This case involves a dispute over the right of the University of Wisconsin System to rename part of a sports complex it acquired from the City of La Crosse. The entire complex has long been named Memorial

Field and, more recently, Veterans Memorial Stadium, in honor of military veterans. The City filed suit after the University named a portion of the complex after a long-serving University football coach. The City contends that this naming by the University infringed on a property right retained by the City.

¶2 The circuit court determined that the pertinent facts were not disputed and that the University did not violate any right retained by the City. Thus, the court determined that the University was entitled to summary judgment and dismissed the City's lawsuit. We conclude that the City's lawsuit was properly dismissed.

Background

¶3 In 1948, a multi-acre sports complex in La Crosse was dedicated to military veterans and named Memorial Field. More recently, signs have identified the complex as Veterans Memorial Stadium.

¶4 On February 4, 1988, the City transferred, by deed, the multi-acre complex to the University for the nominal sum of one dollar. The deed provided that the property conveyed "may continue to be used by the public as the same is presently being used by other governmental units, agencies, schools, [and] associations, including the City of La Crosse, and has been in the past." The University benefited by obtaining the property and facilities as its own sports complex. The City and people of La Crosse benefited by avoiding substantial costs for needed repairs, and avoiding ongoing operating expenses, while retaining the ability to use the complex as in the past.

¶5 A separate "Use Agreement" was executed about three weeks later, on February 25, 1988. This agreement, signed by various City and University

officials, purported to impose various restrictions on the University. In particular, item 4 in that agreement stated that "the name of the stadium shall [be] retained as 'Veterans Memorial Stadium.'"

¶6 In 2000, the University received a large financial gift, conditioned on renaming the complex in honor of a long-serving University football coach, Roger Harring. A predecessor chancellor renamed the stadium "Roger Harring Veterans Memorial Stadium." After local veterans groups objected, Harring requested that his name not be used. The current chancellor, Douglas Hastad, directed that Harring's name not be used on the stadium, but that the football field itself be named "Roger Harring Field." As a result, the stadium building is still prominently named "Veterans Memorial Stadium," but the scoreboard adjacent to the football field states "Veterans Memorial Stadium" and below that, in somewhat larger letters, "Roger Harring Field." Local veterans groups again objected.

¶7 After attempts at negotiation failed, the City filed this lawsuit, naming as defendants Douglas Hastad, chancellor of the University of Wisconsin-La Crosse, and the university system's Board of Regents (collectively referred to in this opinion as the University). The relief sought by the City included a declaration of its continued interest in the property, including the City's right to retain use of the entire property as a memorial exclusively honoring military veterans; an order directing Hastad to remove the name "Roger Harring Field" from the property; or, in the alternative, a declaration that the property reverts to the City because of the University's failure to comply with the conditions in both the deed and the use agreement.

Discussion

¶8 When reviewing summary judgment, we apply the same standard used by the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). We need not repeat that well-established standard here.

¶9 On appeal, the City has abandoned all of its claims except one. The City maintains that it is entitled to a "declaration of interests," under WIS. STAT. § 841.01 (2003-04).[1] The City seeks a declaration that it has retained full naming rights because of rights the City asserts it retained in both the deed granting the property to the University and in the separate use agreement.

¶10 The parties dispute whether the City's claim is barred by sovereign immunity, or whether it is, instead, permitted by WIS. STAT. §§ 775.10 and 841.01. The University argues that these statutes, in combination, entitle a party to pursue only a quiet title action and that the City's action is not a quiet title action. The University, however, fails to provide clear authority for its argument. In any event, because we reject the City's appeal for other reasons, we need not resolve the issue.

¶11 Before moving on, we clarify that the City does not argue that the University is contractually obligated, under either the deed or the use agreement, to refrain from renaming any part of the complex. The City expressly acknowledges that it has no interest conferred by contract. Rather, the City claims a property interest through the recorded deed and subsequent use agreement.

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Thus, we view this case through the lens of the City's argument under WIS. STAT. § 841.01.

The Deed

¶12 The deed transferring the property from the City to the University contains the following condition: "This conveyance is made upon the express condition that the property conveyed hereby may continue to be used by the public as the same is presently being used by other governmental units, agencies, schools, [and] associations, including the City of La Crosse, and has been in the past." We agree with the City that this deed is not unrestricted; plainly, it contains a restriction. However, the question here is whether the restriction prohibits naming the field part of the complex "Roger Harring Field."

¶13 The City argues that the term "used by the public" includes the use of the facility as a veterans memorial, as embodied in the name of the facility, and that the name must therefore remain unchanged for that use to continue. The University argues that this provision does not cover the name of the facility, but relates, instead, to public access to and physical use of the facility. Based on these differing but reasonable interpretations, we conclude that the provision is ambiguous.

¶14 The City argues that the ambiguity should be resolved in its favor. The City contends that, under ***Brody v. Long***, 13 Wis. 2d 288, 297, 108 N.W.2d 662 (1961), a grant of land *by a public body* is to be construed most strongly against the party receiving the land, which in this case is the University. In ***Brody***, however, the receiving party was a private entity. In contrast, here *both* the grantor and the grantee are public bodies. And, as the University explains, citing a number of sources, the intent of the rule in ***Brody*** is to prevent *private* grantees

from claiming more than the government intended to give, thereby protecting the public interest against private intrusion. The reason behind the rule does not apply here. Both parties are governmental entities. Both represent public interests, even if those interests are different. Thus, we conclude that the rule of construction the City relies on does not apply here.

¶15 The University argues that we must apply a different rule. This rule provides that if a grantor of a deed wants to reserve a right, it must do so unambiguously. *See* ***Dodge v. Carauna***, 127 Wis. 2d 62, 65, 377 N.W.2d 208 (Ct. App. 1985). The sound principle underlying this rule is that, when a party purchases or otherwise acquires land, it ought to do so unencumbered by ambiguous retained rights. The City fails to provide a reason for why this general rule should not apply here and, therefore, it is the rule we are compelled to apply.

¶16 With respect to naming rights, it cannot reasonably be argued that the City unambiguously retained the right to compel the University to retain the name "Veterans Memorial Stadium" as the name for each and every component of the multi-acre complex. Further, even if the deed language is construed as including the use of the stadium complex as a memorial to veterans, the University has substantially complied with that reading. *See* ***St. Clara College v. City of Madison***, 250 Wis. 538, 547-49, 27 N.W.2d 745 (1947) ("substantial" compliance with condition or covenant is sufficient). The stadium complex continues to be used as a memorial to veterans. It is undisputed that the stadium itself continues to prominently bear the name "Veterans Memorial Stadium." And, the University has added significantly to the use of the complex as a memorial by adding a Veterans Memorial, a Hall of Honor, and a Veterans Walkway. Thus, the multi-acre complex remains a memorial to veterans, arguably more so, despite the fact

that the scoreboard sign says both "Veterans Memorial Stadium" and "Roger Harring Field."

The "Use Agreement"

¶17 If the use agreement confers on the City an "interest in real property" within the meaning of WIS. STAT. § 841.01(1), the City's position would be considerably stronger. The use agreement contains language supporting the City's view that the entire complex must remain named "Veterans Memorial Stadium." Throughout the agreement, the word "stadium" is used to describe the entire complex. Thus, when the use agreement states that "the name of the stadium shall [be] retained as 'Veterans Memorial Stadium,'" it appears to mean the entire complex, including the playing fields.

¶18 The parties dispute whether the use agreement constitutes a lease or a license. But there is no reason to resolve this dispute—or others concerning the use agreement—because we conclude that the City has not made even a superficial showing that the use agreement constitutes an "interest in property" as that term is used in WIS. STAT. § 841.01(1).

¶19 The City's entire argument in its opening brief specific to the use agreement is as follows:

> In asking the court for a declaration of interest in real property, the city argues that the language in the deed and accompanying Use Agreement create an interest in real property as defined by state statute. Pursuant to § 841.01, Wis. Stats., a person may demand a declaration of his or her interests under a lease more than one year in length. Section 841.01, (2), Wis. Stats. specifically excludes application of this statute to leases of one year or less. It follows, therefore, that leases for more than one year are included. A declaration of interests under a lease for more than one year is appropriately considered under § 841.01, Wis. Stats.

> The Use Agreement between the City and the University of Wisconsin-La Crosse is a lease for more than one year. It establishes an interest in real property under § 841.01, Wis. Stats.

There is nothing in this argument that explains why the use agreement is a lease or how it can be binding on the University in light of the fact that the University acquired the property before the use agreement was executed.

¶20 The University's brief argues that the chancellor cannot "lease" university land unless authorized to do so under proper procedures, and that the procedures were not followed in this case because the agreement was never reported to the Regents. Therefore, according to the University, the agreement cannot be a binding lease. The University asserts that, at best, the use agreement is a license that does not create an interest in the property. The City provides no direct reply. Rather, the City states: "[I]t is noteworthy that the previous agreement between the parties, executed in 1982, was a ninety-nine year lease agreement over use of the same property and also signed by the Chancellor." The City also appears to suggest that the University itself considers the use agreement binding because, according to the City, the University has abided by the provisions of the agreement since its execution, except for the stadium-naming provision. These replies do not help the City. Just because a former chancellor signed a prior lease agreement does not mean that the former chancellor had the *authority* to bind the University to a lease. Further, just because the University abides by the terms of an agreement does not establish that it is legally bound to do so. And, as discussed above, the City does not explain in the first instance why the agreement should be treated as a lease.

¶21 We conclude that the City has failed to establish that the use agreement is binding on the University, as a lease or otherwise. Accordingly, the circuit court properly granted summary judgment and dismissed the City's lawsuit.

By the Court.—Order affirmed.

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