

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 28, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 2004AP1833**

**Cir. Ct. No. 2001CV177**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**JAMES ANNOYE AND SANDRA ANNOYE,**

**PLAINTIFFS-APPELLANTS,**

**v.**

**THE YACHT CLUB AT SISTER BAY CONDOMINIUM ASSOCIATION, INC.  
F/K/A SISTER BAY RESORT CONDOMINIUM ASSOCIATION, INC.,  
WILLIAM L. TEWS AND SANDRA M. TEWS, STOEHR FAMILY LIMITED  
PARTNERSHIP, JAY PATRICK KUCHLER, MARY ANN JAZEIECKI  
TRUST, JOHN I. JOHNSON, JR., KATHLEEN R. JOHNSON, JR., AS  
TRUSTEES UNDER THE JOHN I. JOHNSON, JR., KATHLEEN R.  
JOHNSON REVOCABLE LIVING TRUST, JR., DONALD W. McDONALD  
AND ELIZABETH A. McDONALD, HARRY J. ZEMEL AND KATHLEEN T.  
ZEMEL, DAVID M. MCCONKEY AND JUDITH MCCONKEY, ROBISON  
TRUST U/A 11-4-83, CLINTON S. ROBISON, JR., TRUSTEE, DARYL  
PILGREEN, AS SUCCESSOR IN INTEREST TO MARY BETH PILGREEN,  
JOHN R. PANKRATZ AND KATHLEEN A. PANKRATZ, PETER M.  
PANKRATZ, PAUL F. PANKRATZ, KATHLEEN PANKRATZ DANNING,  
RICHARD J. PANKRATZ, MARY PANKRATZ EVENSON, BETH A.  
PANKRATZ ALLAIRE, ARTHUR JAGODZINSKI AND MARY JAGODZINSKI,  
SCHLESING FAMILY TRUST, RICHARD E. OLSON AND LINDA M.  
OLSON, DAVID R. WEBER AND MARY E. WEBER, ELLIOTT JOHNSON  
AND LINDA RAE JOHNSON, TIMOTHY J. MONTEEN AND MICHAEL P.  
MONTEEN, JUDITH POTTER, AS SUCCESSOR IN INTEREST TO LOUISE**

**L. JAMISON, JAMES CHRISTBAUM, THOMAS W. FISK, SHERYL L. BRUEMMER-FISK AND RICHARD J. SCHUCHART, JOHN A. BOYCE AND GRACE M. BOYCE, TRUSTEES OF THE JOHN A. BOYCE AND GRACE M. BOYCE REVOCABLE TRUST, STUART PODOLNICK AND DAWN A. PODOLNICK, PAULETTE STARCK AND BARBARA JANE HYDE, MICHAEL STARCK AND PEGGY STARCK, AS TRUSTEES OF THE PAUL F. STARCK FAMILY TRUST U/T/A DATED 12/13/83, KAREN JOHNSON, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MATT E. STARCK AND JOSEPH D. STARCK, ALAN MEILINGER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ELIZABETH M. MEILINGER, BRUNO J. FRANCESCHI AND SHIRLEY FRANCESCHI, FLORENCE FEE, EDWARD R. KLEID AND BARBARA M. KLEID, JAMES TANDIAS AND MARY TANDIAS, LARSON REVOCABLE TRUST DATED FEBRUARY 14, 1994, JEFFREY S. GRUMBECK AND BARBRA L. GRUMBECK, SUSAN E. STRAHS TRUST AND DR. EDWARD HOY AND JANET HOY,**

**DEFENDANTS,**

**BLUE SHORE DEVELOPMENT COMPANY, LLC,**

**INTERVENING DEFENDANT-RESPONDENT.**

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APPEAL from judgments and orders of the circuit court for Door County: D. TODD EHLERS, Judge. *Dismissed.*

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

¶1 PER CURIAM. James and Sandra Annoye appeal a summary judgment dismissing their claims against the defendants and the intervening defendant, Blue Shore Development Co., LLC. Because the Annoyes have failed to comply with the October 8, 2004, order of this court, the appeal is dismissed.

¶2 In September 2001, the Annoyes filed suit against the Sister Bay Resort Condominium Association (Sister Bay) in an attempt to invalidate a condo merger that had occurred in August. In July 2002, following various procedures

and hearings—including an appeal to this court on which the Annoyes prevailed<sup>1</sup>—they filed an amended complaint to name the individual condo owners as well as Sister Bay. In October 2002, Blue Shore was allowed to intervene and filed a counterclaim against the Annoyes for abuse of process.

¶3 In February 2003, the trial court held that the condo merger was valid and granted the summary judgment motions filed by the defendants and Blue Shore, entering judgment on March 17, 2003. The Annoyes’ motion for reconsideration was ultimately denied. Meanwhile, the counterclaim against the Annoyes proceeded, but that was ultimately dismissed as well.

¶4 Following an April 2004 order that finally dismissed the counterclaim, the Annoyes appealed the summary judgment holding the merger was valid. We dismissed the appeal against the defendants as untimely, since the judgment and order dismissing them had been entered in March 2003. The 2003 order was not, however, final as to Blue Shore at the time because the counterclaim remained. *See Brownsell v. Klawitter*, 102 Wis. 2d 108, 109-10, 306 N.W.2d 41 (1981). Thus, on October 4, 2004, we struck the Annoyes’ brief with “leave to refile a brief limited to issues affecting Blue Shore Development Company, LLC.”

¶5 We also ordered, however, that the Annoyes “must identify what relief can be granted as to Blue Shore ... without affecting the judgment as to the other defendants-respondents whose judgment is not reviewable.” On appeal, the

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<sup>1</sup> *Annoye v. Sister Bay Resort Condo. Assoc.*, 2002 WI App 218, 256 Wis. 2d 1040, 652 N.W.2d 653.

Annoyes request “that the Circuit Court be reversed in its entirety and the matter be remanded to determine the appropriate amount of damages.”

¶6 First, the Annoyes never pled a claim for compensatory damages in the trial court, even against the original defendants. The action was for declaratory relief. They may not assert a new claim on appeal that was never presented in the trial court.

¶7 Second, the Annoyes never asserted any claim against Blue Shore in the trial court. They argue that because Blue Shore intervened, it “accepted” all claims against the defendants as claims against itself. The Annoyes cite no legal authority for this proposition, and thus we normally need not consider it.<sup>2</sup> *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (we need not consider arguments unsupported with reference to authority).

¶8 Nonetheless, it is true that “[w]hen a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party.” *Kohler Co. v. Sogen Int’l Fund, Inc.*, 2000 WI App 60, ¶12, 233 Wis. 2d 592, 608 N.W.2d 746 (citation omitted). But we require parties to litigate their claims to preserve them; the Annoyes fail to show they ever actively pursued their claims against Blue Shore, even when Blue Shore proceeded to litigate its counterclaim. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (the appellant has the burden of establishing an issue was raised in the trial court). Thus, we consider the claims against Blue Shore abandoned.

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<sup>2</sup> The failure to cite authority is also contrary to WIS. STAT. RULE 809.19(1)(e) (2003-04).

¶9 Finally, the Annoyes' issues are directly linked to the validity of the condo merger. Indeed, their claim for relief asks us to reverse the trial court, which necessarily means we must hold the merger invalid. This directly contravenes our order. Any declaration invalidating the condo merger will directly and adversely affect the judgment entered in favor of the dismissed defendants.

*By the Court.*—Appeal dismissed.

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

