COURT OF APPEALS
DECISION
DATED AND FILED

August 17, 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. 2005AP960-FT **Cir. Ct. No. 2003CV2147**

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

BUENA PARK IMPROVEMENT ASSOCIATION, INC., RICHARD WANKE, JOSEPH UPTHAGROVE AND NICOLE UPTHAGROVE,

PLAINTIFFS-RESPONDENTS,

PAUL BEYERL, TERRY C. BEYERL, JAMES J. BONTLY, GEORGE BRZEZINSKI, THERESA ESIENBEIS, SALVATORE P. FERRITO, JOYCE A. FIELDS, CRAIG A. FORD, NANCY J. FORD, DALE F. GAUERKE, SHARON GAUERKE, TRACI GAUTHEIR, NATHANIEL J. GOETZ, DEANNA M. GOETZ, CHARLES P. HAASCH, NICHOLAS J. HEKKERES, ROANID R. HOCHEVAR, JEFFREY R. HOLMES, BRADLEY HONDEL, WILLIAMS A. JANSCZAK, DENNIS M. JANNUSCH, MARIAN M. JANNUSCH, ROSEMARY KASUBOSKE, ROBERT KLAMIK, CAROL KLAMIK, DAVID T. KUSCH, KATHLEEN M. KUSCH, RONALD E. LARSON, EDWARD R. MIEZIN, JR., JEFFREY M. POLZIN, TRACEY POLZIN, STEVEN J. POPPE, KELI R. POPPE, GEORGE D. RASCH, RICHARD J. RESSER, ELFRIEDA C. SAWASKY, BARRY J. SCHIMMEL, BRUCE R. SCHULZ, SANDRA A. SCHULZ, LINDA SERWA, JAMES VILIMEK SERWA, RONALD J. STALKER, JR., SANDRA A. SHUPUT, LYNN C. TAMBLYN, JOANNE D. TAMBLYN, ANDREW J. WENDLING, MICHELLE H. WENDLING, GORDON E. WILLERT, WALTER P. ZENDEK AND KAREN A. ZENDEK,

INVOLUNTARY-PLAINTIFFS,

v.

RICHARD H. SOHR AND KAREN J. SOHR,

DEFENDANTS-APPELLANTS,

TOWN OF WATERFORD,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Racine County: FAYE M. FLANCHER, Judge. *Affirmed*.

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Richard Sohr and Karen Sohr appeal from the judgment entered against them. In the underlying action, the respondents sought a declaration of real property interest under WIS. STAT. ch. 841 (2003-04).[1] The Sohrs argue on appeal that the circuit court erred when it denied their motion for summary judgment and granted summary judgment to the respondents. Specifically, they argue that the circuit court erred when it determined that the three parcels of land at issue were held in common by the owners of residential lots in the Buena Park First Addition subdivision. Because we conclude that the circuit court properly granted summary judgment to the respondents, we affirm.

¶2 The respondents are the Buena Park Improvement Association, Inc., an association formed by property owners in the Buena Park subdivision, and the

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

property owners themselves. The Sohrs also own property in the subdivision. Charles and Rosalie Class formed the Buena Park First Addition subdivision by a plat dated May 17, 1926. The circuit court found that the plat of the subdivision was recorded in Racine county in 1926. The property at issue here is three parcels that are designated as "park" in the 1926 plat. The parcels are on the waterfront of the Fox River. In 2001, the Sohrs purchased one of these parcels located next to their residential property from the Town of Waterford. When the Town conveyed the parcel to the Sohrs, it did so by a quitclaim deed that did not guarantee title. The Sohrs then built a pier on this property.

¶3 The respondents brought the underlying action asserting that the three parcels designated as "park" were dedicated as common property of the owners of lots in the subdivision. The respondents asserted that the Sohrs had unlawfully exercised dominion over the property including the placement of the pier on the property. The respondents asked the court to declare that the Sohrs had no right, title, or interest in the property other than the fractional interest in common with all other owners of the subdivision, and further asked the court to permanently enjoin the Sohrs from placing or maintaining any piers, lifts, landscaping, etc., on the property.

¶4 The Sohrs asserted that the respondents lacked standing to bring the action because they did not have an interest in the property as defined by WIS. STAT. § 840.01(1). The respondents asserted that the recording of the plat with the designation of "park" on the three parcels amounted to a complete conveyance of the property by statutory dedication and the law at the time, WIS. STAT. § 236.11 (1925). The circuit court concluded that the respondents had standing to bring the action under the statute, and that the parcels at issue were dedicated by statutory

dedication to the owners of all the residential lots of the subdivision. The Sohrs now appeal.

¶5 Our review of the circuit court's grant of summary judgment is de novo, and we use the same methodology as the circuit court. ***M&I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.***, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995).

> We first examine the complaint to determine whether it states a claim, and then we review the answer to determine whether it joins an issue of material fact or law. If we determine that the complaint and answer are sufficient to join issue, we examine the moving party's affidavits to determine whether they establish a *prima facie* case for summary judgment. If the movant has carried his [or her] initial burden, we then look to the opposing party's affidavits to determine whether any material facts are in dispute that entitle the opposing party to a trial.

Schurmann v. Neau, 2001 WI App 4, ¶6, 240 Wis. 2d 719, 624 N.W.2d 157 (citations omitted).

¶6 Summary judgment should not be granted if reasonable, but differing, inferences can be drawn from undisputed facts. ***Belich v. Szymaszek***, 224 Wis. 2d 419, 425, 592 N.W.2d 254 (Ct. App. 1999). The competing inferences, however, must be "reasonable." ***Id.***

> An elementary principle is that an inferred fact is a logical, factual conclusion drawn from basic facts or historical evidence. It is the probability that certain consequences can and do follow from basic events or conditions as dictated by logic and human experience. Building on this elementary principle is the principle that a reasonable inference is a conclusion arrived at by a process of reasoning. This conclusion must be a rational and logical deduction from facts admitted or established by the evidence when such facts are viewed in the light of common knowledge or common experience. Further, an inference is not supposition or conjecture; it is a logical

> deduction from facts proven and guesswork cannot serve as a substitute.

Id. (citations omitted).

¶7 The Sohrs argue on appeal that there was insufficient evidence presented to the circuit court to make a determination of the intent of the original grantors. They also argue that the court erred in granting summary judgment because the most material fact, the intent of the original grantors, is in dispute. Their argument appears to be that there are reasonable inferences that can be drawn to create a disputed issue of material fact. But while they criticize the inferences drawn by the circuit court, they do not offer any support for a competing inference.

¶8 In granting summary judgment to the respondents, the circuit court considered portions of the affidavits submitted by the respondents. The circuit court first concluded that the parcels of land were dedicated as "park." The court based this determination on the designation on the plat. The court further determined that the use of the word "park" could be given its ordinary meaning: "that it's a piece of land that's dedicated for recreational use." We agree that the evidence supports this determination.

¶9 The circuit court then considered whether the designation of "park" on the plat was a private dedication to the lot owners in the subdivision only, or was intended to be a park open to general use. The circuit court determined that it was intended to be private, for the subdivision owners only. To reach this conclusion, the court considered the evidence offered that the Town of Waterford had not done anything to maintain the parks over the years and that the members of the subdivision had maintained the parks. The court also relied on the evidence

presented in the form of the minutes from the Waterford Town Board Meetings that the roads in the subdivision were privately maintained until the 1960s and 1970s, during which time the Town took over the private roads. The court specifically considered the statement in the minutes from September 27, 1969: "Question arose: If the town takes over the road, will the community beaches become public beaches? They will be turned over to the association."

¶10 The Sohrs argue that while the minutes establish private ownership of the roads, they do not establish private ownership of the parks. We agree with the circuit court that from this evidence, considered in its entirety, a reasonable inference may be drawn that the parks were for the private use of the owners of land in the subdivision. The Sohrs suggest the possibility that a reasonable inference from this evidence is that the Classes, the original grantors, retained ownership of the parks. The Sohrs, however, have not offered any evidence to support this, nor do we find any in the record. We conclude that such a suggestion, without further support, is not a reasonable inference but merely speculation.

¶11 The Sohrs also contend that if the parks were for the private use of the subdivision, then they should have been taxed as such. But the affidavit of the Town tax assessor established that no one paid taxes on the parcels because the Town never assessed taxes on the parcels. It was not until 2001, when the Sohrs recorded their quitclaim deed, that the Town assigned a tax key number to the parcels. The court also considered that when the Town sold the parcel to the Sohrs in 2001, it did so stating that it could not guarantee title to the property.

¶12 The Sohrs further argue that the circuit court erred because the evidence contained in the affidavits submitted in support of the respondents'

motion was hearsay and not properly considered by the circuit court. Specifically, the Sohrs argue that the court relied on the minutes of the Town Board meetings to establish that the grantors' intent was that the parks be for the use of the owners of the subdivision. The Sohrs argue that there was not a proper foundation and the court relied on the matters in the minutes to prove the truth of what those minutes said. The minutes the respondents offered, and on which the circuit court relied, established that the roads in the subdivision were initially privately maintained and then slowly taken over by the Town of Waterford. We do not believe that this matter can be seriously contested by the Sohrs. Further, the court used the minutes to draw the inference that the parks were intended for private use, not as absolute proof that the parks were private. We see nothing improper with the circuit court considering this evidence to reach the conclusion it did. For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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