

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 25, 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. 2004AP1350

Cir. Ct. No. 2003CV153

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

DIANE C. HIGGINS AND ANDREW J. HOFF,

PLAINTIFFS-RESPONDENTS,

V.

TOWN OF OCONOMOWOC,

DEFENDANT-RESPONDENT,

**JOSEPH REINDERS, JULIE REINDERS, JOHN DOE
AND JANE DOE,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Waukesha County:
ROBERT G. MAWDSLEY, Judge. *Affirmed.*

Before Dykman, Deininger and Vergeront, JJ.

¶1 PER CURIAM. Joseph Reinders and Julie Reinders appeal from a judgment entered in favor of the Town of Oconomowoc and the respondents in a dispute over a ten-foot strip of land. We affirm.

¶2 The ten-foot strip is at the north end of the Lake Park Heights subdivision. It runs perpendicular to the shoreline of Okauchee Lake. On the plat map, dated May 1923, there are twenty-foot rights-of-way, expressly marked as such, that run parallel to the lake shore. At their north ends, the two twenty-foot rights-of-way that are closest to the lake intersect the ten-foot strip. The ten-foot strip is not marked with the right-of-way designation. However, it is not separated from them by a line or other indicator of separation. The Reinders own a non-shoreline subdivision parcel that abuts the ten-foot strip.

¶3 The Reinders argue that the circuit court erred by concluding the intent of the original plat owner was to dedicate the ten-foot strip as a public right-of-way. They appear to argue that it was actually intended as a private right-of-way. The respondents each argue that rights-of-way on plat maps are presumed public unless otherwise marked, but neither appears to cite any law establishing such a presumption. However, we conclude the circuit court's conclusion was correct. The ten-foot strip appears on the map to be an inseparable continuation of the twenty-foot rights-of-way. There is no indication on the map that a different status was intended for the ten-foot strip. The Reinders do not attempt to argue that the twenty-foot strips were intended to be private, and such a contention would be highly doubtful, in light of the fact that the twenty-foot rights-of-way are now public streets. There is no affirmative evidence, from the map or otherwise, that either the twenty-foot or ten-foot strips were intended to be private.

¶4 The Reinders argue that the circuit court erred by concluding that the Town accepted the dedication of the ten-foot strip. They argue that neither the Town’s “general acceptance” of the plat in 1923, nor the Town’s 2003 resolution accepting specifically the ten-foot strip, was sufficient. They argue that the strip remains private until the Town makes an order declaring it to be a public highway. This argument is based mainly on *Gogolewski v. Gust*, 16 Wis. 2d 510, 114 N.W.2d 776 (1962). While the conclusion in that case does superficially support the argument, we note that the court’s analysis was based on certain statutes as they existed in the early 1930s. *Id.* at 515-17. The Reinders do not argue that these same statutes exist today, or existed at the time of the 2003 acceptance, or that we are bound to apply to that acceptance the statutes that existed at the time of the plat approval. Therefore, we conclude that the Reinders have failed to demonstrate that the circuit court erred.

¶5 The Reinders argue that the Town should be estopped from taking control of the strip, due to reliance by other subdivision owners on use of the strip. The argument is not well developed. The Reinders do not explain what actions they have taken to their detriment in reliance on their expected future use of the strip. Furthermore, subdivision owners will continue to be able to use the strip on the same basis as other members of the public.

¶6 Higgins and Hoff assert that the Reinders’ position is frivolous because the Lake Park Heights Association did not have title to the strip, but they do not develop this argument further. The Reinders’s analysis fails, but is not so lacking in merit as to be frivolous. We do not pursue the matter further.

By the Court.—Judgment affirmed.

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

