

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 13, 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. 2004AP3038

Cir. Ct. No. 2003CV134

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WALTER L. LARSEN,

PLAINTIFF-APPELLANT,

V.

TOWN OF EGG HARBOR,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Door County:
PETER C. DILTZ, Judge. *Reversed and cause remanded.*

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

¶1 PER CURIAM. Walter L. Larsen appeals a judgment dismissing his action against the Town of Egg Harbor for return of part of the property taxes Larsen paid in 2002. The trial court concluded Larsen's claims of discrimination or unequal taxation must fail because Larsen held a property interest different

from other property owners in platted subdivisions by virtue of a 1978 court order. Because we conclude the 1978 order was ambiguous and should have been construed to deny Larsen title to the disputed property, we reverse the judgment and remand the case for further proceedings consistent with this decision.

¶2 Larsen’s father, his predecessor in title, bought two lots in the subdivision in 1949. One of the lots as described in the warranty deed did not exist because that area had been set aside for a street. To resolve that dispute, the buyer, seller and the Town, by resolution, agreed to amend the plat. Larsen’s father was given title to the lot that had been set aside as a street and the street was moved to an adjacent lot. The court order effectuating the agreement, drafted by Larsen’s father, contained two provisions that affect the present controversy. First, it gave Larsen title to the northerly half of the relocated street subject to the right of the public for street purposes; and second, it provided that the relocated street “shall have the same status as though said street had originally been platted in its relocated position in said plat.”

¶3 In 2002, the Town assessed Larsen based on his ownership of half the lot set aside for the relocated street. Larsen paid the tax and sued the Town for a refund.¹ The trial court concluded that Larsen has title to the property in question by virtue of the 1978 court order. Therefore, without addressing Larsen’s discrimination or unequal taxation issues, the court concluded that Larsen’s claims fail.

¹ The Town argues that Larsen used an incorrect method of challenging his assessment, contending that he should have sought relief from the board of review and certiorari review by the court. We reject that argument because it is based on the false premise that Larsen is challenging the property’s valuation. Rather, he is challenging the Town’s assertion that he owns the property in question, an issue that is not properly submitted to the board of review.

¶4 Whether a judgment is ambiguous is a question of law that we decide without deference to the trial court. See *Washington v. Washington*, 2000 WI 47, ¶26, 234 Wis. 2d 689, 611 N.W.2d 261. A court order, like any other writing, is ambiguous if it is reasonably susceptible to more than one construction. See *In re Estate of Flejter*, 2000 WI App 26, ¶28, 240 Wis. 2d 401, 623 N.W.2d 552. If an order is ambiguous, the court should consider the underlying record and pleadings to determine its intent. See *Wright v. Wright*, 92 Wis. 2d 246, 255, 284 N.W.2d 894 (1979).

¶5 We conclude the 1978 order is ambiguous because it contains mutually exclusive terms. Granting Larsen title to half of the lot on which the street was relocated is inconsistent with giving the street “the same status as though the street had been originally platted in its relocated position.” Had the street been platted in its relocated position, it would have been held in trust by the Town for that purpose. See WIS. STAT. § 236.29(1).² The inconsistent language that purports to give Larsen title to a portion of the platted street creates an ambiguity as to the parties’ and the court’s intent.

¶6 Our review of the underlying case compels the conclusion that the language purporting to give Larsen title to half the property on which the street is relocated should not be enforced. The 1978 proceeding arose from an error in a conveyance to Larsen’s father. He would have been made whole by receiving title to the land on which the street was initially platted. Awarding him title to any portion of the lot on which the relocated street was placed would be an undeserved

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

windfall. Construing the 1978 order to deny Larsen title to the relocated street area is also consistent with the requirements of WIS. STAT. § 236.29(1) which requires the platted street to be held in trust by the Town. It is also consistent with the only evidence presented on the parties' intent. Larsen submitted his father's affidavit stating his intention when he drafted the 1978 order was to confirm that the relocated street would become the property of abutting landowners if the street was later vacated, as set out in WIS. STAT. § 236.28.

¶7 Under these circumstances, we conclude the 1978 order should be construed to enforce the clause that gives the relocated street the same status as though it had been originally platted in its relocated position, rendering unenforceable the provision that purports to give the abutting landowner title to the area under the street. We remand this case to the trial court to consider Larsen's discrimination and unequal taxation claims in light of this holding.

By the Court.—Judgment reversed and cause remanded.

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

