

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 6, 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. 2005AP244**

**Cir. Ct. No. 2002CV296**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**TOWN OF OCONTO,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL B. FROST AND KAREN SUE FROST,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Oconto County:  
LARRY L. JESKE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Michael and Karen Frost appeal a summary judgment enjoining them from interfering with public access to West Frog Pond Road based on the court's conclusion that it is a public road because the Town worked the road for more than ten years. Although the Frosts purport to raise nine

issues on appeal, the dispositive issues are whether the trial court appropriately refused to consider some documents filed by the Frosts and whether the Town established that there is no genuine issue of material fact so that the Town is entitled to judgment as a matter of law.<sup>1</sup> We affirm the summary judgment.

¶2 In support of its motion for summary judgment, the Town presented affidavits establishing that it plowed snow and placed gravel on the road for more than fifty years. Under WIS. STAT. § 80.01(2),<sup>2</sup> unrecorded highways that have been “worked as public highways ten years or more are public highways....” The Frosts responded with affidavits establishing their ownership of the land on which the highway easement rests. Approximately three hours before the motion hearing, they also attempted to present letters regarding the property. The trial court refused to consider the late submissions and granted the Town’s motion for summary judgment.

¶3 Much of the Frosts’ brief is devoted to proving their ownership of the property. They argue that the Town has taken their property without compensation. Their arguments ignore the effect of WIS. STAT. § 80.01(2), a statute of limitations for a land owner to commence an action for ejectment or compensation. *See Tomlinson v. Wallace*, 16 Wis. 224, 233 (1862). Unless the Frosts brought their action within ten years of the date the Town began

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<sup>1</sup> Two of the Frosts’ arguments do not merit individual attention. Their claim that Judge Jeske was not licensed to practice law based on their limited definition of “license” has no merit. Their argument that the court lacked subject matter and personal jurisdiction because the Town paid the filing fee and service charges with federal reserve notes rather than gold or silver is frivolous.

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

continuously “working” the highway, issues regarding their ownership of the land and compensation for the taking are irrelevant because the statute of limitations expired on these claims.

¶4 The Town’s affidavits established that the road had been worked annually since 1954. On summary judgment, proof by affidavit is allowed, and the Town is not required to produce any other evidence. *See* WIS. STAT. § 802.08(3). The Frosts’ 2002 photograph showing the road overgrown with vegetation is not sufficient to defeat summary judgment. The ten-year statute of limitations expired long before that photograph was taken and decades before the Frosts purchased the property. Because the Frosts presented no evidence that the road was not worked for any ten-year period commencing in 1954, the Town’s uncontradicted affidavits establish the factual basis for summary judgment. *See id.*

¶5 The court properly refused to consider the Frosts’ late submissions. They were not filed five days before the hearing as required by WIS. STAT. § 802.08(2), were not served on opposing counsel and were not in the form of an affidavit. The letters did not constitute evidence that could defeat the Town’s summary judgment motion.

*By the Court.*—Judgment affirmed.

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

