

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 27, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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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.

**No. 00-1183**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**TOWN OF HALLIE,**

**PLAINTIFF-RESPONDENT-CROSS-  
APPELLANT,**

**v.**

**CITY OF EAU CLAIRE,**

**DEFENDANT-APPELLANT-CROSS-  
RESPONDENT.**

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APPEAL and CROSS-APPEAL from judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

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

¶1 HOOVER, P.J. The City of Eau Claire appeals a summary judgment declaring that its annexation ordinance was void. Eau Claire's annexation ordinance included territory that was also contained in a proposed

Town of Hallie incorporation. The trial court determined that the petitions for the City's annexation and the Town's incorporation were published on the same date and, therefore, were initiated simultaneously. The court determined that the Town's incorporation proceedings had priority over the annexation.<sup>1</sup>

¶2 The City argues that the trial court erroneously concluded that the incorporation proceedings took precedence. We conclude that the signatures on the City's annexation petition fail to satisfy the requirements of WIS. STAT. § 66.021(2)(a)<sup>2</sup> and therefore affirm the judgment.

¶3 The issue before us requires us to interpret and apply WIS. STAT. § 66.021(1), questions of law we review de novo. *DOR v. Mark*, 168 Wis. 2d 288, 291, 483 N.W.2d 302 (Ct. App. 1992). When reviewing a summary judgment, we perform the same function as the trial court and our review is de novo. See *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. See WIS. STAT. § 802.08.

¶4 The trial court determined that the following facts were undisputed, and this determination is not challenged on appeal. The entire area the City sought to annex is located in the proposed village. Before these annexation and incorporation proceedings commenced, two earlier petitions were filed, one for annexation of exactly the same territory annexed later and one for incorporation of

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<sup>1</sup> The Town filed a cross-appeal raising essentially the same issues raised on appeal. Because our decision disposes of the issues on cross-appeal, we do not address them separately.

<sup>2</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

substantially the same territory described in the incorporation that was pending. Subsequently, the City council denied the annexation petition. Because of an erroneous legal description, the incorporation petition was voluntarily dismissed.

¶5 Subsequently, on March 27, 1999, the residents of the Town and the City simultaneously published notices pertaining to the proposed annexation and incorporation that led to this appeal. Publication is the first step in annexation and incorporation procedure. On April 6, the earliest possible filing date, the proposed incorporation petition was filed in circuit court. The circuit court concluded that the incorporation petition met statutory requirements and ordered the department of administration to conduct its statutorily required study.

¶6 On July 13, more than three months after the earliest possible filing date, the annexation petition was filed with the City. The City adopted an ordinance annexing the territory on August 10. On August 15, the City published an incomplete and inaccurate copy of the ordinance. On September 3, the City published a corrected and complete copy of the ordinance. The Town challenged the annexation.

¶7 The Town raised four issues in its challenge to the annexation: (1) The signatures on the annexation petition did not meet statutory requirements; (2) the scale map did not meet statutory requirements; (3) the annexation was void because proper publication occurred more than fifteen days after adoption of the ordinance, contrary to WIS. STAT. § 62.11(4); and (4) the petition for incorporation is entitled to precedence over the annexation petition. The circuit court concluded that the fourth issue was dispositive and ruled in favor of the Town.<sup>3</sup> We reach the

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<sup>3</sup> The trial court did not specifically analyze the nondispositive issues.

same result as the trial court but take a different route. We conclude that the first issue, relating to the statutory criteria for signatures, is dispositive and, therefore, do not discuss the remaining three.

¶8 When the legislature grants the power to extend boundaries to a municipal corporation, that power “must be exercised in strict accordance with the statute conferring it.” *Town of De Pere v. City of De Pere*, 184 Wis. 2d 278, 282, 516 N.W.2d 1 (Ct. App. 1994) (citation omitted). A municipality's annexation power is governed by WIS. STAT. § 66.021(2):

METHODS OF ANNEXATION. Subject to s. 66.023(7), territory contiguous to any city or village may be annexed thereto in the following ways:

(a) *Direct annexation.* A petition for direct annexation may be filed with the city or village clerk if it has been signed by either of the following:

1. A number of qualified electors residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:

a. The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value within the territory.

Section 66.021(1)(b) defines an owner as:

"Owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant shall be considered such owner to the extent of his or her interest.

¶9 The dispositive issue is whether “JDL Enterprises” signed the City’s annexation petition as owner, thereby satisfying the assessed valuation test of WIS.

STAT. § 66.021(2)(a). It is undisputed that the direct annexation petition contains the requisite number of signatures and that the petitioner-owners do not own one-half or more of the land in the territory proposed for annexation. It is further undisputed if the land owned by JDL Enterprises is excluded from consideration, the petition does not contain the signatures of those owning the requisite one-half of the real property in assessed value.

¶10 The City concedes that JDL Enterprises does not appear on the petition. It contends, however, that the signatures of the individual partners, John Markquart and David Markquart, are sufficient to bind and commit the partnership to the petition. It relies on the Markquarts' affidavits that these individuals signed the petition "with the intent of binding the partnership."

¶11 Nonetheless, there is no dispute that the Markquarts signed the petition as "owners" without disclosing on the petition that they were the sole partners and were signing on behalf of the partnership. The law, however, "recognizes a partnership as a separate legal entity" for the purpose of holding title to real estate. *Mark*, 168 Wis. 2d at 294. "Property acquired by a partnership is considered partnership property." *Id.* at 293.<sup>4</sup>

¶12 There is no dispute that the partnership, JDL Enterprises, is the holder of record title of the property in question. Consequently, under WIS. STAT. § 66.021, JDL Enterprises is the owner. In accordance with § 66.021, we

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<sup>4</sup> "Under the Uniform Partnership Act as adopted in Wisconsin, the concepts of entity and aggregate (for a partnership) are commingled." *DOR v. Mark*, 168 Wis. 2d 288 n.4, 483 N.W.2d 302 (Ct. App. 1992). "In some instances, the entity theory applies; in others the aggregate theory applies." *Id.*

conclude that the Markquarts' signatures fail to satisfy the requirement that the petition be signed by the owner.

¶13 The City argues that under WIS. STAT. § 178.06(1), every partner is an agent of the partnership for the purpose of its business and “the act of every partner, including the execution in the partnership name of any instrument,” binds the partnership.<sup>5</sup> The City’s argument depends upon its premise that the petition was signed by the partners “in the partnership name.” It is undisputed, however, that the partnership name was not on the petition. Because there was no indication that the Markquarts signed as partners or agents of JDL Enterprises, the City’s argument must fail.

¶14 The City also relies on WIS. STAT. § 178.07(2), which provides:

Where title to real property is in the name of the partnership, a conveyance executed by a partner, in the partner's own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under s. 178.06 (1).

This section provides authority for the passing of an equitable interest in the partnership. It does not, however, help the City’s case because here the question under WIS. STAT. § 66.021 concerns record title, not an equitable interest.

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<sup>5</sup> WISCONSIN STAT. § 178.06, “Partners are agents of partnership,” reads:

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which the partner is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom the partner is dealing has knowledge of the fact that the partner has no such authority.

¶15 Next, the City argues that persons acting on behalf of the property owner may sign an annexation petition, citing *Town of Medary v. City of La Crosse*, 88 Wis. 2d 101, 277 N.W.2d 310 (Ct. App. 1979). *Medary* holds that one may nominate another to sign an annexation petition using a special power of attorney. *Id.* at 109. In *Medary*, there was no dispute that one of the tenants in common's name was signed by virtue of a special power of attorney. The form of the signature was not in dispute. We conclude that *Medary* is not applicable to the case before us.

¶16 Finally, the City argues that the Markquarts' intent, as evidenced by their affidavits, must control, relying on *Wyss v. Albee*, 193 Wis. 2d 101, 532 N.W.2d 444 (1995). The *Wyss* case resolved an apparent conflict between WIS. STAT. § 178.06, relating to partners being agents of partnerships, and WIS. STAT. § 706.03, relating to agents, officers and guardians, signing conveyances. In any event, in *Wyss*, the document in question clearly disclosed that the transaction was on "behalf of the partnership." *Wyss* does not address WIS. STAT. § 66.021(2)(a), the statute before us. We conclude that *Wyss* does not control.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.

