

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 6, 2006**

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. 2006AP1109-FT**

**Cir. Ct. No. 2005CV93**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**DOUGLAS THUMS,**

**PETITIONER-APPELLANT,**

**V.**

**VILLAGE OF RIB LAKE,**

**RESPONDENT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Taylor County:  
GARY L. CARLSON, Judge. *Affirmed.*

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

¶1 PER CURIAM.<sup>1</sup> Douglas Thums appeals a judgment dismissing his appeal of a special assessment for failure to timely pay the special assessment as required by WIS. STAT. § 66.0703(12)(f). Thums argues the court erred as a

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

matter of law, pursuant to WIS. STAT. § 74.11(12), by not applying the money he did pay on time toward the special assessment. We disagree. Because § 74.11(12)(a) does not require treasurers to search all available records to find every instance of unpaid special assessments, the judgment is affirmed.

### **BACKGROUND**

¶2 Thums owns several properties in the Village of Rib Lake. On April 26, 2005, the Village made a special assessment for water and sewer infrastructures against one of Thums's properties (the property). On July 19, 2005, Thums appealed the special assessment to the circuit court. The tax statement showed the first tax installment and special assessment installment for the property was \$5,348.05 due on January 31, 2006.

¶3 On January 31, 2006, Thums paid the village treasurer \$5,588.91. However, the record does not establish that this payment was designated for the property. The village treasurer applied this payment toward taxes owed on other properties and not toward the property with the special assessment. On February 7, 2006, the Village moved to have the appeal dismissed pursuant to WIS. STAT. § 66.0703(12) because the special assessment was not paid before January 31, 2006. On February 9, 2006, Thums paid another \$5,401.53 to the Village treasurer. This amount matched the special assessment owing on the property.

¶4 The circuit court found Thums failed to timely pay the special assessment and therefore waived his right to appeal the Village's special assessment.

## DISCUSSION

¶5 WISCONSIN STAT. § 74.11(12)(a) contains the priority order for applying inadequate payments to outstanding tax balances. Thums argues § 74.11(12)(a) creates a duty for treasurers to search through the tax rolls and apply each payment in the order listed in § 74.11(12)(a) regardless for which property the taxes were paid. We disagree because Thums’s reading of § 74.11(12)(a) is inconsistent with Wisconsin case law.

¶6 WISCONSIN STAT. § 74.11(12)(a) contains the payment priority of taxes received by district or county treasurers. If a treasurer “receives a payment from a taxpayer which is not sufficient to pay all amounts due, the treasurer shall apply the payment to the amounts due, including interest and penalties, in the following order” special assessments second, and property taxes fourth. WIS. STAT. § 74.11(12)(a). Thums argues this language requires the village treasurer to search the tax roll and apply each payment received in the order listed to any properties the taxpayer owned.

¶7 We rejected an analogous argument in *Pocius v. Kenosha County*, 231 Wis. 2d 596, 605 N.W.2d 915 (Ct. App. 1999). In *Pocius*, a taxpayer sued Kenosha County to challenge the validity of a tax deed placed on one of his properties for failing to pay his taxes. *Id.* The taxpayer argued WIS. STAT. §§ 70.65(2)(a)(1), 70.47(6) and 70.52, which govern the maintenance of the tax roll, created a duty on the treasurer to update the taxpayer’s address for any and all properties in his name when he gave a new address to the treasurer’s office in connection with another property. We rejected this argument concluding that an exchange involving one property does not require “the Village to examine all of its

records, including the ownership records of all real estate in the Village to determine if Pocius's name appeared in any of this data." *Id.* at 605-06.

¶8 Had Thums presented evidence that the January 31 payment was made on the assessed property, we agree the village treasurer should have then applied it toward the special assessment. Absent a showing from Thums that his January 31 payment was towards the property with the special assessment, his claim is no different from the taxpayer in *Pocius*. Because Thums presented no evidence that he paid the assessment on the property, WIS. STAT. § 74.11(12)(a) cannot apply and the judgment is affirmed.

*By the Court.*—Judgment affirmed.

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