COURT OF APPEALS
DECISION
DATED AND FILED

May 15, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP1507 **Cir. Ct. No. 2005CV173**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JUDY A. GEURINK AND ROBERT C. GILRAY,

PLAINTIFFS-APPELLANTS-CROSS-RESPONDENTS,

V.

LEE G. WEGNER AND KATHLEEN A. WEGNER,

DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Lincoln County: PATRICK M. BRADY, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

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

¶1 PER CURIAM. Judy Geurink and Robert Gilray (collectively, "Geurink") appeal a judgment declaring that Geurink's claim of adverse possession was extinguished by the taking of a tax deed in 1986. On appeal,

Geurink insists that WIS. STAT. § 75.144,[1] which became effective shortly after the date of the tax deed, applies retroactively. Lee and Kathleen Wegner (the Wegners) cross-appeal, seeking expenses under WIS. STAT. § 804.12(3) for successfully proving issues that were the subject of denials of requests for admissions. We conclude the circuit court correctly rejected Geurink's adverse possession claim, but reverse and remand for further proceedings concerning expenses on the failure to admit.

¶2 This case began as an action by Geurink to obtain a declaration that a portion of the Wegners' property had been gained by adverse possession. The Wegners counterclaimed, asserting they owned the entirety of their property, which was obtained from Lincoln County in 1995. Lincoln County had obtained title to the parcel by tax deed on March 20, 1986.

¶3 Relying upon ***Leciejewski v. Sedlak***, 116 Wis. 2d 629, 639, 342 N.W.2d 734 (1984), the circuit court concluded that a tax deed is not derivative, but creates a new title that extinguishes all former titles and liens not expressly exempted by statute from its operation. The court rejected Geurink's argument that WIS. STAT. § 75.144 was such an exemption. The court held that § 75.144 applied prospectively. Because the effective date of the statute was after the date of the tax deed, Geurink's adverse possession claim failed as a matter of law.[2] Geurink subsequently filed a motion for reconsideration, which was denied.

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[2] The court declared the metes and bounds description of the property. The court also determined the Wegners had the right to use a private drive known as Tall Pine Trail by virtue of appurtenant easements, which is not a subject of this appeal.

Geurink then filed a "Request for Clarification." The parties apparently disagreed on where the boundaries of the properties were as a practical matter. In its "Decision On Request For Clarification," the court noted that for the first time Geurink also asserted that an iron pipe described in certain deeds was not where the deeds indicated. The court concluded: "[N]ot only has there been no proof submitted about any of this, it is not even properly part of the action that the plaintiffs commenced." The Wegners then sought an award of expenses under WIS. STAT. § 804.12(3) for Geurink's failure to admit certain matters as requested under WIS. STAT. § 804.11. The court concluded expenses were not appropriate. The parties now appeal.

¶4 Prior to the enactment of WIS. STAT. § 75.144, ***Leciejewski*** held that title acquired from the county following a tax foreclosure defeated a claim of ownership based upon adverse possession. ***Leciejewski***, 116 Wis. 2d at 640. Once a valid foreclosure judgment was rendered, the judgment vested in the county an estate in the property in fee simple absolute, which the county could then pass on. ***Id.*** at 639.

¶5 WISCONSIN STAT. § 75.144(1) now provides: "titles that are obtained under this chapter are subject to claims of ownership by adverse possession under s. 893.25." Geurink insists without citation to legal authority that § 75.144 was a legislative reaction to the perceived harshness of ***Leciejewski***. Geurink also cites, without citation to the record on appeal, a letter from an

attorney purportedly "intimately familiar with the intent of the Legislature."[3] According to Geurink, the author of this letter states it was the legislature's intent to apply § 75.144 retroactively. We are unpersuaded.

¶6 Generally, statutes are applied prospectively. ***Snopek v. Lakeland Med. Ctr.***, 223 Wis. 2d 288, 293, 588 N.W.2d 19 (1999). Two well-defined exceptions apply to this general rule: (1) if by express language or necessary implication the statutory language reveals the legislative intent that it apply retroactively, or (2) if the statute is procedural or remedial in nature, rather than substantive. ***Trinity Petro., Inc. v. Scott Oil Co.***, 2006 WI App 219, ¶14, 724 N.W.2d 259.

¶7 Here, the circuit court correctly concluded the language of WIS. STAT. § 75.144 does not reveal by express language or necessary implication a legislative intent that the statute apply retroactively. *See* ***Snopek***, 223 Wis. 2d at 294. Geurink nevertheless insists that our supreme court established a new "global approach" to statutory interpretation in ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58, ¶¶69-70, 271 Wis. 2d 633, 681 N.W.2d 110. According to Geurink, this global approach to legislative intent allows consideration of any extrinsic evidence, including letters from attorneys involved in the drafting process. However, Geurink improperly cites a concurring opinion in ***Kalal***. The ***Kalal*** majority stated that it did not "endorse the methodology advanced" by the

[3] Geurink's briefs do not conform to WIS. STAT. RULE 809.19. Many of Geurink's factual assertions are not supported by citation to the record on appeal. Other asserted facts are outside the record. The rules make clear that a party's brief must make appropriate reference to the record for each proposition of fact. *See* ***Mount Horeb Cmty. Alert v. Village Bd.***, 2002 WI App 80, ¶19, 252 Wis. 2d 713, 643 N.W.2d 186, *aff'd*, 2003 WI 100, 263 Wis. 2d 544, 665 N.W.2d 229. Moreover, propositions unsupported by citation to legal authority are inadequate and will not be considered. *See* ***id.***

concurrence. ***Id.***, ¶49 n.8. The majority reiterated the rule that extrinsic sources of interpretation are generally not consulted unless there is a need to resolve an ambiguity in the statutory language. ***Id.***

¶8 The circuit court also concluded WIS. STAT. § 75.144 was substantive. A statute that "creates, defines or regulates rights or obligations … is substantive—a change in the substantive law of the state." ***Trinity Petro.***, 724 N.W.2d 259, ¶15. Although Geurink argued in the circuit court that § 75.144 was procedural, Geurink does not attempt on appeal to address whether § 75.144 is substantive or procedural, and we thus consider the issue conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶9 Moreover, Geurink does not attempt to discuss ***Petropoulos v. City of West Allis***, 148 Wis. 2d 762, 767, 436 N.W.2d 880 (Ct. App. 1989), relied upon by the circuit court. In ***Petropoulos***, we stated that a statute creating a right of adverse possession generally may only have prospective application, and applies where possession is taken after the law has gone into effect:

> Of particular importance to this case is our conclusion that adverse possession statutes have prospective application only, and will not be given a retrospective application. They apply where possession is taken after the laws have gone into effect, and compliance with their provisions is necessary to obtain the benefit thereof.

Id. (footnote omitted).

¶10 Here, possession by Lincoln County did not take place after WIS. STAT. § 75.144 had gone into effect. To the contrary, title to the property was taken by Lincoln County by tax foreclosure on March 20, 1986, prior to the existence of § 75.144. Section 75.144 was created by 1985 Wis. Act 247, which

was enacted April 15, 1986. The date of publication was April 23, 1986. Section 75.144 became effective the day after publication, April 24, 1986. *See* WIS. STAT. § 991.11. Therefore, Lincoln County obtained the Wegners' property by tax deed one month before § 75.144 became effective.

¶11 We conclude the circuit court correctly concluded that WIS. STAT. § 75.144 did not apply; but rather, the holding in ***Leciejewski*** governed. As the court observed, to hold otherwise would impose new notice requirements under § 75.144 on an event that had already occurred and would impair vested rights. Indeed, under Geurink's argument, retroactivity of § 75.144 could undo title by suits for adverse possession long before its effective date. The circuit court was correct in declaring Geurink's claim of adverse possession extinguished by the taking of a tax deed in 1986.[4]

¶12 Geurink next argues that claims under the seven- and ten-year limitation periods of WIS. STAT. §§ 893.26 and 893.27 "are preserved prior to and subsequent to the adoption of [WIS. STAT.] section 75.144." Geurink insists that claims under both statutes were specifically pleaded in the complaint and referenced in the summary judgment affidavits.

¶13 Both WIS. STAT. §§ 893.26 and 893.27 require that claims be based upon a written instrument describing the land being occupied. *See, e.g.*, § 893.26(2)(b). In its summary judgment decision, the circuit court stated: "The parties' proof makes clear that the plaintiffs are not claiming adverse possession

[4] Geurink insists the 1995 deed from Lincoln County was a "tax deed." This assertion is unexplained, undeveloped and unsupported by citation to legal authority. We will therefore not consider it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

based upon a written instrument (certainly, no such instruments were provided to the court); therefore, the applicable time requirement is 20 years under Wis. Stat. § 893.25." We agree with the circuit court that Geurink's proof upon summary judgment was insufficient. We reject Geurink's claim that a shorter limitation period was applicable.

¶14 Geurink also alleges their claims were based upon a staked area consistent with the recorded legal description and they can rely on the stakes as their property boundaries. In its decision on request for clarification, the court noted:

> [Geurink] continues to make references to the stakes that Mr. Gilray relied upon in placing his well "being of record with Lincoln County," but [Geurink] has yet to submit into evidence any such document. And the time to do so has passed; all summary judgment proof was to be submitted according to the briefing schedule the court set for the summary judgment motion.

¶15 Geurink continues to insist in their reply brief to this court that "[h]is recorded document of that boundary has been on record with Lincoln County in the Register of Deeds since 1956." Geurink also contends that "[a]rguments made in reference to the lack of stakes are without merit because the reference to stakes is throughout the entirety of Plaintiffs-Appellants-Cross-Respondents' pleadings, Briefs, and Affidavits."

¶16 Again, Geurink's reply brief does not contain any citations to the record on this issue, a violation of WIS. STAT. RULE 809.19(1)(d) and (e). We decline to embark upon our own search of the record, unguided by references and citations, to look for evidence to support Geurink's argument. We therefore refuse to consider the argument. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463.

¶17 Finally, Geurink argues the extinguishment of the adverse possession claim is an unconstitutional taking. This argument is undeveloped and unsupported by any citation to legal authority, and therefore we also will not consider it. ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶18 The Wegners cross-appeal, arguing the circuit court erred by not awarding expenses for failure to admit. The Wegners insist we should direct the payment of all expenses required to prove the truth of matters Geurink failed to admit pursuant to WIS. STAT. § 804.12(3). We conclude the circuit court failed to properly analyze the four enumerated exceptions to an order for sanctions and therefore reverse and remand for further proceedings consistent with this decision.

¶19 WISCONSIN STAT. § 804.12(3) provides:

> If a party fails to admit the genuineness of any document or the truth of any matter as requested [in a request for admissions], and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in the making of the proof, including reasonable attorney fees. The court *shall make the order unless it finds that* (a) the request was held objectionable pursuant to sub. (1), or (b) the admission sought was of no substantial importance, or (c) the party failing to admit had reasonable ground to believe he or she might prevail on the matter, or (d) there was some other good reason for the failure to admit. (Emphasis added).

¶20 Geurink contends the requests were objectionable in that many of the requests to admit sought legal conclusions. However, because Geurink failed to object to the requests for admission, we will not address Geurink's argument. *See* ***Michael A.P. v. Solsrud***, 178 Wis. 2d 137, 151 n.5, 502 N.W.2d 918 (Ct. App.

1993). We note the circuit court concluded without analysis that twelve of the failures to admit involved "denials of the legal issues on which the case turned." Because it appears that some of the requests involved statements or opinions of fact, or the application of law to fact, including the genuineness of any document described in the requests, *see* WIS. STAT. § 804.11(1), we cannot sustain the court's conclusion regarding that exception.

¶21 Furthermore, an award is required unless the court makes a finding that the admissions sought "were of no substantial importance." Here, the court stated only that "the court is skeptical at best about their importance." This is not a proper analysis under WIS. STAT. § 804.12(3). The court also concluded that "[e]ven if the court were to find that an award was appropriate, it would be minimal at best." Under § 804.12(3), the court must determine which expenses claimed are proper and may not categorically deny any expenses because some of the expenses may not be awardable or because the award may be minimal.

¶22 The court also did not properly discuss whether Geurink lacked reasonable grounds to believe they might prevail. The court stated: "In addition, the fact that the court ruled against the Plaintiffs on summary judgment does not render the plaintiffs' position unreasonable." The court reasoned the retroactivity of WIS. STAT. § 75.144 was "behind many of the plaintiffs' admission responses." However, the test is not whether the party actually prevailed, but whether they acted reasonably in believing they might prevail. *See* ***Michael A.P.***, 178 Wis. 2d at 151. In addition, even assuming the retroactivity of § 75.144 was behind many of Geurink's responses, some of the requests related to the disputed Tall Pine Trail easement. This was not discussed by the court. Because the court concluded the expenses were inappropriate on the above ground, it also did not reach the issue whether there was other good reason for the failure to admit.

¶23 On remand, even if the court determines that none of the four exceptions listed in WIS. STAT. § 804.12(3) were present in this case, it does not necessarily follow that the Wegners are entitled to the entirety of expenses claimed. Determinations of the amount of reasonable expenses incurred in proving the truth of the matters denied, including reasonable attorney fees, is ordinarily a matter for the circuit court's discretion. ***Michael A.P.***, 178 Wis. 2d at 153. Here, the circuit court observed that "[t]he Wegners' efforts did not include all of the work the Wegners' counsel had performed since this action was commenced." Geurink also points out there are twenty-three time entries prior to Geurink's first reply to the requests for admission for which the Wegners are seeking repayment. Moreover, the Wegners now concede that they are seeking expenses only on twelve of the nineteen requests on which they based their motion. Among those twelve, we are unable to determine as a matter of law on the record presented what claimed expenses were reasonably incurred only in connection with proving matters improperly denied in response to requests for admission. We reverse and remand for further proceedings on the issue of expenses on the failure to admit.

¶24 Finally, we emphasize our review in this case has been unnecessarily complicated by the parties' lack of citation to the record, citations to facts not in the record, failure to brief relevant areas of the law, misstating the law, failing to provide pinpoint citations, and taking positions inconsistent with positions taken in the circuit court. It should be clear to all lawyers that rules of appellate practice are designed in part to facilitate the work of the court and that when, by disregarding the rules, counsel fail in rendering the court the aid contemplated, this court will not hesitate in summarily rejecting their arguments.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions. Costs to the Wegners.

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