COURT OF APPEALS
DECISION
DATED AND FILED

January 29, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0651 **Cir. Ct. No. 00-CV-1260**

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

KENOSHA 2020, LLC AND GARY W. THOMPSON,

PETITIONERS-APPELLANTS,

V.

WISCONSIN DEPARTMENT OF ADMINISTRATION,

RESPONDENT-RESPONDENT,

TOWN OF BRISTOL AND CITY OF KENOSHA,

INTERVENING-RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Kenosha County: S. MICHAEL WILK, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 BROWN, J. Gary W. Thompson and Kenosha 2020, LLC appeal from an order dismissing their petition for judicial review of a Wisconsin Department of Administration decision approving a cooperative boundary agreement between the Town of Bristol and the City of Kenosha for lack of standing pursuant to WIS. STAT. §§ 227.52 and 227.53(1) (1999-2000).[1] We conclude that Thompson and Kenosha 2020 have failed to demonstrate that they have suffered an injury in fact due to the DOA decision and thus are not aggrieved parties as required by statute. We therefore affirm.

¶2 The facts for purposes of this appeal are brief. In 1997, officials from the Town of Bristol and City of Kenosha entered into negotiations under WIS. STAT. §§ 66.30 and 66.023 to develop a cooperative plan to transfer property and determine boundary lines between the municipalities. The negotiations resulted in the Town of Bristol agreeing to transfer to the City of Kenosha territory that is approximately two and one-quarter miles long and one mile wide and containing 1435 acres, including 350 acres of undeveloped land owned by the Town of Bristol along the I-94 Interstate corridor (the City Growth Area).

¶3 The Town of Bristol and the City of Kenosha presented draft plans under former WIS. STAT. § 66.023 at public hearings in December 1998, July 1999 and April 2000. In October 2000, the DOA approved a cooperative plan between the Town of Bristol and the City of Kenosha under § 66.023(5). Kenosha 2020 and Thompson subsequently filed a petition for review under WIS. STAT. ch. 227 and § 66.023(9) and (11). According to the petition, Kenosha 2020 is a Wisconsin

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

limited liability company engaged in public policy research and education that participated in the process leading to the cooperative plan proposal and approval. Thompson owns a one-third joint tenancy interest in property located in the Town of the Town of Bristol in the City Growth Area.

¶4 The Town of Bristol and the City of Kenosha filed a motion to dismiss the petition alleging that Kenosha 2020 and Thompson both lacked standing. The trial court granted the motion and dismissed the review action. Kenosha 2020 and Thompson appeal from the trial court's order.

¶5 Our review of a motion to dismiss for lack of standing is de novo. ***Town of Delavan v. City of Delavan***, 160 Wis. 2d 403, 410, 466 N.W.2d 227 (Ct. App. 1991). In Wisconsin, the law of standing is to be construed liberally. ***Wisconsin's Envtl. Decade v. PSC***, 69 Wis. 2d 1, 8, 230 N.W.2d 243 (1975) (hereinafter ***WED I***).

¶6 WISCONSIN STAT. §§ 227.52 and 227.53(1) govern the issue of standing to seek judicial review of agency determinations. ***Town of Delavan***, 160 Wis. 2d at 409. These statutes provide in pertinent part:

> **227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter ….
>
> ….
>
> **227.53 Parties and proceedings for review. (1)** Except as otherwise specifically provided by law, any person *aggrieved* by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter …. (Emphasis added.)

Thus, in order to have standing to petition for review of an agency decision, a petitioner must be "aggrieved" by the decision. *See* ***Town of Delavan***, 160 Wis. 2d at 410.

¶7 In order to establish that he or she is an aggrieved party and thus has standing pursuant to WIS. STAT. §§ 227.52 and 227.53(1), the petitioner must satisfy a two-part test. ***Waste Management of Wis., Inc. v. DNR***, 144 Wis. 2d 499, 504, 424 N.W.2d 685 (1988). First, the petitioner must demonstrate that he or she has sustained or is in immediate danger of sustaining some direct injury due to an agency decision.[2] ***Fox v. DHSS***, 112 Wis. 2d 514, 525, 334 N.W.2d 532 (1983). The injury or threat of injury must not be hypothetical or conjectural, but rather must be real and immediate; the injury must be an "injury in fact." ***Id.*** Second, the petitioner must show that the injury is to an interest that the law recognizes or seeks to regulate or protect. ***Waste Management***, 144 Wis. 2d at 505. To have standing, a petitioner must establish both prongs of the test. ***Id.***

¶8 In evaluating a WIS. STAT. ch. 227 motion to dismiss, we must determine whether the petition on its face states the nature of the petitioner's interests and the facts showing the petitioner is aggrieved by the agency decision. *See* WIS. STAT. § 227.53(1)(b); *see also* ***WED I***, 69 Wis. 2d at 8. We assume that the allegations in the petition are true and entitle the allegations to a liberal construction in favor of the petitioner. ***Id.*** We are not concerned with the ability of the petitioner to prove the facts alleged at trial. ***Id.*** at 8-9.

[2] Thompson and Kenosha 2020 cite to WIS. STAT. §§ 227.01 and 227.52 for the proposition that demonstrating a "substantial interest" satisfies the first prong of the standing test. We can find no legal authority supporting this argument.

¶9 We initially address the issue of whether Thompson has standing to pursue his claim. Thompson argues that as a holder of a one-third joint tenancy interest in property located in the City Growth Area, he has a substantial interest that is directly and adversely affected by the cooperative plan. Thompson asserts that the cooperative plan harms him because it changes the land use and jurisdictional laws governing the City Growth Area.

¶10 Thompson first claims that under the plan his property in the City Growth Area is subject to many additional requirements imposed by the City of Kenosha's ordinances. In his brief, Thompson cites to several City of Kenosha ordinances that did not apply to his property previously and that he claims now apply as a result of the plan. However, Thompson simply refers to these ordinances and does not specify how they have injured him or even threaten to injure him. Thompson has no right to be free of city ordinances or other ordinances regulating land development and he has failed to articulate how these new ordinances pose any real and immediate threat of harm to him.

¶11 Thompson also asserts that while he will be subject to these additional ordinances, he does not have franchise in the City of Kenosha and the agreement provides him with none. While Thompson has a one-third joint tenancy interest in property in the Town of Bristol, he does not claim in his petition to reside on the property in which he has an interest nor does he aver that he is registered to vote in the Town of Bristol. On appeal, Thompson asks us to take judicial notice of the fact that he both resides in and is a registered voter in the Town of Bristol. However, as we have indicated, the scope of our review is limited to the facts as alleged in the petition and Thompson has failed to aver the facts necessary to assert this claim of injury.

¶12 Thompson finally contends that the City of Kenosha's laws impose costs and limit choices as to what he can do with his property, parts of which are zoned agricultural, and will "almost inevitably" provide for conflicts with new residential neighbors permitted under the plan. Once again, Thompson does not articulate what costs he has incurred or will incur as a result of the plan, what choices have been or will be limited by the plan, or what kinds of conflicts with his neighbors have ensued or will ensue as a result of the plan. Thompson does not allege any development plans for his property that the cooperative plan prevents or hinders and that he would have a legal right to undertake without the consent of the other joint tenants. Thompson is merely speculating that at some point under some unknown circumstances, the new laws could adversely affect him.

¶13 Standing must ultimately rest on a showing, or at least an allegation, of direct injury or a real and immediate threat of direct injury. ***Fox***, 112 Wis. 2d at 529. None of Thompson's claimed injuries rise to this level. Thompson's claims of injury are either unsupported in the petition or simply too remote and speculative to confer standing on him to bring this action.[3]

¶14 We now turn to the question of whether Kenosha 2020 has standing to challenge the DOA's action. As we have already observed, WIS. STAT. §§ 227.52 and 227.53(1) provide that any person aggrieved by an agency decision

[3] Thompson also directs us to a list of "Claimed Errors" found in the petition and contends that it represents his alleged injuries. The petition, however, merely raises these errors and Thompson fails to fully develop the argument explaining how the errors in any way directly injure or present a real and immediate threat of direct injury to his interest. We therefore decline to address them. *See* ***Town of Delavan v. City of Delavan***, 160 Wis. 2d 403, 413, 466 N.W.2d 227 (Ct. App. 1991) (declining to address undeveloped and unsupported arguments of alleged injury).

is entitled to judicial review of the decision, but the petitioner must state the nature of its interest, the facts showing the petitioner is aggrieved by the decision and the grounds upon which the petitioner contends the decision should be reversed or modified. According to the petition, Kenosha 2020 is a Milwaukee-based limited liability company that participated in the process leading to the approval of the plan. This, however, is the extent of the petition's discussion of Kenosha 2020's interest in the action. The petition does not evidence that Kenosha 2020 owns or has any interest in land in the Town of Bristol or that it has any members who reside in the Town of Bristol. The petition does not demonstrate or even allege that Kenosha 2020 or its members have sustained or will sustain any injuries due to the DOA's decision.[4] Kenosha 2020 simply has failed to provide any basis for determining that it has suffered an injury, actual or threatened, and is an aggrieved party under the statutes.

¶15 Lastly, Thompson and Kenosha 2020 raise several other challenges to the DOA's decision, among them that the plan violates the equal protection clauses of the Wisconsin and the United States Constitutions because it prevents property owners in the City Growth Area from installing on-site sanitary systems. Thompson asserts that the constitutional standard for standing differs from the inquiry we apply in a WIS. STAT. ch. 227 review action. He argues that in an equal protection claim a personal stake is sufficient to confer standing where there exists a logical nexus between the status asserted and the constitutional infringements alleged, citing ***Moedern v. McGinnis***, 70 Wis. 2d 1056, 1064, 236

[4] Kenosha 2020, like Thompson, alleges that the list of "Claimed Errors" in the petition represents its alleged injuries; we decline to address the errors for the same reason we refused to address the similar argument advanced by Thompson. *See* ***Town of Delavan***, 160 Wis. 2d at 413 (declining to address undeveloped and unsupported arguments of alleged injury).

N.W.2d 240 (1975), for this proposition. Thompson, however, fails to adequately explain how he satisfies this standard. For example, he does not explain whether the equal protection analysis is subject to the rational relationship test or the strict scrutiny test; in fact, he does not use these terms at all. All he does is give us a conclusory statement that his supposed forced compliance with the cooperative plan prohibits him from putting an on-site sanitary system on his property. This simply is not enough. In light of the inadequate briefing on this issue, we decline to address it. ***Grube v. Daun***, 213 Wis. 2d 533, 544, 570 N.W.2d 851 (1997) ("This court declines to address issues raised on appeal that are inadequately briefed."). The remaining issues Thompson and Kenosha 2020 raise either suffer from a similar deficiency or were not properly raised at the trial court level, and, as such, we decline to address them here.[5] *See* ***id.***; ***Bishop v. City of Burlington***, 2001 WI App 154, ¶8, 246 Wis. 2d 879, 631 N.W.2d 656, *review denied*, 2001 WI 117, 247 Wis. 2d 1035, 635 N.W.2d 783 (Wis. Sep. 19, 2001) (No. 00-2346) ("A litigant must raise an issue with sufficient prominence such that the trial court understands that it is being called upon to make a ruling."); s*ee also* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) ("This court will not address issues for the first time on appeal.").

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[5] We might also add the famous "performing bear" precept to this discussion. *See* ***State v. Waste Management of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).