

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 17, 2003

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. 02-3088
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-187

**IN COURT OF APPEALS
DISTRICT IV**

MERITER HOSPITAL, INC.,

PLAINTIFF-RESPONDENT,

V.

WILLIAM GOODMAN,

**DEFENDANT-THIRD-
PARTY PLAINTIFF-APPELLANT,**

V.

**MADISON ABORTION CLINIC, KIMBERLY A.
CHRISTENSEN, DENNIS D. CHRISTENSEN, ALTON M.
KEY AND ROBERT A. PETERSON,**

THIRD-PARTY DEFENDANTS,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

**INTERVENOR-THIRD-
PARTY DEFENDANT.**

APPEAL from a judgment of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. William Goodman appeals a judgment enjoining him from entering the Madison Abortion Clinic (“the Clinic”) and the Meriter Hospital capitol site.¹ The issues are whether Meriter Hospital, Inc. had standing to maintain a civil trespass claim against Goodman, whether a material factual dispute requires further proceedings, and whether Goodman can use a necessity defense to oppose Meriter’s claim for an injunction against trespass. We affirm on all issues.

¶2 In relevant part Meriter’s complaint alleged: (1) that it owns the Meriter Hospital capitol site, and leases space in it to the Clinic; (2) that Goodman entered the site on at least three occasions, without permission, in order to protest the Clinic’s operations; and (3) that on two of those occasions he was forcibly removed from the Clinic after shouting at and otherwise harassing patients and

¹ The injunction provides that

defendant William L. Goodman is permanently enjoined from the following conduct: trespassing on or otherwise entering the Madison Abortion Clinic located at 309 W. Washington Avenue, Madison, Wisconsin and the Meriter Hospital Capitol Site, including parking lots, parking lot entrances, driveways, driveway entrances, skywalks, hallways, and building entrances wherein abortions are performed, excluding all public ways, public sidewalks, and public sidewalk areas that run continuously through parking lot entrances, driveway entrances, and other entrance ways.

The judgment also includes a map of the premises identifying the area where Goodman is excluded.

staff. As relief Meriter sought a permanent injunction against any further trespasses by Goodman on the capitol site premises.

¶3 In response, Goodman denied one of the three alleged trespasses. He admitted entering the Clinic on the other two occasions. In each case he alleged that he had implied consent to do so in order to hand deliver letters to a clinic doctor. He admitted that on both occasions he entered the patient and staff area of the Madison Abortion Clinic without their express permission. Goodman asserts that he was compelled by his conscience to remain on the Madison Abortion Clinic's property [after delivering the letters] in order to peacefully protect human life and that he refused to leave.... Others used force to remove him from the premises.

¶4 Meriter moved for judgment on the pleadings. The trial court held that the facts as alleged and admitted entitled Meriter to a permanent injunction. On appeal Goodman contends that Meriter lacks standing to pursue an injunction for the Clinic's benefit, that the pleadings raised a material factual dispute concerning his implied consent to enter the Clinic, and that further proceedings are necessary to litigate his defense of necessity.

¶5 Except for the absence of affidavits and other evidentiary submissions, the appellate standard for reviewing judgments on the pleadings is identical to the standard of review for summary judgments. *See Schuster v. Altenberg*, 144 Wis. 2d 223, 228, 424 N.W.2d 159 (1988). We first examine the complaint to determine whether a claim for relief has been stated. *Id.* If it has, we examine the responsive pleading to determine whether a material factual issue exists. *Id.* If no genuine issue of material fact exists, the court may determine that the moving party is entitled to judgment as a matter of law. *Id.* We apply this

methodology de novo. See *Jankee v. Clark County*, 2000 WI 64, ¶48, 235 Wis. 2d 700, 612 N.W.2d 297.

¶6 Goodman first argues that Meriter lacks standing to seek an injunction because the acts constituting the trespasses occurred on the Clinic's leased premises. In his view, while Meriter is the landlord and owner of the premises, it does not possess or occupy them such that it may claim trespass. He contends that in such circumstances only the lessee, here the Clinic, may claim trespass. However, the pleadings establish that the Clinic lies entirely within the Meriter premises, with no access except by entering the capitol site. Therefore, in both entries to the Clinic that Goodman admitted, he passed through the Meriter capitol site. Consequently, Meriter has standing to object to his entry, even though Goodman's primary objective was to protest on the Clinic's premises. Additionally, Goodman admitted that hospital security staff were involved in removing him from the Clinic. Goodman cites no authority for the proposition that Meriter cannot seek civil remedies to protect tenants within its premises for whom it provides security.

¶7 Goodman next asserts that a dispute exists over whether he had implied consent to enter Meriter and the Clinic on his two admitted visits, because each time he delivered a letter, and Meriter routinely permits people to deliver letters on its premises. It is beyond reasonable dispute, however, by Goodman's own admissions, that he entered the premises to protest the Clinic's operations, and that delivering letters to staff was merely another tactic of that protest. He had no implied consent to protest on Meriter's or the Clinic's premises under any reasonable view. Additionally, Goodman admitted that he remained in the Clinic and refused to leave after delivering his letters. He became a trespasser at that

point regardless of any implicit permission to deliver the letters. He was properly and reasonably subjected to an injunction for that post-delivery conduct alone.

¶8 The trial court properly barred Goodman from presenting a necessity defense, i.e., that his trespasses were necessary to protect the Clinic's patients from serious harm. That defense is unavailable in a prosecution for criminal trespass into an abortion clinic. See *State v. Migliorino*, 150 Wis. 2d 513, 540, 442 N.W.2d 36 (1989). We conclude it is equally unavailable as a defense in an action to enjoin future trespasses into an abortion clinic.

By the Court.—Judgment affirmed.

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

