

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 22, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 94-1019

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE MATTER OF THE LOWER
BARABOO DRAINAGE DISTRICT:**

**COLUMBIA COUNTY AGRICULTURAL AND
LAND CONSERVATION COMMITTEE
AND CANDY BULGRIN,**

Appellants,

v.

**MAURICE WILLIAMS,
HENRY HUTTERLI,
AND JOHN MUELLER,**

Respondents.

APPEAL from an order of the circuit court for Columbia County:
DANIEL S. GEORGE, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Columbia County Agricultural and Land Conservation Committee (LCC) and Candy Bulgrin appeal from an order authorizing the withdrawal of several landowners from the Lower Baraboo Drainage District (LBDD). The appellants contend that the court erred when it permitted the landowners to amend a petition for dissolution of the LBDD under § 88.82, STATS., 1991-92, to a petition to withdraw their land under § 88.80, STATS., 1991-92,¹ and then approved the withdrawal. We disagree and affirm the order.

This litigation began when certain landowners filed a petition in circuit court seeking dissolution of the LBDD. They claimed that the petition contained the signatures of landowners representing the necessary sixty-seven percent of the confirmed benefits from the LBDD, § 88.82(1)(b), STATS., 1991-92. Both the Columbia County Farm Drainage Board (CCFDB) and the Department of Natural Resources objected to dissolution.² Prior to the hearing, the petitioners alleged that the LBDD had violated both the open records and open meetings laws.

The court held a hearing on January 5, 1994. After initial arguments by counsel, off-the-record settlement discussions occurred, and the parties reached a tentative accord. The petitioners agreed to amend their petition from one seeking dissolution to one seeking withdrawal of their lands from the LBDD and to drop their open records and open meetings challenges. As stated by petitioners' counsel, the CCFDB "concur[s] and joins in our recommendation to the Court ... that the person signing the petition to withdraw under 88.80 will no longer receive any benefit from the drainage district [and] the withdrawing parties can withdraw with no material injury to the drainage district."

Before ruling on the proposed settlement, the court solicited comments from persons in attendance. Two persons, including Bulgrin,

¹ 1993 Wis. Act 456 amended both statutory sections effective May 13, 1994. Because the trial court entered its order on January 20, 1994, we apply the 1991-92 statutes.

² The DNR took a mixed position on dissolution. It favored eventual dissolution, but wanted the LBDD to exist as long as necessary to administer federal flood clean-up monies.

objected to the dissolution. The president of the CCFDB also objected, leading to further off-the-record discussion. Ultimately, the president advised the court that the CCFDB concurred in the stipulation. The court then granted the order consistent with the stipulation, but stayed the order until it received documentation that the individuals petitioning to withdraw from the district had paid the forthcoming assessments.³ Appellants petitioned for leave to appeal under RULE 809.50, STATS. We granted the petition.

Respondents argue that Bulgrin and LCC lack standing to appeal. A person may not appeal from an order unless aggrieved by the order. *Ford Motor Credit Co. v. Mills*, 142 Wis.2d 215, 217, 418 N.W.2d 14, 15 (Ct. App. 1987). A person is aggrieved if the order bears directly and injuriously upon his or her interest. The person must be adversely affected in some appreciable manner. *Id.* at 217-18, 418 N.W.2d at 15.

Both appellants have standing to appeal. Bulgrin owns land in the drainage district. Section 88.05(4)(b), STATS., 1991-92, requires that owners of affected land receive notice of proceedings under ch. 88. An order permitting the withdrawal of some land from the drainage district "bears directly and injuriously" upon the interests of the remaining landowners. Bulgrin has standing to appeal.

Section 88.05(4)(a), STATS., 1991-92, requires that the "chairperson of the county land conservation committee" receive notice of ch. 88 proceedings. Under § 92.07(6), STATS., 1991-92, a county land conservation committee "may carry out preventive and control measures and works of improvement for flood prevention and for conservation, development, utilization and control of water within the county." A land conservation committee and a drainage district have similar statutory responsibilities. Consequently, the interests of a land conservation committee may be adversely affected by a change in the territory within a drainage district. LCC has standing to appeal.

³ The stipulation anticipated that the drainage district would receive Federal Emergency Management Agency disaster relief monies requiring matching funds assessed from drainage district landowners. The court entered an order on April 20, 1994, confirming the levy of assessments, allowance of board fees and expenses and consent to borrow money.

We next consider whether the court erred when it permitted the amendment of the petition and approved the withdrawal of the petitioners' land from the LBDD. A person seeking to withdraw land from a drainage district must file a petition for withdrawal with the drainage district board. Section 88.80(2), STATS., 1991-92. The board then determines whether all benefits assessed against the lands have been paid. *Id.* Upon such a determination, the board files with the court the petition and a report with a recommendation as to the petition's disposition. *Id.* The court gives notice of, and then conducts a hearing on the petition. Section 88.80(3). Notice of the hearing must state the prayer or substance of the prayer. Section 88.05(2)(d), STATS., 1991-92. If the court finds that all benefits against such lands have been paid, that the lands will receive no benefit from the drainage district, and that the drainage district will not be materially injured by the withdrawal of such lands, it "shall" order detaching the lands from the district. Section 88.80(1) and (3).

Appellants argue that the trial court erred by immediately acting on the amended petition in that such action deprived them of notice, and violated filing and other procedures for the review of petitions to withdraw lands from drainage districts. They assert that the absence of notice interfered with their right to testify on the petition, § 88.06(3), STATS., 1991-92, and precluded them from filing written objections to the amended petition. Section 88.07(1), STATS., 1991-92. Appellants also argue the trial court erroneously exercised its discretion by failing to provide an adequate hearing to review the petition.

We conclude appellants had adequate notice of the proceeding. Petitions for dissolution and withdrawal require the same persons to receive notice. *See* §§ 88.80(3), 88.82(1)(d) and 88.05, STATS., 1991-92. Because appellants knew the court might dissolve the drainage district, we reject the argument that they required notice that the court might take less drastic action. The trial court's actions may have precluded appellants from filing jurisdictional or other objections under § 88.07(1), STATS., 1991-92, but appellants have failed to demonstrate any valid objections which could have been raised had they been afforded greater opportunity to do so.

Appellants also argue that the trial court failed to comply with § 88.80(2) and (3), STATS., 1991-92, in that the landowners did not file their

withdrawal petition first with the board, the board did not determine that benefits assessed against respondent landowners were paid, and it did not file with the court a written report containing the board's recommendation on the petition. We reject their argument as elevating form over substance. The record shows that the board, in its stipulation, made a recommendation to the court that the petition be granted. While it could not then determine that all assessments had been paid, the court stayed its order until the future assessments had been paid.

Appellants argue the trial court erred by entering the order without benefit of a hearing required under § 88.80(3), STATS., 1991-92. The statute does not indicate the type of hearing required. The record shows the trial court conducted a hearing in that it solicited comments concerning the proposed stipulation from those in attendance. We reject appellants' contention that § 88.06, STATS., 1991-92, applies to a petition for withdrawal. That statute govern actions by drainage boards requiring court consent or approval. The court itself approves petitions for withdrawal.⁴

Faced with a petition to dissolve the drainage district, the drainage board entered a stipulation. This the board had every right to do. Section 88.21(2), STATS., 1991-92. The trial court reviewed this stipulation, approved amending the petition to one of withdrawal, and properly entered its order.

By the Court.—Order affirmed.⁵

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

⁴ Section 88.80, STATS., 1993-94, as amended, now provides that drainage boards approve petitions for withdrawal and must determine whether: (1) all benefits assessed against the lands to be withdrawn have been paid; (2) the lands will receive no benefit from the drainage district; and (3) the drainage district will not be materially injured by the withdrawal of lands. Section 88.80(1) and (3).

⁵ Respondents have moved for costs and fees under RULE 809.25(3), STATS., the frivolous appeal rule. Because of the lack of case law interpreting ch. 88, STATS., appellants' appeal is not frivolous and we deny respondents' motion.