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DISTRICT IV

April 18, 2024

To:

Hon. Everett D. Mitchell
Circuit Court Judge
Electronic Notice

Lynn Kristine Lodahl
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Randall Popp
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP539

Randall Popp v. Wisconsin Department of Safety and Professional Services (L.C. # 2022CV772)

Before Graham, Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Randall Popp, pro se, appeals a circuit court order upholding a decision by the Department of Safety and Professional Services board that regulates professional land surveyors.¹ Popp argues that we should modify or reverse the board's decision. Specifically, Popp seeks a modification that would require a surveyor to remove three rebar stakes that the surveyor installed on property that Popp contends is his. Based on our review of the briefs and

¹ The full name of the board is the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors, and Registered Interior Designers.

the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).² We affirm.³

This case arises from what appears to be a long-running dispute relating to the boundary between Popp’s property and a cemetery. The cemetery’s caretaker engaged the services of a surveyor, and the surveyor installed the rebar stakes in the course of providing the services. Popp filed a complaint with the Department of Safety and Professional Services in which he alleged that the surveyor trespassed on his property and installed the stakes contrary to existing mapping. The Department interpreted the complaint as alleging a violation of WIS. ADMIN. CODE A-E § 8.06(1) (Nov. 2022), which requires a surveyor to “use reasonable care and competence in providing professional services.” After an investigation, the board found that the surveyor committed no violation of professional standards. Popp petitioned the circuit court for judicial review under WIS. STAT. ch. 227, and the court upheld the board’s decision.

On appeal, “we review the agency’s decision, not the circuit court’s.” *Bethards v. DWD*, 2017 WI App 37, ¶16, 376 Wis. 2d 347, 899 N.W.2d 364. The petitioner—here, Popp—“bears the burden of demonstrating that the agency decision should be modified or set aside.” *Id.* Our scope of review is the same as the circuit court’s and is limited to the grounds in WIS. STAT. § 227.57. As relevant here, the court shall modify or set aside the agency decision “if [the court]

² All references to the Wisconsin Statutes are to the 2021-22 version.

³ According to Popp, the rebar stakes or “monuments” at issue in this case are 3/4-inch-thick metal rods that are about 18 inches long, are buried in the ground, and were originally marked with wooden flagsticks. The Department’s brief includes a photographic image that depicts what appear to be the wooden flagsticks, along with a narrative explanation. This narrative explanation appears to mistakenly conflate the rebar stakes with the flagsticks, but we see no indication that the board made a similar mistake in reaching its decision.

finds that the agency has erroneously interpreted a provision of law *and* a correct interpretation compels a particular action,” or “if the facts compel a particular action as a matter of law.” *See* § 227.57(5), (7) (emphasis added).

Popp advances multiple arguments, and at bottom they all have the same fundamental flaw. None of his arguments establishes that the law or the facts compel the particular action he seeks, namely, an order requiring the surveyor to remove the rebar stakes. Moreover, Popp fails to persuade us that the board erroneously interpreted the law when it concluded that the surveyor committed no violation of professional standards.

According to Popp, the surveyor violated professional standards by failing to consult a recorded survey from 2003. We are not persuaded by this argument because Popp does not establish that a surveyor must consult a previous survey when, as here, the surveyor is performing preliminary work. The record shows that the surveyor installed the rebar stakes to mark a “possible boundary line,” not to mark the final boundary line of a completed survey, and that the cemetery discontinued his services before he completed a survey.

Popp also argues that the board erred because its decision was based on the recommendation of an advisor who made the recommendation without including the fact that the rebar stakes remained in the ground. Popp argues that the board would have made a different decision if it had understood that the stakes remained in the ground. We are not persuaded by this argument for two reasons. First, Popp concedes that the board’s advisor included this “previously omitted fact” in a subsequent case summary for the board before the board made its decision. Second, Popp does not establish that this fact is legally relevant. He does not show

that the surveyor violated professional standards either by installing the stakes or by not removing them after the cemetery discontinued his services.

Next, Popp argues that the surveyor trespassed on his property. As with Popp's other arguments, his trespass argument does not establish that the law or the facts compel the board to take the action that he seeks, namely, an order requiring the surveyor to remove the rebar stakes.⁴

Other arguments that Popp makes likewise lack merit given our scope of review and the particular relief that he seeks. We discuss those arguments no further. See *Libertarian Party of Wis. v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (“[C]hallenges not discussed with specificity can be deemed to lack sufficient merit to warrant individual attention.”).

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

⁴ The parties dispute whether a statutory provision, WIS. STAT. § 59.73(2), generally exempts all professional surveyor work from liability for trespass or instead exempts only professional surveyor work for subdividing property. We need not resolve this dispute to conclude that Popp has not shown that the alleged trespass is sufficient justification to compel board action requiring the surveyor to remove the rebar stakes.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals