

No. 95-0759

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

**JAMES N. ELLIOTT and
MILWAUKEE BUILDING AND
CONSTRUCTION TRADES COUNCIL,**

Plaintiffs-Appellants,

v.

ERRATA SHEET

**MICHAEL L. MORGAN
and CITY OF MILWAUKEE,**

Defendants-Respondents.

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PLEASE TAKE NOTICE that the attached pages 4-5 are to be substituted for pages 4-5 in the above-captioned opinion which was released on November 7, 1995.

Dated this 20th day of December, 2006.

In its answer to the plaintiffs' complaint, the defendants raised as an affirmative defense that the plaintiffs "have failed to join necessary and indispensable parties." We agree. RULE 803.03(1), STATS., provides:

Joinder of persons needed for just and complete adjudication.

(1) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if:

(a) In the person's absence complete relief cannot be accorded among those already parties; or

(b) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

1. As a practical matter impair or impede the person's ability to protect that interest; or

2. Leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his or her claimed interest.

Application of the wage-rate laws to Business Improvement District No. 15 and to Milwaukee Riverwalk District would affect their ability to fulfill the objectives of their charter—most notably by increasing the costs of their operations. Simply put, the interests of both Business Improvement District No. 15 and Milwaukee Riverwalk District are at risk in this case; they are entitled to an opportunity to protect those interests. They are indispensable parties to this action.¹ The plaintiffs have not argued that joinder of Business

¹ The plaintiffs argue that Business Improvement District No. 15 is not an indispensable party because it is "functionally inseparable from the City of Milwaukee itself." This, of course, begs the question because the interrelationship between the city and Business Improvement District No. 15 is one of the issues underlying the plaintiffs' contention that the wage-rate laws apply. Moreover, a similar argument was made and rejected in the context of paternity actions in *State v. Jody A.E.*, 171 Wis.2d 327, 491 N.W.2d 136 (Ct. App. 1992), where we held that a mother was an indispensable party to a paternity action prosecuted by the state despite the state's putative representation of the mother's interests. *Id.*, 171 Wis.2d at 341–342, 491 N.W.2d at 141. Failure to join Business Improvement District No. 15 and Milwaukee Riverwalk District will either bind them to a judicial result without an opportunity for them to be heard, or, if they are not so bound, will invite further litigation. The plaintiffs do not contend that the Milwaukee Riverwalk District is not an indispensable party.

Improvement District No. 15 and Milwaukee Riverwalk District is not "feasible." Accordingly, we affirm the judgment dismissing this action, but direct that the dismissal be without prejudice. See *Heifetz v. Johnson*, 61 Wis.2d 111, 119, 211 N.W.2d 834, 838 (1973) (failure to join an indispensable party, if feasible, requires dismissal of the action "since the adjudication cannot proceed to judgment without him," although defect not jurisdictional) (citation omitted).

By the Court. – Judgment affirmed.

Publication in the official reports is not recommended.