

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 6, 1996

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2025-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**COLLEEN LUNDBERG
and WALTER LUNDBERG,**

Plaintiffs-Appellants,

v.

**NORTH MEDICAL
TRANSPORTATION,
LINDA JORGENSEN,
RENEE STAPLES,
JOHN HELSTERN,
TERI HELSTERN,
XYZ INSURANCE COMPANY,
SIREN FIRE DEPARTMENT
and CONTINENTAL
WESTERN INSURANCE
COMPANY,**

Defendants,

**DANBURY VOLUNTEER
FIRE DEPARTMENT
and SENTRY INSURANCE,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Burnett County:
JAMES H. TAYLOR, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Colleen and Walter Lundberg appeal a judgment that dismissed their lawsuit against the Danbury Volunteer Fire Department and Sentry Insurance.¹ Their lawsuit alleged that the Danbury Volunteer Fire Department negligently injured Colleen while attempting to extract her from her motor vehicle after a car accident. The Lundbergs submitted their notice of claim to the Danbury Volunteer Fire Department. They received a notice of disallowance of claim from the Town of Swiss. The notice referred to the date of the incident but not the Danbury Volunteer Fire Department. The Lundbergs did not initiate their lawsuit within six months of the notice under § 893.80(1)(b), STATS. They claimed that they had no knowledge of any involvement in the accident by the Town of Swiss and continued to wait for a notice referring to an entity with the name Danbury. They cited maps, road signs, fire department vehicles, and the firehouse itself, all of which used the name Danbury, in reference to the unincorporated Town of Danbury. The Lundbergs never contacted the incorporated Town of Swiss about the notice.

The trial court dismissed the Lundbergs' lawsuit on the ground that the Lundbergs had not initiated their lawsuit within six months of the Town of Swiss' notice disallowing their notice of claim, in violation of § 893.80(1)(b), STATS. The trial court ruled that the Danbury Volunteer Fire Department was a subdivision of the Town of Swiss, not a separate legal entity, and that the Town of Swiss' notice was effective to initiate the running of the six-month deadline under § 893.80(1)(b) regarding the Lundberg's claim alleging negligence by the Danbury Volunteer Fire Department. On appeal, the Lundbergs offer two basic arguments: (1) the Town of Swiss' notice of claim disallowance was deceptive to the point of voiding the notice and estopping enforcement of the six-month statutory deadline; and (2) the Danbury

¹ This is an expedited appeal under RULE 809.17, STATS.

Volunteer Fire Department was a de facto separate, suable legal entity. We reject these arguments and affirm the judgment.

First, the Town of Swiss' notice of claim disallowance was sufficient. It correctly identified the incident and notice of claim. It did not become deceptive or misleading by virtue of the fact that it failed to identify the Danbury Volunteer Fire Department as a subdivision of the Town of Swiss or to refer to the Danbury Volunteer Fire Department in any fashion. When the Lundbergs received the Town of Swiss' notice, they should have made the connection and spotted the link between the Town of Swiss' notice and their own notice of claim. At that point, in spite of the fact that the name Danbury appears on official state maps, road signs, fire department vehicles, and the firehouse itself, the Lundbergs could no longer reasonably continue their assumption that the Danbury Volunteer Fire Department was a separate legal entity that would be eventually providing them a separate notice of claim disallowance. Rather, at that point, they failed to exercise reasonable investigative diligence. Parties are constructively on notice of the existence and location of municipalities, and the failure to identify a town in a notice of claim disallowance is no grounds to estop the town. In sum, the trial court correctly refused to void the notice and estop enforcement of the six-month statutory deadline.

Second, the Danbury Volunteer Fire Department is not a separate legal entity with an obligation to provide the Lundbergs a separate notice of claim disallowance. It does not have the attributes of a separate legal entity. For example, it receives all of its funds from the Town of Swiss. It has no independent revenue raising or proprietary powers. The record contains no evidence that the department owns the equipment or buildings it uses. The department is, in reality, a subdivision of the Town of Swiss. The fact that the department has its own bylaws, holds monthly meetings with voting by its active membership, and elects officers with some degree of authority to administer the department's funds, does not make the department a de facto separate legal entity. The Town of Swiss has apparently delegated these comparatively minor powers to the department for administrative convenience. They do not free the department from the Town of Swiss' ultimate control. In sum, the Lundbergs may not maintain a lawsuit against the Danbury Volunteer Fire Department, either as a subdivision of the Town of Swiss or as a de facto separate legal entity.

By the Court. – Judgment affirmed.

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