



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT IV**

November 13, 2013

To:

Hon. John C. Albert  
Circuit Court Judge  
Dane County Courthouse  
215 South Hamilton, Br 3, Rm 4105  
Madison, WI 53703

Mark Hazelbaker  
Kasieta Legal Group, LLC  
7818 Big Sky Drive  
Madison, WI 53719

Carlo Esqueda  
Clerk of Circuit Court  
Room 1000  
215 South Hamilton  
Madison, WI 53703

Greg Griswold  
3488 County Road J  
Cross Plains, WI 53528

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

---

2012AP433

Town of Cross Plains ex rel. Greg Griswold and Greg Griswold v.  
Ann Walden, Vera Riley, Jeff Baylis, Elizabeth J. Krantz and  
Robert Bowman (L.C. # 2009CV2873)

Before Lundsten, Higginbotham and Sherman, JJ.

Greg Griswold appeals a judgment of the circuit court, which dismissed Griswold's claims against all defendants and denied Griswold's motion for the recusal of Judge John C. Albert. Griswold also appeals a circuit court order denying his motion for waiver of transcription fees. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We summarily affirm.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Griswold filed a complaint on June 12, 2009, against town officials, including members of the Board of Supervisors of the Town of Cross Plains (collectively, the town officials). The circuit court dismissed the action, reasoning that Griswold did not own real estate within the Town of Cross Plains when he filed the complaint and, therefore, was not a taxpayer of the Town of Cross Plains with standing to sue the town officials. Griswold challenges this ruling on appeal, arguing that he has a legal property interest in real estate located at 3488 County Highway J in the Town of Cross Plains.

Griswold previously made this same argument with respect to the Highway J property in a prior appeal, 2011AP881. We rejected the argument in an opinion and order dated July 25, 2012, stating that, “as of January 1, 2009, Griswold did not have any record filed with the Dane County Register of Deeds reflecting any interest he had in the property.” We also noted in a footnote that the Dane County Circuit Court had found, in case no. 2009CV870, that a warranty deed recorded by Griswold on June 22, 2010, was null and void.<sup>2</sup>

The doctrine of issue preclusion forecloses Griswold from relitigating the issue of whether he had an interest in the property for the time period up to and including January 1, 2009, as that issue was already decided in appeal no. 2011AP881. *See Masko v. City of Madison*, 2003 WI App 124, ¶4, 265 Wis. 2d 442, 665 N.W.2d 391. Griswold fails to identify any evidence in the record indicating that he acquired an interest in the Highway J property thereafter, or in any other real estate in the Town of Cross Plains, such that he would have had taxpayer status in the Town of Cross Plains when he initiated this action.

---

<sup>2</sup> An appeal of the circuit court’s ruling in case no. 2009CV870 is currently pending before this court, as appeal no. 2012AP1903.

Griswold attempts to argue that, because the circuit court previously ruled, on December 13, 2010, that Griswold did have standing, that the court was somehow prohibited from later reconsidering its ruling after learning of the judgment in 2009CV870, which found that Griswold had no legal or equitable title to the property. However, we are satisfied that the court was within the proper exercise of its discretion in reconsidering its ruling on that issue, given the judgment in 2009CV870. Accordingly, we affirm the circuit court's judgment dismissing the action for lack of standing.

We turn next to Griswold's argument that the circuit court erred in denying Griswold's motion for the recusal of Judge Albert. The mandatory disqualification statute, WIS. STAT. § 757.19(2), states the situations in which a judge must disqualify himself from an action or proceeding. Griswold cites § 757.19(2)(g) in support of his argument. Section 757.19(2)(g) states that a judge shall disqualify himself when that judge "determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner." Our supreme court has held that, because the basis for disqualification under § 757.19(2)(g) is subjective, there is no standard to apply on review other than an objective one, limited to establishing whether the judge made a determination requiring disqualification. *State v. American TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 186, 443 N.W.2d 662 (1989). Here, the record reflects that Judge Albert considered the issue of recusal and made a determination that recusal was not warranted. Accordingly, we affirm the circuit court's denial of Griswold's recusal motion.

Finally, we address Griswold's argument that the circuit court erroneously exercised its discretion by denying his petition for a waiver of transcription fees. We previously addressed this issue in our order dated March 20, 2012, in which we denied Griswold's motion to waive transcription fees. Nothing in Griswold's briefs alters our view on that issue.

The respondents request in their brief that this court issue an order finding the appeal to be frivolous and imposing sanctions. However, it is not sufficient to request sanctions in a responsive brief. *Howell v. Denomie*, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621. A motion requesting that an appeal be found frivolous must be filed no later than the filing of the respondent's brief. WIS. STAT. RULE 809.25(3)(a). No such motion was filed in this appeal and, accordingly, the request for sanctions must be denied.

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*