



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 II**

April 15, 2015

To:

Hon. Linda M. Van De Water  
Circuit Court Judge  
Waukesha County Courthouse  
515 W. Moreland Blvd.  
Waukesha, WI 53188

Kathleen A. Madden  
Clerk of Circuit Court  
Waukesha County Courthouse  
515 W. Moreland Blvd.  
Waukesha, WI 53188

Alexandra Cali  
Robert P. Ochowicz  
Kasdorf, Lewis & Swietlik, S.C.  
One Park Plaza, Ste. 500  
11270 West Park Place  
Milwaukee, WI 53224

Terry J. Klippel  
Storm, Balgeman, Miller & Klippel, S.C.  
1011 N. Mayfair Rd., Ste. 200  
Wauwatosa, WI 53226

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

---

2014AP2277

Earl A. Wiggins Revocable Trust v. Village of Menomonee Falls  
(L.C. #2012CV1526)

Before Brown, C.J., Reilly and Gundrum, JJ.

Earl A. Wiggins Revocable Trust (the Wiggins Trust) appeals from a circuit court judgment dismissing on summary judgment its complaint against the Village of Menomonee Falls (the Village). 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 (2013-14).<sup>1</sup> We affirm the judgment of the circuit court.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version.

The Wiggins Trust is a revocable trust of which Earl A. Wiggins is the grantor, trustee, and beneficiary. The trust owns residential property in Menomonee Falls where Wiggins has lived since approximately 2004.

In May 2012, the Wiggins Trust filed a complaint against the Village for damages related to flooding that had occurred on its property after heavy rains. The complaint alleged that the Village had caused the flooding by directing storm water in front of the property into a drainage pipe that runs through and underneath the property. The complaint further alleged that this amounted to a continuing trespass and nuisance.

In a subsequent deposition, Wiggins clarified that his trust's complaint was based on how the Village had designed the storm water drainage system.

Q: All right. My question is is the size of the pipe your complaint? Or the design of where the water goes through the pipe?

A: The design. The entire design.

Q: Okay. And just to shorten this a little bit. Is your complaint with regard to what the village did, as far as where the water flows, when you have a heavy rain like this, is the design of where the pipe is and where it flows and how they designed where the water should flow in heavy rains?

A: Definitely.

Q: Okay.

A: Poor design.

Q: So your argument is if they designed it properly, it wouldn't have flooded?

A: No. Not at all.

Q: Am I correct in that statement?

A: Yes.

The Village eventually filed a motion for summary judgment, claiming that it had governmental immunity against the Wiggins Trust's claims under WIS. STAT. § 893.80(4).<sup>2</sup> The circuit court agreed and dismissed the complaint. This appeal follows.

We review a grant of summary judgment de novo, using the same methodology as the circuit court. *Estate of Sheppard ex rel. McMorrow v. Schleis*, 2010 WI 32, ¶15, 324 Wis. 2d 41, 782 N.W.2d 85. Summary judgment is proper if there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *See id.*; WIS. STAT. § 802.08(2).

Determining whether governmental immunity exists involves the application of legal standards to a set of facts, which is a question of law. *Lodl v. Progressive N. Ins. Co.*, 2002 WI 71, ¶17, 253 Wis. 2d 323, 646 N.W.2d 314. We therefore review the issue de novo. *Estate of Brown v. Mathy Constr. Co.*, 2008 WI App 114, ¶6, 313 Wis. 2d 497, 756 N.W.2d 417.

On appeal, the Wiggins Trust contends that the circuit court erred in dismissing its complaint on summary judgment. We disagree.

Like the circuit court, we conclude that the Village had immunity against the Wiggins Trust's claims. That is because those claims were based on allegations of an improperly designed storm water drainage system, and the acts of designing such a system are subject to immunity under WIS. STAT. § 893.80(4). *See, e.g., Milwaukee Metro. Sewerage Dist. v. City of Milwaukee*, 2005 WI 8, ¶9, 277 Wis. 2d 635, 691 N.W.2d 658 (decisions concerning the design

---

<sup>2</sup> Under WIS. STAT. § 893.80(4), municipalities and their employees are immunized against liability “for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.”

of a waterworks system are discretionary, legislative decisions for which a municipality enjoys immunity).<sup>3</sup>

Given this immunity, which the Wiggins Trust does not dispute, we are satisfied that the Village was entitled to judgment as a matter of law. Accordingly, we affirm.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

---

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

---

<sup>3</sup> The Wisconsin Supreme Court recently reaffirmed this principle in *Bostco LLC v. Milwaukee Metropolitan Sewerage District*, 2013 WI 78, 350 Wis. 2d 554, 835 N.W.2d 160, a case involving a claim of negligent maintenance of a sewer tunnel. There, it observed, “[W]e do not upset the rule that acts of designing, planning, and implementing are legislative or quasi-legislative acts subject to immunity under § 893.80(4).” *Id.*, ¶41 n.21.