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**DISTRICT II**

January 18, 2017

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Sheboygan County Courthouse  
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Sheboygan, WI 53081

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

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2015AP2475

Terry Wiegert v. John Ranieri (L.C. # 2015CV192)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

John Ranieri appeals from a summary judgment order resolving a boundary dispute between his property and property owned by Terry and Deborah Wiegert (hereafter Wiegert). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm.

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

Central to the dispute before us is the effect of a 1913 circuit court order vacating alleys laid out in an 1894 plat of the T.H. Lynch's Addition in which the parties' lots are located. In 1913, a predecessor in title to the parties' lots petitioned the circuit court to vacate alleys adjoining lots six, seven and eight. The alley relevant to this appeal ran east-west between lots six and seven on the south, now owned by Wiegert, and lot eight on the north, now owned by Ranieri. The 1913 court found that lots six, seven, and eight had a single owner and no one would be harmed if the east-west alley was vacated. The court vacated the alley, ordered the plat changed to reflect the vacated alley, and stated that the vacated alley belongs to the adjoining lot owned by the petitioning owner. The court's order with an attached drawing of a "plat" showing the vacated alley was recorded in the office of the Sheboygan County Register of Deeds.

The deeds in the parties' chains of title all state "including all vacated East/West and vacated North/South alleys between or adjoining said Lots." Ranieri has title to lot eight and the north forty feet of lots six and seven. Wiegert has title to lots six and seven except for the north forty feet of lots six and seven. Wiegert alleges that Ranieri's garage porch extends beyond the Ranieri lot line. Relying on the 1913 order vacating the east-west alley, Wiegert sued Ranieri in 2015 to determine the boundary between their properties.

At the summary judgment hearing, Wiegert contended that the 1913 order determined the lot line and surveys performed in 1995 and 2014 erroneously measured the lot line from the pre-1913 boundary line rather than the boundary created by the 1913 order. Wiegert contended that the post-1913 boundary runs from the midpoint of the vacated east-west alley.

Ranieri countered that because a new plat was not created to reflect the 1913 order, the 1913 order did not change the boundary between the parties' lots. Ranieri argued that a platting process had to occur to change the boundary.

The circuit court concluded that no facts were in dispute. The court noted that an analogous current statute, WIS. STAT. § 66.1005(1), contemplates that when property is vacated, the vacated property reverts to the adjacent property owners and is annexed to that property. Reviewing and applying the 1913 order which stated that the vacated east-west alley belongs to the adjoining lot, the court concluded that the boundary between lots six and seven (Wiegert) and lot eight (Ranieri) was changed by the 1913 order and any lot measurements had to be made in relation to the vacated alley. The effect of measuring the boundary from the vacated alley gave Wiegert 11.42 feet of property claimed by Ranieri. The court granted summary judgment to Wiegert. Ranieri appeals.

We review the circuit court's grant of summary judgment de novo, and we apply the same methodology employed by the circuit court. *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). "We independently examine the record to determine whether any genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Streff v. Town of Delafield*, 190 Wis. 2d 348, 353, 526 N.W.2d 822 (Ct. App. 1994).

On appeal, Ranieri argues that the 1913 order did not alter the boundary between his property and Wiegert's, and in the absence of a replat, the boundary has not changed. In arguing that Wiegert cannot claim an additional 11.42 feet, Ranieri relies upon the 1894 plat of T.H. Lynch's Addition in which the lots are located and a 1995 survey. Ranieri further argues that the

1913 order did not comply with WIS. STAT. § 236.36, that a new plat was required to “alter areas dedicated to the public,” and the relevant portions of the 1894 plat had to be vacated to change the boundary

Wiegert counters that the procedure used in 1913 to vacate the east-west alley was consistent with the Wisconsin Statutes in effect at that time. WIS. STAT. § 2265 and 2266 (1913). Section 2265 permitted a circuit court to alter or vacate any part of a plat on the petition of the property owner, except “for such parts thereof as have been dedicated to and accepted by the public for use as a street or highway....” Section 2266 permitted the circuit court to enter judgment accordingly and “the judgment so made, together with a plat, if only a part of a plat shall have been vacated, showing the part thereof so vacated, shall be recorded in the office of the register of deeds.” The 1913 court found that the lots affected by the east-west alley had a single owner and no one would be harmed if the alley was vacated. The 1913 order filed with the register of deeds office included a drawing of a “plat” showing the vacated east-west alley.

Wiegert notes that the 1913 order directed that the vacated alley belongs to the adjoining lots. The parties’ deeds each refer to the same forty-foot piece of land. Wiegert also argues that a surveyor’s opinion cannot alter the 1913 order.

In his reply brief, Ranieri concedes that the deeds in the parties’ chains of title refer to the vacated east-west alley between their lots. Nevertheless, Ranieri reiterates that without a new plat, the boundary was not changed.

It is beyond dispute that the 1913 order is of record and governs this case. Other than insisting that the 1913 order did not change the boundary between his property and Wiegert’s property, Ranieri cites no persuasive authority for his claim that the 1913 order did not alter the

boundary. Ranieri also does not adequately explain how the current WIS. STAT. § 236.36 relating to replats is relevant to an order entered in 1913.

Similarly, Ranieri cites no persuasive authority for his argument that a surveyor's opinion regarding the boundary can overcome the provisions of the 1913 order that established the boundary.

In the absence of persuasive authority provided by Ranieri, we conclude that the 1913 order did not require a replat to alter the Wiegert-Ranieri boundary. The 1913 order vacated the alley and stated that the vacated alley belonged to the adjoining land. The 1913 order filed in the register of deeds office included a drawing of a "plat" showing the vacated east-west alley. All subsequent deeds in the chains of title reflect and give effect to the 1913 ruling. A surveyor's opinion cannot contravene the 1913 order.

Upon the foregoing reasons,

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

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