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DISTRICT II

March 8, 2017

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

2016AP702 City of Menasha, Wisconsin v. Village of Harrison, Wisconsin (L.C. #2015CV17)

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

The City of Menasha appeals from an order dismissing its annexation challenge against the Village of Harrison for lack of standing. 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 (2015-16).[1] We affirm the order of the circuit court.[2]

[1] All references to the Wisconsin Statutes are to the 2015-16 version.

[2] Upon completion of briefing, the Village of Harrison filed a motion to strike portions of the City of Menasha's reply brief. We now deny that motion.

In 1999, the City of Menasha and the Town of Harrison entered into an intermunicipal agreement. Pursuant to that agreement, the City and the Town established boundaries and defined "growth areas" of each other for purposes including annexation and incorporation.

In 2013, a portion of the Town of Harrison became the Village of Harrison. Within months of the incorporation, the Town and the Village entered into their own intergovernmental agreement. That agreement resulted in most of the Town becoming a part of the Village via multiple annexations under WIS. STAT. § 66.0217(2).[3]

In 2015, the City of Menasha filed a lawsuit challenging the Village of Harrison's annexations of lands that were located in the City's growth areas as defined in the 1999 agreement. It sought a declaratory judgment declaring that the annexations were invalid because they violated the rule of reason.

Ultimately, the circuit court dismissed the City of Menasha's annexation challenge for lack of standing. This appeal follows.

On appeal, the City of Menasha contends that the circuit court erred in dismissing its annexation challenge. The City claims that it had standing to test the validity of the annexations because (1) it has sustained or will sustain pecuniary loss as a result; and (2) the annexations pose a substantial injury to its interests.

"To have standing, a party must have suffered or be threatened with an injury to an interest that is legally protectible, meaning that the interest is arguably within the zone of

[3] WISCONSIN STAT. § 66.0217(2) permits a municipality to annex a contiguous property if all of the electors and property owners within the property agree to annexation and file a petition requesting it.

interests that a statute or constitutional provision, under which the claim is brought, seeks to protect." ***Zehner v. Village of Marshall***, 2006 WI App 6, ¶11, 288 Wis. 2d 660, 709 N.W.2d 64 (citation omitted). Whether a party has standing is a question of law, which we review de novo. ***Id.***

Traditionally, the only parties that had standing to challenge an annexation were the residents and taxpayers of an attaching municipality and the petitioners and owners of land within the area to be attached or detached. *See* ***In re Mosinee***, 177 Wis. 74, 76, 187 N.W. 688 (1922). The legislature later expanded this group to include affected towns and town boards. *See* WIS. STAT. § 66.0233.

As this court clarified in ***Darboy Joint Sanitary Dist. No. 1 v. City of Kaukana***, 2013 WI App 113, 350 Wis. 2d 435, 838 N.W.2d 103, only the above-referenced persons and entities have standing to challenge an annexation. We explained:

> We indirectly addressed the "zone of interests" of WIS. STAT. § 66.0217 in ***Village of Slinger v. City of Hartford***, 2002 WI App 187, 256 Wis. 2d 859, 650 N.W.2d 81, where abutting property owners challenged annexation. *See* ***id.***, ¶¶1, 3 & 14. In rejecting their challenge we stressed that the legislature did not include in the annexation statutory scheme a right for abutting landowners to challenge annexation. ***Id.***, ¶14.
>
> Traditionally, that is, "[p]rior to the enactment of the annexation statute in 1933, neither a town in which the annexed territory was located, nor its citizens, other than those residing or owning property within the limits of the territory being annexed, had a legal interest in the annexation." ***Id.***, ¶13. As such, "the law essentially excluded any individuals other than those residing within the annexed township from objecting; indeed, the law even prohibited townships whose territory was being annexed from being heard." ***Id.*** As we noted in ***Village of Slinger***, while the legislature has since decided to extend standing to challenge annexations to affected towns, *see* WIS. STAT. § 66.0233, it has not chosen to extend standing to other potentially affected parties like landowners of abutting property. *See* ***Village of Slinger***, 256

> Wis. 2d 859, ¶14 ("[I]f the legislature had intended to expand [the right to challenge an annexation] to [other] individuals ... who do not ... live in any of the territory affected, it would have so provided in the legislation."). We similarly conclude here that the legislature has not expanded the right to challenge an annexation to sanitary districts and therefore the Sanitary District does not have standing to bring its claim.

Id., ¶¶21-22.

We conclude that ***Darboy*** is on point and dictates the result in this case. Because the legislature has not expanded the right to challenge an annexation to neighboring non-party cities, the City of Menasha did not have standing to bring its claim. Accordingly, we agree with the circuit court's decision to dismiss.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals