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

DISTRICT III

October 16, 2018

To:

Hon. John Zakowski
Circuit Court Judge
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Rodman Streicher
Silton Seifert Carlson, S.C.
331 East Washington Street
Appleton, WI 54911

Georgia Hall
P.O Box 95
Holden, LA 70744

Harry Hall
3401 Riverstone Court
De Pere, WI 54115

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

2017AP447 Georgia Hall v. Village of Ashwaubenon (L. C. No. 2016CV800)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Georgia and Harry Hall, pro se, appeal an order dismissing their certiorari action on its merits. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we dismiss the appeal for lack of competency. *See* WIS. STAT. RULE 809.21 (2015-16).[1]

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

The Halls and the Village of Ashwaubenon (the Village) have a long-running dispute concerning the property tax assessment on the Halls' condominium unit (the Property). In short, the Halls claim the Property is an "illegal dwelling," because the Village has refused to issue a certificate of occupancy due to multiple building code violations, and that the value of the Property is therefore negligible. *See* ***Hall v. Village of Ashwaubenon Bd. of Dirs.***, No. 2014AP2239, unpublished slip op. ¶¶2-4 (WI App July 14, 2015) (***Hall II***). To that end, since 2008 the Halls have unsuccessfully filed six appeals with the Village Board of Review (the Board), arguing that the Property's value is either one cent or one dollar.

On May 26, 2016, the Board waived a hearing on the Halls' most recent complaint—an objection to the Property's 2015 tax assessment—and accepted a tax assessor's recommendation that the Property be valued at $144,900. The Halls sought review of the Board's decision by filing a petition for a writ of certiorari in the circuit court, pursuant to WIS. STAT. § 70.47(13). The Halls named the Village as the respondent in the action, and they sought reversal of the Board's decision on the grounds that the assessment constituted an unlawful property taxation under WIS. STAT. § 74.35(2)(a). The Board was never joined as a respondent, and the circuit court ultimately rejected the action on its merits.

On appeal, this court, on its own motion, directed the parties to address in supplemental briefs whether the circuit court had either subject matter jurisdiction or competency to consider the merits of the Halls' certiorari action. After review of the supplemental briefs and the record, we now conclude that the Board is the proper party in a certiorari action under WIS. STAT. § 70.47(13), not the Village. As the Board was not joined as a party, the court lacked competency to consider the merits of this certiorari action.

"Certiorari is an extraordinary remedy by which courts exercise supervisory control over inferior tribunals, quasi-judicial bodies and officers." ***Acevedo v. City of Kenosha***, 2011 WI App 10, ¶8, 331 Wis. 2d 218, 793 N.W.2d 500 (2010). The rule of certiorari review is that the writ of certiorari must "go to the board or body whose acts are to be reviewed, otherwise the court cannot obtain jurisdiction either of the subject matter or the persons composing the board."[2] ***Id.***, ¶17. However, there are two exceptions to the rule:

> (1) "where specially provided by statute, or in particular cases of necessity, as where the board or body whose acts are sought to be reviewed is not continuing or has ceased to exist," and (2) when service requirements are ambiguous and there is an absence of a clear statutory identity of the board or body.

Id. (citations omitted).

We conclude that ***Acevedo*** controls our decision. Here, the Halls sought certiorari review of a final decision of the Board, which is a quasi-judicial body. *See* ***Thoma v. Village of Slinger***, 2018 WI 45, ¶8 n.4, 381 Wis. 2d 311, 912 N.W.2d 56. Yet the Halls named only the Village, and not the Board, as a party. The Village is not a tribunal, quasi-judicial body, or officer. *See* ***Acevedo***, 331 Wis. 2d 218, ¶8. The Board alone made the decision of which the Halls seek review in this action. As to the exceptions to the rule, only the first is arguably relevant. However, WIS. STAT. § 70.46 clearly implies that boards of review are continuing, and the statute

[2] Although we referred to subject matter jurisdiction in ***Acevedo v. City of Kenosha***, 2011 WI App 10, ¶8, 331 Wis. 2d 218, 793 N.W.2d 500, our supreme court has stated that "a circuit court is never without subject matter jurisdiction" and clarified that the proper inquiry is whether a court has retained competency to exercise its subject matter jurisdiction in individual cases. *See* ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶¶1-2, 273 Wis. 2d 76, 681 N.W.2d 190. Furthermore, even though challenges to court competency may be forfeited if not timely raised in the circuit court, a reviewing court has inherent authority to disregard any forfeiture and address the issue of competency in appropriate cases. ***City of Eau Claire v. Booth***, 2016 WI 65, ¶11, 370 Wis. 2d 595, 882 N.W.2d 738.

contains no language indicating they are temporary. Moreover, nothing in the record on appeal indicates that the Board is not continuing or has ceased to exist.

The Halls raise two arguments in an attempt to distinguish ***Acevedo***, both of which fail. First, they argue that the Board's waiver of a hearing on their objection to the Property's 2015 tax assessment, pursuant to WIS. STAT. § 70.47(8m), conferred jurisdiction to the circuit court. This argument is undeveloped, and we will not address it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Second, the Halls point to the language in ***Hall II***, where we stated:

> In any event, the Village was, by law, a party in interest to the Board of Review proceedings, *see* WIS. STAT. § 70.47(11), and, as the "taxation district," was required to be named in the Halls' excessive assessment suit, *see* WIS. STAT. § 74.37(3). Accordingly, we conclude the Village was the proper entity to answer the complaint.

Hall II, No. 2014AP2239, ¶23. The Halls' cite to ***Hall II*** fails because that case was not a certiorari action under § 70.47(13); rather, it was an excessive assessment case under § 74.37. ***Hall II*** therefore has no bearing on this case.

In sum, the Village is not a proper party in this certiorari action. As the proper party has not been named, we must dismiss the case due to a lack of competency.

Upon the foregoing,

IT IS ORDERED that the appeal is dismissed for lack of competency.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals