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DISTRICT II

May 15, 2024

To:

Hon. Angela W. Sutkiewicz
Circuit Court Judge
Electronic Notice

Kelly Del Ponte
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
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Jason E. Dierkes
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You are hereby notified that the Court has entered the following opinion and order:

2023AP2395-FT

Robert Vincent v. Village of Howards Grove (L.C. #2023CV391)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Robert Vincent appeals from an order dismissing his action against the Village of Howards Grove. Vincent had sought to challenge a special assessment on his property. Pursuant to a presubmission conference and this court's order of January 16, 2024, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2021-22).¹ Upon review of those memoranda and the Record, we affirm the order.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

On March 7, 2023, the Village of Howards Grove (hereinafter the Village) passed a final resolution authorizing public improvements on one of its streets and levying special assessments against benefitted properties. On May 2, 2023, the Village mailed the final resolution to interested persons, including Robert Vincent, who owned one of the benefitted properties.

Vincent wished to challenge the special assessment. Accordingly, on July 24, 2023, he filed a Notice of Appeal in the circuit court and served a copy on the Village clerk. His attorney also provided the clerk with an uncertified check for \$150.²

On August 14, 2023, the Village moved to dismiss Vincent's action on the ground that he had failed to comply with the bond requirement of WIS. STAT. § 66.0703(12)(a). The circuit court agreed and dismissed the matter. This appeal follows.

On appeal, Vincent contends that the circuit court erred in dismissing his action against the Village. Whether a motion to dismiss was properly granted is a question of law that we review de novo. See *Greenwald Fam. Ltd. P'ship v. Village of Mukwonago*, 2023 WI 53, ¶13, 408 Wis. 2d 143, 991 N.W.2d 356.

WISCONSIN STAT. § 66.0703(12) provides the exclusive procedure by which an aggrieved property owner may appeal from the municipality's adoption of a final resolution to levy special assessments. Section 66.0703(12)(a) provides:

² The Village clerk did not cash the law office business check that Vincent included with his Notice of Appeal when he served it on the Village. Ultimately, the Village rejected the check because it determined it was not an acceptable form of payment under the statute. Vincent later served the clerk with \$150 in cash; however, that was not done until September 29, 2023.

A person having an interest in a parcel of land affected by a determination of the governing body, under sub. (8)(c), (10) or (11), may, within 90 days after the date of the notice or of the publication of the final resolution under sub. (8)(d), appeal the determination to the circuit court of the county in which the property is located. The person appealing shall serve a written notice of appeal upon the clerk of the city, town or village and execute a bond to the city, town or village in the sum of \$150 with 2 sureties or a bonding company to be approved by the city, town or village clerk, conditioned for the faithful prosecution of the appeal and the payment of all costs that may be adjudged against that person. The clerk, if an appeal is taken, shall prepare a brief statement of the proceedings in the matter before the governing body, with its decision on the matter, and shall transmit the statement with the original or certified copies of all the papers in the matter to the clerk of the circuit court.

Vincent insists that he complied with WIS. STAT. § 66.0703(12)(a) in this case. The Village disagrees. At issue is whether Vincent needed to execute the required bond within ninety days of notice of the final resolution as the Village suggests or whether he could do so at a later time as Vincent suggests.³ The interpretation of a statute also presents a question of law that we review de novo. See *Greenwald*, 408 Wis. 2d 143, ¶14.

Reviewing the language of WIS. STAT. § 66.0703(12)(a), we are persuaded that the Village's interpretation is correct. The first sentence of the statute provides the time limitation to appeal, and the next sentence provides the necessary procedures a person must take to appeal, including executing the required bond. Thus, to comply with the statute, Vincent had to execute the required bond within ninety days of notice of the final resolution.

³ According to Vincent, the time limitation of ninety days applies only to the filing of the notice of appeal.

Here, Vincent failed to submit a proper form of bond⁴ within ninety days of notice of the final resolution. Therefore, dismissal of his action was appropriate. *See Emjay Inv. Co. v. Village of Germantown*, 2011 WI 31, ¶30, 333 Wis. 2d 252, 797 N.W.2d 844 (“An aggrieved property owner must strictly comply with the 90-day period of appeal in WIS. STAT. § 66.0703(12)(a); the failure to do so is a forfeiture of the right to appeal.”).

Upon the foregoing reasons,

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

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

GROGAN, J. (*concurring*). “Procedural statutes are to be liberally construed so as to permit a determination upon the merits of the controversy if such construction is possible.” *Kyncl v. Kenosha County*, 37 Wis. 2d 547, 555-56, 155 N.W.2d 583 (1968). Here, Vincent timely filed the Notice of Appeal to challenge his special assessment. He timely paid the \$150 required fee to the Village clerk, but submitted the payment in the form of a business check from the law firm that represented Vincent when the statute required cash or a certified check. The Village clerk, however, did not refuse the business check or indicate it was an unacceptable form of payment. Instead, the clerk accepted it, and then the Village waited three weeks for the filing deadline to expire before informing Vincent that the statute required a certified check or cash.

⁴ An uncertified check does not satisfy the requirement of bond. *See* WIS. STAT. § 895.346.

This court has stated that it “will not hold the litigant responsible for the actions of the clerk accepting [filings].” *State v. Aderemi*, 2023 WI App 8, ¶25, 406 Wis. 2d 132, 986 N.W.2d 306. Although this factual scenario is not identical to *Aderemi* because Vincent could have easily complied with the statute’s bond requirement, it is concerning that the Village delayed action until the statutory deadline expired—depriving a taxpayer from having the opportunity to challenge the merits of the tax assessment over a technicality. I respectfully concur.

Samuel A. Christensen
Clerk of Court of Appeals