COURT OF APPEALS
DECISION
DATED AND FILED

November 17, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2136 **Cir. Ct. No. 2007CV235**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN EX REL. CAROLYN R. BORST AND VERNON F. BORST,

PETITIONERS-APPELLANTS,

V.

CITY OF NEW RICHMOND BOARD OF APPEALS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County: EDWARD F. VLACK III, Judge. *Reversed and cause remanded with directions*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Vernon and Carolyn Borst appeal an order affirming a City of New Richmond raze order. The Borsts assert that because Carolyn, as co-owner of the subject property, was not served with the raze order as

required under WIS. STAT. § 66.0413(1)(d),[1] the trial court erred by denying their due process claim. We agree and, therefore, reverse the order.[2]

BACKGROUND

¶2 Carolyn and Vernon co-own a commercial building in the City of New Richmond. It is undisputed that Vernon was personally served with what the parties have construed as a "raze order" from the New Richmond Building Inspector. The order informed Vernon that his building was being condemned and, because the repairs would be excessive and "not a reasonable option," Vernon was directed to raze the building and clean up the premises within 120 days.[3]

¶3 Vernon appealed to the New Richmond Board of Appeals, but due to a miscommunication, did not appear for the scheduled hearing. Vernon appeared with counsel at a subsequent Board hearing. At that time, he was given two weeks to remove excess items from his property, and sixty days to return to the Board with an "engineered plan" for repairs to bring the property into compliance. Vernon was informed that if he failed to timely return with a plan, the raze order

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[1] All references to the Wisconsin Statutes are to the 2007-08 version.

[2] Because this issue is dispositive of the appeal, we need not address the Borsts' alternative arguments. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

[3] WISCONSIN STAT. § 66.0413(1)(b) governs raze orders and provides, in relevant part, that the governing body, building inspector or other designated officer may:

> If a building is old, dilapidated or out of repair and consequently dangerous, unsafe, unsanitary or otherwise unfit for human habitation and unreasonable to repair, order the owner of the building to raze the building or, if the building can be made safe by reasonable repairs order the owner to either make the building safe and sanitary or to raze the building, at the owner's option.

would take immediate effect. When Vernon failed to reappear before the Board, his appeal was denied. The Borsts then sought certiorari review in the circuit court raising, among other things, their present due process challenge. The court affirmed the raze order and this appeal follows.

DISCUSSION

¶4 The Borsts argue Carolyn's due process rights were violated by the City's failure to serve her with the raze order as required under WIS. STAT. § 66.0413(1)(d). The statute provides: "[A raze order] shall be served on the owner of record of the building that is subject to the order or on the owner's agent if the agent is in charge of the building in the same manner as a summons is served in circuit court." WIS. STAT. § 66.0413(1)(d). Here, a warranty deed dated January 7, 1999, lists both Vernon and Carolyn as owners of the property. In its decision, the circuit court nevertheless rejected the Borsts' due process claim, concluding "the statute simply requires service of a raze order on the owner of record ... not the *owners*." However, WIS. STAT. § 990.001(1) governs statutory construction and provides that "singular includes the plural" and vice versa.

¶5 In its decision, the court also intimates Carolyn was properly served by operation of WIS. STAT. § 66.0413(1)(e), which provides: "If a raze order … is recorded with the register of deeds …, the order is considered to have been served, as of the date the raze order is recorded, on any person claiming an interest in the building or the real estate *as a result of a conveyance from the owner of record* unless the conveyance was recorded before the recording of the raze order." (Emphasis added.) We interpret this subsection to apply in situations where, for instance, a conveyance is made during condemnation proceedings. Because

Carolyn and Vernon purchased the property together in 1999, application of this subsection appears to be misplaced.

¶6 Finally, the court concluded the non-service argument was waived. The court held that neither Carolyn nor Vernon raised any issues with defective service before the Board and it was "improper to raise a collateral attack in this certiorari proceeding." Carolyn, however, never appeared before the Board. During her hearing testimony before the trial court, Carolyn admitted she was aware that Vernon had "received a letter from the city," but she insisted she did not know its contents and was generally unaware of the proceedings.

¶7 Based on the hearing testimony, the court may have implicitly found that Carolyn had actual notice of the raze order, even in the absence of proper service. The statute, however, mandated service of the raze order on the owner[s]. This court has held that where the clear and unambiguous language of a statute mandates service, actual notice will not suffice. *See* ***Pool v. City of Sheboygan***, 2006 WI App 122, 293 Wis. 2d 725, 719 N.W.2d 792. There, the court addressed whether the City of Sheboygan had properly served notice of disallowance of a landowner's inverse condemnation claim on the landowner's adult daughter. Although the landowner admitted receiving the notice, the ***Pool*** court rejected the City's contention that actual notice was sufficient "in light of the clear and unambiguous language of the statute." ***Id.***, ¶11.

¶8 To the extent the City may argue that service on Vernon could be construed as service on Carolyn, our supreme court has held to the contrary. In ***Howard v. Preston***, 30 Wis. 2d 663, 142 N.W.2d 178 (1966), a husband accepted service of an action for foreclosure of the couple's homestead on behalf of his wife. The ***Howard*** court held that a marital relationship did not make the husband

an agent authorized to accept service of summons on behalf of his wife. There, the court also recognized that "knowledge of the pendency of a suit is not the equivalent of service." ***Id.*** at 669. By failing to personally serve Carolyn with the raze order, as mandated by WIS. STAT. § 66.0413(1)(d), she was deprived of her due process rights. Because the trial court erred by concluding proper service was made under the subject statute, we will reverse the order and remand the matter with directions to vacate the raze order.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.