

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP1104

Cir. Ct. No. 2008CV611

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**CRAIG ZEMKE, ANN ZEMKE, KEITH WILSON, MARGARET WILSON,
DANIEL L. HALL, KIMBERLY R. HALL, RICHARD DERRICK AND JOAN
DERRICK,**

PLAINTIFFS-RESPONDENTS,

v.

STEVEN DAVID HANSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Polk County:
MOLLY E. GALEWYRICK, Judge. *Affirmed.*

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

¶1 PER CURIAM. Steven Hanson, pro se, appeals a judgment denying a permanent injunction seeking to prohibit Hanson from widening and

relocating a road surface on a twenty-six foot wide strip of land owned in common with the various plaintiffs-respondents (collectively referred to as “the Zemkes”).¹ Hanson challenges various aspects of the court’s decision. We affirm.

¶2 This matter arises from Hanson’s proposed condominium development on Horseshoe Lake in Polk County.² The Zemkes sought a temporary and permanent injunction prohibiting Hanson from widening approximately 450 feet of Greatwood Lane, a private dead end road that services eight lakeshore lots, and from which the Zemkes access their land. Three lakeside lots are without dwellings, two of which Hanson owns.

¶3 As relevant to this appeal, the western half of Greatwood Lane consists of a twenty-four foot wide private road easement that runs alongside a twelve-acre parcel also owned by Hanson. The eastern half of the private road is a twenty-six foot wide strip of land, consisting primarily of mature trees, brush, and lawn in some instances. The traveled portion of the road is found predominantly in the twenty-four foot wide easement area, of which the driving surface is approximately fifteen to seventeen feet wide.

¶4 Hanson and the Zemkes own the twenty-six foot wide strip of land as undivided tenants in common.³ Hanson’s exact fractional interest is unknown

¹ The court also dismissed Hanson’s counterclaim and denied his reconsideration motion.

² Hanson is the appellant in this litigation, but he represents in his brief that Hanson Management is the owner of substantially all the land. Hanson Management is a Nevada corporation. Hanson owns all of Hanson Management and for purposes of this litigation, Hanson concedes that he and Hanson Management are one entity and Hanson may be bound by this court’s decision.

³ Hanson concedes that a nonparty named Leary also owns an interest.

because of various uncertainties in the chain of title, but likely ranges from a 1/30th interest to a 1/5th interest. In 1982, Hanson had previously acquired an easement across the twenty-six foot wide strip of land to access three of the lakeside lots. The Zemkes have nonexclusive easements for purposes of ingress and egress over the twenty-four foot strip of land.⁴

¶5 In 2008, Hanson applied to the Polk County Land Information Committee for a special exception permit to develop his twelve-acre parcel into a condominium called Greatwood Shores. The condominium project consisted of eight “pods” with eight individual units in each pod, totaling sixty-four units.

¶6 Hanson intended to shift and widen the driving surface of Greatwood Lane to the east, using the twenty-six foot strip of land. The Zemkes opposed Hanson’s plan. An alternative plan provided condominium access from White Pine Way, a roadway to be constructed to the west of Hanson’s twelve-acre parcel. Following a public hearing, the committee approved the project, subject to several conditions. Among other things, the committee’s conditions required that condominium owners from the proposed project would not be allowed access from Greatwood Lane. Rather, the committee required that condominium traffic use White Pine Way for access. The committee would review the property after two

⁴ Hanson contends that plaintiffs-respondents Hall and Wilson have no easement rights to the westerly twenty-four foot strip. The circuit court stated in its decision that “three of the five lots represented by Plaintiffs don’t have an easement in the west 24-feet of the roadway.” The Zemkes disputed this statement in their brief in opposition to reconsideration, and asserted the lack of an express grant of easement in the Hall and Wilson deeds was likely the result of a drafting error. In any event, the trial focused on the twenty-six foot strip and we decline to address this issue. Public utilities also have easements in the twenty-six foot wide strip, and it hosts underground electrical utilities, drainage culverts and ditch-work.

years, or two units were built, to assure compliance with the conditions. Neither party appealed the committee's decision.

¶7 The present action was subsequently commenced. Temporary restraining orders and temporary injunctions were granted preventing Hanson from cutting mature trees and disrupting landscape. After a two-day bench trial, the circuit court issued a written decision concerning the Zemkes' request for a permanent injunction.

¶8 The circuit court concluded that Hanson's ownership and easement interests in the twenty-six foot wide strip had merged, and his easement was extinguished. It also found that "it is not necessary to widen or improve Greatwood Lane for the Greatwood Shores project, because the [Committee] limited car travel to White Pine Way only." The court stated that Hanson "seeks to widen Greatwood Lane to a total of 28-feet including shoulders which other Wisconsin Courts have found to be a reasonable width." The court rejected an argument that plans to widen the surface on Greatwood Lane to twenty-eight feet would prejudice the Zemkes, because "Hanson can not transfer fractional shares of his interest to future condominium dwellers of Greatwood Shores pursuant to his approval from the Land Information Committee." The court found that Hanson did not intend to move the road surface onto the twenty-six foot strip, but merely to widen the existing surface to provide improved access to his two lakeside lots. The court stated, "Greatwood Lane is a private dead end road and will remain a private dead end road." The court therefore denied the permanent injunction. It also dismissed Hanson's amended counterclaim. Hanson's motion for reconsideration was denied, and this appeal follows.

¶9 On appeal, Hanson concedes sufficient evidence supports the circuit court’s finding that the committee limited vehicular traffic to White Pine Way. He states:

In its Decision, the trial court states as findings of fact, “the Land Information Committee limited car travel to White Pine Way,” and “no vehicular traffic from the proposed 64-unit project would be allowed access from Greatwood Lane.” [Hanson] takes no issue with these findings; they are supported by the evidence.

¶10 Nevertheless, Hanson insists that limiting vehicular traffic to White Pine Way is “not the same thing” as stating that he may not transfer fractional shares of his interest in Greatwood Lane to future condominium owners. Hanson argues the circuit court’s statement that he cannot transfer fractional shares to future owners of Greatwood Shores “is an impermissible collateral attack” on the committee’s decision, which was never appealed.

¶11 Given the circuit court’s finding that Hanson had “no plan to provide improved access to anyone other than his own 2 lake lots and the Plaintiffs,” Hanson’s argument on appeal is perplexing. In any event, Hanson is objecting to the court’s analysis of an issue on which he is not aggrieved. The circuit court denied the Zemkes’ request for a permanent injunction. A right to appeal from a judgment or order is confined to the parties aggrieved in some appreciable manner by the court action. *Ford Motor Credit Co. v. Mills*, 142 Wis. 2d 215, 217-18, 418 N.W.2d 14 (Ct. App. 1987).

¶12 We acknowledge the circuit court dismissed Hanson’s amended counterclaim which, among other things, requested a declaration that he was “entitled as a matter of law to the full use and full width” of Greatwood Lane. The dismissal was based in part upon Hanson’s testimony that he did not intend to

move the road surface onto the twenty-six foot strip. Hanson now insists on appeal that he is entitled to a declaration that he may convey fractional shares and easements in Greatwood Lane for access to future owners of the condominium, both in the twenty-six foot strip and the twenty-four foot strip.

¶13 We cannot give Hanson the declaration he seeks because to do so would interfere with conditions imposed by a governmental body. Hanson has not attempted to show that the committee's conditions lack legal effect, and the findings of the circuit court conclusively demonstrate to the contrary. The court found (and Hanson concedes) "no vehicular traffic from the proposed 64-unit project would be allowed access from Greatwood Lane." Stated another way, the court found the committee "limited car travel to White Pine Way only." These conditions were legitimately imposed by a governmental body and we shall not declare otherwise.⁵

¶14 The fact that Hanson owns two lakeside lots accessed by Greatwood Lane does not alter the analysis. By way of example, to the extent the lakeside lots became elements or common areas of the condominium project, the transfer of fractional interests in Greatwood Lane to condominium purchasers would violate the committee's conditions because vehicular traffic from the Greatwood Shores project could then access Greatwood Lane. This was implied by the court's statement, "[I]t is not necessary to widen or improve Greatwood Lane for the Greatwood Shores project, because the Land Information Committee limited car travel to White Pine Way only." As mentioned, the court also found that Hanson

⁵ Ironically, Hanson makes much of the fact that the Zemkes did not appeal the committee's decision, but it is Hanson who attempts to affect the committee's ruling without having appealed its decision.

did not intend to move the road surface onto the twenty-six foot strip, but merely to widen the existing surface to twenty-eight feet to provide improved access to his two lakeside lots. The court's statement was based upon Hanson's trial testimony denying any intention to reposition the road surface:

Look, all I'm trying to do is repair and maintain the road and have it wide enough so people can get down to my two lakeshore lots, can get in and out without a safety hazard.

....

I don't have any plans to do anything with Greatwood Lane other than maintain it and keep it open so my two lakeshore lot buyers can get in and get out safely and conveniently on a daily basis for year round living.

¶15 Hanson may not attempt to provide condominium access to Greatwood Lane through the proverbial back door. Similarly, Hanson may not seek to limit the committee's conditions by insisting the "main" roadway access for Greatwood Shores is on White Pine Way, or that parking will be restricted to White Pine Way. These arguments are contrary to the circuit court's finding that the committee limited car travel to White Pine Way only, which Hanson concedes is properly supported by the evidence. Whatever theoretical transfer of interest may be envisioned in his capacity as fractional owner of the twenty-six foot strip, Hanson may not transfer interests in a manner that would provide condominium owners vehicular access to Greatwood Lane.⁶ Quite simply, Hanson is not entitled to full use of the full width of the road. The amended counterclaim was properly dismissed.

⁶ Hanson insisted in his circuit court trial brief that the Zemkes had no right to restrict him. He also argued that "Plaintiffs have no right to dictate that the road surface be kept to a cartway." However, it was the committee's conditions that limited access to White Pine Way, not the Zemkes who restricted him.

¶16 Hanson also challenges the circuit court’s conclusion that his ownership and easement interests in Greatwood Lane merged as a matter of law. The court cited the doctrine of merger of title, based on the property law concept that “no man can, technically, be said to have an easement in his own land.” *See Anderson v. Quinn*, 2007 WI App 260, ¶11, 306 Wis. 2d 686, 743 N.W.2d 492. Hanson insists that his ownership and easement interests are not co-extensive, and his easement was not extinguished by his acquisition of only a fractional ownership interest. We need not address this issue because it has no legal significance in this case, and is therefore nonjusticiable.

By the Court.—Judgment affirmed.

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

