

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 1, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2015AP2594

Cir. Ct. No. 2015CV31

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

MISSISSIPPI SPORTS AND RECREATION, INC.,

PLAINTIFF-APPELLANT,

V.

TOWN OF WHEATLAND, ROBERT STREETER AND GERALD PEDRETTI,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Vernon County:
MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

¶1 PER CURIAM. Mississippi Sports and Recreation, Inc. filed a petition for a writ of mandamus to require the Town of Wheatland to “reconvene” board of review hearings from 2009 to 2013 to hear Mississippi Sports’s

objections to its property tax assessments from those years.¹ The Town filed a motion for summary judgment seeking dismissal of the mandamus action based on Mississippi Sports's failure to comply with the statutory procedures that the Town asserted Mississippi Sports was required to follow to challenge a property tax assessment. The circuit court agreed, granted the Town's motion for summary judgment, and dismissed the petition for mandamus. Mississippi Sports appeals. We conclude that Mississippi Sports's petition for mandamus was properly dismissed because it is undisputed that Mississippi Sports failed to comply with statutory prerequisites to challenging the 2009-2013 property tax assessments before the board of review, and therefore, Mississippi Sports has no legal right to the relief it seeks. Accordingly, we affirm.

BACKGROUND

¶2 Mississippi Sports owns several parcels of land in the Town of Wheatland, and the property tax assessments for those parcels increased in some or all of the years 2009 through 2013. In 2013, Mississippi Sports filed for Chapter 11 bankruptcy in federal court. Vernon County filed a claim in the bankruptcy proceeding for unpaid 2009-2013 real estate taxes on the Wheatland properties, and Mississippi Sports objected to the claim, asserting that the taxes were based on incorrect property valuations. The bankruptcy court concluded that it was barred by the Bankruptcy Code from "revisiting the tax liabilities" from 2009 through 2013, and allowed the claim. Mississippi Sports then filed a petition for mandamus relief in Vernon County circuit court, seeking an order requiring

¹ The defendants are the Town of Wheatland in Vernon County, Town Chairman Robert Streeter, and Town Clerk Gerald Pedretti. We generally refer to the defendants collectively as the Town.

that the Town of Wheatland board of review meet and address Mississippi Sports's objections to the 2009-2013 tax assessments on its Wheatland properties.

¶3 The Town moved for summary judgment dismissing the petition based on Mississippi Sports's failure to "comply with the statutory procedure necessary to challenge its 2009-2013 assessments." The circuit court granted the motion and dismissed the petition. This appeal followed.

DISCUSSION

¶4 Mississippi Sports argues that the circuit court erred by entering summary judgment dismissing Mississippi Sports's petition for mandamus. In the following sections, we state the summary judgment standard of review, identify the element for mandamus relief that is at issue, explain why we conclude that Mississippi Sports does not establish that element for mandamus relief, and address and reject Mississippi Sports's arguments to the contrary.

I. Summary Judgment Standard of Review

¶5 We review a circuit court's grant of summary judgment de novo, and apply the same legal principles as the circuit court. *Chapman v. B.C. Ziegler and Co.*, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425. Those principles require us to answer whether "there is no genuine issue as to any material fact" and whether judgment may be entered as a matter of law. WIS. STAT. § 802.08(2) (2013-14).²

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶6 In applying the above principles, we review the Town’s motion for summary judgment as the circuit court would, structuring our discussion around its arguments as to why it is entitled to summary judgment.

II. The Element for Mandamus Relief at Issue

¶7 There are four elements that a petitioner for mandamus relief must establish: (1) a clear legal right to relief; (2) a positive and plain legal duty on the part of the body to which the writ is directed; (3) substantial damage due to nonperformance of that duty; and (4) no adequate remedy at law. *Mount Horeb Cmty. Alert v. Village Bd. of Mount Horeb*, 2003 WI 100, ¶9, 263 Wis. 2d 544, 665 N.W.2d 229. This appeal turns on only the first element, the existence of a clear legal right to relief.

III. The Absence of a Legal Right to Relief

¶8 The Town argues that Mississippi Sports has no clear legal right to the relief it seeks—a board of review meeting to hear its objections to the 2009-2013 tax assessments—because Mississippi Sports failed to follow the statutory procedures necessary to bring those objections before the board. We agree.

¶9 As we have stated:

WISCONSIN STAT. chs. 70 and 74 contain a comprehensive scheme for the assessment and collection of property taxes. Chapter 70 sets out the procedures for assessment of property and adjustment of the assessment. Property is assessed as of January 1 of every year, and if a taxpayer’s property is assessed at a different value than the year before, he or she is notified of that change. WIS. STAT. §§ 70.10, 70.365. The notice to the taxpayer informs him or her of the opportunity to object to the changed assessment before the board of review. Sec. 70.365.

If the taxpayer is not satisfied by the board of review’s determination, he or she may appeal by an action

for certiorari to the circuit court, a complaint to the department of revenue, or a claim against the taxation district. WIS. STAT. §§ 70.47(13), 70.85, 74.37. *Compliance with the board of review procedures is a prerequisite to all three forms of appeal and the three sections are the exclusive method for challenging an excessive assessment.*

Reese v. City of Pewaukee, 2002 WI App 67, ¶¶5-6, 252 Wis. 2d 361, 642 N.W.2d 596 (citations omitted and emphasis added). *See also Hermann v. Town of Delavan*, 215 Wis. 2d 370, 379-80, 383, 572 N.W.2d 855 (1998) (holding that the three forms of appeal set forth in WIS. STAT. §§ 70.47(13), 70.85, and 74.37 are exclusive methods to challenge property tax assessments, and stating that they are available only to a property owner “*who files an objection with the board of review*” under the statutory board of review procedures (emphasis added)).

¶10 Mississippi Sports seeks an order requiring the board of review to reconvene to hear its objections to the 2009-2013 assessments so that it may pursue either of two of the forms of appeal identified above, namely an appeal for certiorari review or a complaint to the department of revenue. However, in order for Mississippi Sports to have a legal right to have the board of review hear its objections to begin with, Mississippi Sports is required to have complied with the statutory board of review procedures. *See Reese*, 252 Wis. 2d 361, ¶6. As we explain, the record shows that it did not comply with those procedures.

¶11 The statutory board of review procedures are set forth in WIS. STAT. § 70.47. WISCONSIN STAT. § 70.47(7)(a) contains the procedural requirements for objecting to an assessment at a board of review meeting, and reads in relevant part:

Objections to the amount or valuation of property shall first be made in writing and filed with the clerk of the board of review *No person shall be allowed in any action or proceedings to question the amount or valuation of*

property unless such written objection has been filed and such person in good faith presented evidence to such board in support of such objections and made full disclosure before said board, under oath of all of that person's property liable to assessment in such district and the value thereof. The requirement that it be in writing may be waived by express action of the board.

(Emphasis added.) See also **Hermann**, 215 Wis. 2d at 379 (“Persons objecting to either the valuation or the amount of property assessed by the taxing district must first file such objection with the clerk of the board of review”).

¶12 The Town presented evidence, including minutes from the board of review's 2009-2013 meetings, showing that no one on behalf of Mississippi Sports filed a written objection to its tax assessments before or during the Town board of review meetings for 2009, 2010, 2011, 2012, or 2013 or obtained waiver of the written objection requirement at those meetings. In response, Mississippi Sports presented no evidence that it filed a correct and timely written objection with the clerk of the board of review, or obtained a waiver of that requirement, at any board of review meeting between 2009 and 2013. Thus, the record establishes as undisputed that Mississippi Sports did not file a written objection to its tax assessments for 2009 to 2013, or obtain a waiver of the written objection requirement for those years, as required by WIS. STAT. § 70.47(7)(a).

¶13 Mississippi Sports argues that **Reese** does not control because in that case the taxpayer was attempting to file a claim of excessive assessment under WIS. STAT. § 74.37, and Mississippi Sports neither seeks to file a claim under that section nor mentions that section in its mandamus petition. However, Mississippi Sports disregards the language cited above that requires compliance with the statutory board of review procedures regardless of the form of appeal a taxpayer chooses: “Compliance with the board of review procedures is a prerequisite to all

three forms of appeal and the three sections are the exclusive method for challenging an excessive assessment.” *Reese*, 252 Wis. 2d 361, ¶6. Mississippi Sports’s effort to distinguish *Reese* fails.

¶14 In its reply brief on appeal, Mississippi Sports argues that it should be able to “bring forth, in front of the fact-finder” whether, under WIS. STAT. § 70.47(7)(a), it submitted a proper objection or the board of review expressly waived the requirement of a written objection in any of its meetings from 2009 to 2013. However, Mississippi Sports made no evidentiary submissions along these lines to the circuit court. The time for a party to create an issue of fact is in response to a motion for summary judgment, not afterwards. *See* WIS. STAT. § 802.08(3) (“the adverse party’s response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial”).

¶15 In sum, we conclude that Mississippi Sports has no right to any “reconvened” board of review meetings to address objections to its 2009-2013 assessments because Mississippi Sports failed to fulfill the statutory predicates to such a right, as required under *Reese* and *Hermann*.³ Therefore, the circuit court

³ Indeed, the wording of the petition itself implies that Mississippi Sports acknowledges its failure to satisfy the statutory predicates. The petition seeks reconvened board of review meetings “on” the tax years in question “for” the parcels in question, rather than “on” Mississippi Sports’s *objections* to the assessments in those years for those parcels.

properly granted the Town's motion for summary judgment and dismissed Mississippi Sports's mandamus petition.⁴

CONCLUSION

¶16 For the reasons stated, we affirm the circuit court's order granting summary judgment to the Town and dismissing Mississippi Sports's petition for a writ of mandamus.

By the Court. – Order affirmed.

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

⁴ The Town also bases its motion for summary judgment on Mississippi Sports's asserted failure to comply with statutory requirements for filing a claim for excessive assessment under WIS. STAT. § 74.37 after the board of review has decided an objection. Mississippi Sports concedes that it did not meet those requirements, and argues that those requirements do not apply to an appeal for certiorari review or a complaint to the department of revenue. We do not address the requirements in WIS. STAT. § 74.37 because Mississippi Sports's failure to comply with the requirements in WIS. STAT. § 70.47 is dispositive.

