COURT OF APPEALS
DECISION
DATED AND RELEASED

December 20, 1995

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

NOTICE

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

No. 94-3158

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

In the Matter of the Determination of the Special Assessments of the Honey Lake Protection and Rehabilitation District:

HONEY LAKE PROTECTION AND REHABILITATION DISTRICT,

Appellant,

v.

ROBERT G. LANGLEY and MELANIE LANGLEY,

Respondents.

APPEAL from a judgment of the circuit court for Racine County: DENNIS J. BARRY, Judge. *Affirmed*.

Before Anderson, P.J., Brown and Nettesheim, JJ.

PER CURIAM. The Honey Lake Protection and Rehabilitation District (district) appeals from a circuit court judgment reducing a special

assessment it levied against property owned by Robert G. and Melanie Langley. We affirm.

The district levied a special assessment on property within the district to pay for the cost of dredging the district's lakes, repairing dams and other related activities. In determining the assessments, the district analyzed the parcels by size, proximity to the lakes and current use. The Langleys' residential property is not lakefront property, but it is the largest parcel within the "pink" portion of the district's map.[1] The average assessment against improved property in the pink category of properties was $1936, and the assessments ranged from $9095 to $455. The Langleys' property was assessed at $9095. The Langleys objected to the assessment, and proceedings were had in the circuit court pursuant to § 33.32(1)(f), STATS., on the question of whether the assessment was reasonable. The circuit court determined that it was not and lowered the assessment to $4000. The district appeals.

A municipality may exercise its police power to make special assessments. ***Peterson v. City of New Berlin***, 154 Wis.2d 365, 370, 453 N.W.2d 177, 180 (Ct. App. 1990). Courts may intercede only when the exercise of that power is clearly unreasonable. ***Id***. In levying special assessments, two requirements must be satisfied: the property must be benefitted and the assessment must have a reasonable basis. ***Id***. at 371, 453 N.W.2d at 180. An assessment is reasonable "if it is fair and equitable and in proportion to the benefits accruing." ***Id***.

The circuit court's determination that the district's assessment of the Langleys' property was unreasonable required factual and legal determinations. *See* ***id***. at 370, 453 N.W.2d at 180. A circuit court's factual findings will be upheld unless they are clearly erroneous. ***Id***. Whether those facts fulfill the legal standard of reasonableness presents a question of law which we determine de novo. ***Id***.

[1] The "pink" parcels were grouped together because they did not require crossing a highway to reach a lake.

In levying a special assessment under § 33.32(1)(b), STATS., "the commissioners shall examine each parcel and determine the benefits to each parcel from the project, considering such factors as size, proximity to the lake and present and potential use of the parcel, including applicable zoning regulations."

The circuit court made the following findings. The Langleys' property was not the closest pink property to the lake and its potential use was restricted by zoning laws and a minimum square footage requirement.[2] The court found that "[g]iven the zoning restrictions, square footage is not the overriding criteria which should be used in determining the amount of assessment." The district overemphasized the size of the Langleys' parcel and did not place enough weight on the benefits to the parcel of the projects to be supported by the assessment. To illustrate this finding, the court noted that the fourth largest parcel in the pink category, 24,000 square feet, was assessed at $3895. After considering the nature of the zoning restrictions on the Langleys' property and its proximity to the lake, the court found that "the reasons for the disparity between the objectors' parcel and the fourth largest parcel ... are impossible to understand or justify." The circuit court reduced the assessment to $4000.[3]

The circuit court's finding that the district overemphasized the size of the Langleys' parcel in calculating their assessment is not clearly erroneous. We also agree with the circuit court's legal conclusion that the assessment was unreasonable. The district has not established that because they own a large piece of property, the Langleys will enjoy greater benefits from the district's projects than the owner of a smaller parcel or a parcel which is located closer to

[2] The Langleys' parcel is 56,034 square feet. Zoning laws require a minimum area of 40,000 square feet.

[3] We recognize that the law does not permit a circuit court on judicial review to order an assessment entered at any fixed sum, but rather to determine from the evidence presented to the board whether the assessment was made on the statutory basis. ***State ex rel. Levine v. Board of Review***, 191 Wis.2d 363, 370, 528 N.W.2d 424, 426-27 (1995); § 70.47(13), STATS. Here, however, the district quarrels only with the circuit court's determination that the district placed undue emphasis on the size of the Langleys' parcel. The district does not further argue that if we uphold the court's reasoning, the court nonetheless erred by reducing the assessment. We therefore leave the court's reduction of the assessment in place.

the lake.[4] Under the circumstances of this case, we do not see a causal link between the size of the Langleys' parcel and the benefits accruing to it from the district's projects.

The district argues that ***Village of Egg Harbor v. Mariner Group***, 156 Wis.2d 568, 457 N.W.2d 519 (Ct. App. 1990), states that reasonableness "does not require that the assessment be limited to the benefits received or be made by any specific method." ***Id***. at 573, 457 N.W.2d at 522. ***Egg Harbor*** does not require a different result in this appeal. While reasonableness is not limited to the benefits received, the benefits received must be considered. Here, the district did not consider the benefits to the Langleys' parcel when it levied the highest assessment in the pink category.

By the Court.—Judgment affirmed.

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

[4] It is implicit in the circuit court's ruling that the Langleys met their burden of overcoming the presumption that the district proceeded regularly. *See* ***Peterson v. City of New Berlin***, 154 Wis.2d 365, 371, 453 N.W.2d 177, 180 (Ct. App. 1990). Having established a prima facie case, the burden shifted to the district to show that the assessment method comported with the statutory requirement that it be reasonable. *See* ***id***.