

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 30, 1996

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. 95-0198

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**STATE OF WISCONSIN EX REL.
JERI BONA VIA, JOHN PETER BONA VIA, M.D.,
MARIANNE BACH and DENNIS GRIFFIN,**

Petitioners-Appellants,

v.

**VILLAGE OF BROWN DEER,
EARL MCGOVERN, EUGENE MALLOY,
JOHN RAFFENSPERGER, EDGAR HENNIG,
SUSAN SCHNEIDER and MARY KUST,**

Respondents-Respondents.

APPEAL from a judgment of the circuit court for Milwaukee County: LOUISE M. TESMER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Schudson, JJ.

PER CURIAM. Four citizens of the Village of Brown Deer (the petitioners) appeal from a trial court judgment quashing a writ of mandamus,

which would have required the Village of Brown Deer Board to either pass a proposed village ordinance banning the possession of handguns or submit the proposed ordinance to the voters in an election. The petitioners present two issues for our review: (1) “[w]hether an ordinance, proposed by petition to ban handguns with a barrel of less than ten inches, is a proper subject for direct legislation under sec. 9.20, Stats. where pre-existing law prohibits discharge of firearms in the village except in lawful defense of person or property;” and (2) whether the trial court erroneously exercised its discretion in granting the motion to quash the writ of mandamus.

Because the Wisconsin Legislature recently enacted legislation that precludes and invalidates all firearm regulations by cities, villages, towns, or counties that are “more stringent” than state law, *see* 1995 Wis. Act 72, and because the proposed Village of Brown Deer ordinance banning the possession of handguns is undisputedly more stringent than state law, the issues raised by the petitioners are moot. Accordingly, we do not address them and the trial court judgment is affirmed.¹

The petitioners sought to enact the proposed ordinance banning the possession of handguns through the direct legislation provisions of § 9.20, STATS. They presented a petition with this proposal to the Village Board, which chose neither to enact it, nor present it to the voters as an initiative at the next election. The petitioners then petitioned the Milwaukee County Circuit Court for a writ of mandamus requiring the Village Board to either enact the ordinance or present it to the voters. The trial court issued an alternative writ requiring either enactment of the ordinance or a response by the Village showing cause why the writ of mandamus should not be granted. The Village later moved the trial court to quash the alternative writ. The trial court granted the motion, concluding that the proposed ordinance was not appropriate for direct legislation under § 9.20, STATS., because it conflicted with a village ordinance preserving the right of a citizen to discharge a firearm in self-defense. The petitioners appeal from the judgment quashing the alternative writ of mandamus.

¹ Subsequent to the submission of briefs in this case, the Village of Brown Deer moved this court to summarily dismiss the appeal because of the legislature's enactment of § 66.092, STATS. Because we affirm the trial court judgment on grounds similar to those raised by the Village in its motion, we need not address the merits of the motion for summary dismissal, and hence, it is denied.

Since the time this matter was submitted on briefs, the legislature has enacted § 66.092, STATS., which provides:

Local regulation of firearms

(1) In this section:

(a) "Firearm" has the meaning given in s. 167.31(1)(c).

(b) "Political subdivision" means a city, village, town or county.

(c) "Sport shooting range" means an area designed and operated for the practice of weapons used in hunting, skeet shooting and similar sport shooting.

(2) Except as provided in subs. (3) and (4), no political subdivision may enact an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

(3)(a) Nothing in this section prohibits a county from imposing a sales tax or use tax under subch. V of ch. 77 on any firearm or part of a firearm, including ammunition and reloader components, sold in the county.

(b) Nothing in this section prohibits a city, village or town that is authorized to exercise village powers under s. 60.22(3) from enacting an ordinance or adopting a resolution that restricts the discharge of a firearm.

(4)(a) Nothing in this section prohibits a political subdivision from continuing to enforce an ordinance or resolution that is in effect on the effective date of this subsection ... [revisor inserts date], and that regulates

the sale, purchase, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, if the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

- (am) Nothing in this section prohibits a political subdivision from continuing to enforce until November 30, 1998, an ordinance or resolution that is in effect on the effective date of this paragraph ... [revisor inserts date], and that requires a waiting period of not more than 7 days for the purchase of a handgun.
- (b) If a political subdivision has in effect on the day before the effective date of this paragraph ... [revisor inserts date], an ordinance or resolution that regulates the sale, purchase, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, and the ordinance or resolution is not the same as or similar to a state statute, the ordinance or resolution shall have no legal effect and the political subdivision may not enforce the ordinance or resolution on or after the effective date of this paragraph ... [revisor inserts date].
- (c) Nothing in this section prohibits a political subdivision from enacting and enforcing a zoning ordinance that regulates the new construction of a sport shooting range or when the expansion of an existing sport shooting range would impact public health and safety.
- (5) A county ordinance that is enacted or a county resolution that is adopted by a county under sub. (2) or a county ordinance or resolution that remains in effect under sub.(4)(a) or (am) applies only in those towns in the county that have not enacted an ordinance or

adopted a resolution under sub. (2) or that continue to enforce an ordinance or resolution under sub. (4)(a) or (am), except that this subsection does not apply to a sales or use tax that is imposed under subch. V of ch. 77.

See 1995 Wis. Act 72 (effective date Nov. 18, 1995).

Subsection (2) precludes a village from enacting an ordinance affecting the possession of firearms, if the ordinance is more stringent than state law. It is undisputed that the proposed ordinance in this case is more stringent than state law. It bans the possession of any handgun with a barrel length of less than ten inches. Such weapons are not banned under current state law.

Accordingly, we conclude that the issues raised by the petitioners are moot. A matter is moot if a determination sought cannot have a practical effect on an existing controversy. *Racine v. J-T Enter. of America, Inc.*, 64 Wis.2d 691, 700, 221 N.W.2d 869, 874 (1974). Further, we will generally decline to address moot issues. See *State ex rel. Wis. Envtl. Decade, Inc. v. Joint Comm. for Review of Admin. Rules*, 73 Wis.2d 234, 236, 243 N.W.2d 497, 498 (1976). In short, because the issues raised are moot, we affirm the trial court's judgment quashing the alternative writ of mandamus.

By the Court. — Judgment affirmed.

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