COURT OF APPEALS
DECISION
DATED AND RELEASED

September 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. 95-1292

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

RAYMOND S. SELJE
and HELEN B. SELJE,
Husband and Wife,

Plaintiffs-Appellants,

v.

VILLAGE OF NORTH FREEDOM,
a Municipal Corporation,
and JEFF CURTIS-CROCKETT, d/b/a
VIERBICHER ASSOCIATES, INC.,
VILLAGE OF NORTH FREEDOM
BUILDING INSPECTOR,

Defendants-Respondents.

APPEAL from an order of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed*.

Before Vergeront, J., and Paul C. Gartzke and Robert D. Sundby, Reserve Judges.

PER CURIAM. Plaintiffs-appellants Raymond and Helen Selje (the Seljes) appeal from a circuit court order granting defendants' motion to dismiss the Seljes' motion for compensation. The circuit court ruled that it no longer had jurisdiction, because the Seljes' motion was too late. RULE 806.07, STATS. For the reasons set forth below, we affirm.

BACKGROUND

The Seljes owned a dilapidated building in North Freedom, Wisconsin. They obtained a building permit with the intention of renovating the property into a storefront and upstairs apartment. The last extension on the building permit expired December 8, 1992. On November 6, 1992, Village Attorney James C. Bohl wrote to the Seljes, advising that per a September 22, 1992 inspection, the building was unsafe and unfit for human habitation. Bohl advised that if the building was not brought up to code by the December 8, 1992 permit expiration date, no further building permit extensions would be authorized, and the building would be subject to a raze order pursuant to statute.

By Resolution No. 181, dated January 12, 1993, the Village Board authorized the Village Building Inspector to issue a raze order pursuant to § 66.05, STATS.[1] On January 15, 1993, the Village Building Inspector did issue

[1] Section 66.05, STATS., reads in relevant part as follows:

> (1)(a) The governing body or the inspector of buildings or other designated officer in every municipality may order the owner of premises upon which is located any building or part thereof within such municipality, which in its judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation, occupancy or use, and so that it would be unreasonable to repair the same, to raze and remove such building or part thereof and restore the site to a dust-free and erosion-free condition.... The order shall specify a time in which the owner shall comply therewith and specify repairs, if any....
>
> (2)(a) If the owner fails or refuses to comply within the time prescribed, the inspector of buildings or other designated

(..continued)

officer may cause such building or part thereof to be razed and removed and may restore the site to a dust-free and erosion-free condition either through any available public agency or by contract or arrangement with private persons, or closed if unfit for human habitation, occupancy or use. The cost of such razing, removal and restoration of the site to a dust-free and erosion-free condition or closing may be charged in full or in part against the real estate upon which such building is located, and if that cost is so charged it is a lien upon such real estate and may be assessed and collected as a special tax....

(b) Any municipality, inspector of buildings or designated officer may, in his, her or its official capacity, commence and prosecute an action in circuit court for an order of the court requiring the owner to comply with an order to raze or remove any building or part thereof issued under this section if the owner fails or refuses to do so within the time prescribed in the order, or for an order of the court requiring any person occupying a building whose occupancy has been prohibited under this section to vacate the premises, or any combination of the court orders. Hearing on such actions shall be given preference. Costs shall be in the discretion of the court.

(3) Anyone affected by any such order shall within the time provided by s. 893.76 apply to the circuit court for an order restraining the inspector of buildings or other designated officer from razing and removing the building or part thereof and restoring the site to a dust-free and erosion-free condition or forever be barred. The hearing shall be held within 20 days and shall be given preference. The court shall determine whether the order of the inspector of buildings is reasonable, and if found reasonable the court shall dissolve the restraining order, and if found not reasonable the court shall continue the restraining order or modify it as the circumstances require. Costs shall be in the discretion of the court. If the court finds that the order of the inspector of buildings is unreasonable, the inspector of buildings or other designated officer shall issue no other order under this section in regard to the same building or part thereof until its condition is substantially changed. The remedies provided in this subsection are exclusive remedies and anyone affected by such an order of the inspector shall not be entitled to recover any damages for the razing and

such an order informing the Seljes that if they had not razed the building and restored the site within ninety days, the costs of razing the building, together with attorney's fees, inspector costs, and removal and cleanup costs would be assessed against them as a special tax.

On February 19, 1993, the Seljes filed a petition for a restraining order. By stipulation dated March 8, 1993, all parties agreed to waive the twenty-day hearing deadline mandated by § 66.05(3), STATS., agreeing to an April 19, 1993 hearing.

At the April 19, 1993 hearing, the Seljes appeared pro se. There is no transcript of the hearing, but the minutes indicate that the Seljes raised various arguments and entered various exhibits into evidence. By order dated May 4, 1993, the circuit court denied the Seljes' petition for a restraining order on the ground that the building was too dilapidated to warrant the high cost of improving it to meet code requirements. The court also found, however, that a separate garage building on the property was not affected by the raze order. The court concluded that the requirements of § 66.05, STATS., had been met, and that "it is appropriate to restore the site to a dust and erosion free condition."

Of particular importance to this appeal, the court retained jurisdiction over the matter for a period of sixty days after the razing project was completed, for the purpose of making any determination regarding costs to be assessed and collected as a special tax under § 66.05, STATS.

From various record documents, we surmise that the Seljes' building was razed in the summer of 1993.

(..continued)

removal of any such building and the restoration of the site to a dust-free and erosion-free condition.

(4) "Building" as used in this section includes any building or structure.

By Resolution No. 198, dated November 8, 1993, the Village Board assessed a special tax against the Seljes in the amount of $13,420.30, that being the cost of razing the building, together with inspection and attorney's fees.

By letter dated December 24, 1993, and received by the court on January 10, 1994, the Seljes objected to the assessment. By letter dated January 10, 1994, the circuit court advised the Seljes that they could neither respond to, nor take action upon their December 24, 1993 letter "absent a formal motion with notice to all parties." The Seljes did file such a motion—styled a "Motion for hearing of just compensation"—but not until January 20, 1995, that being one year and ten days after being advised by the court of the necessity for a formal motion.

At the March 3, 1995 motion hearing, the circuit court considered the Village's motion to dismiss the Seljes' motion as late. Specifically, the court held that due to the amount of time which had passed, it had no jurisdiction to hear a late claim under RULE 806.07, STATS. The court declined to award costs for a frivolous proceeding, but did award $150 in motion costs.

ANALYSIS

The Seljes appeal, claiming various substantive errors. However, we restrict consideration to their arguments relating to the court's jurisdiction to hear their January 20, 1995 motion.[2]

The Seljes allege that when one of them (they do not say which) went to the judge's chambers, the judge's administrative assistant told them that "the judge considered all cases open for two years and there would be no

[2] We do not consider the Seljes' argument that they should not pay the $150 motion costs assessed against them. They have offered no argument on that subject, simply asserting that because they should win on the merits, they should not have to pay costs. The Seljes cite no cases or authority to support their argument. In light of the inadequate briefing on this issue, we decline to address it. ***In re Balkus***, 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 (Ct. App. 1985).

problem if motions were filed within two years of the start of the Plaintiff's case."

We have closely scrutinized the record, especially the transcript of the March 3, 1995 hearing conducted on the Seljes' motion. We find no evidence that the Seljes ever raised this argument before the circuit court, despite being asked repeatedly by the circuit court whether they had any other arguments relevant to the court's jurisdiction to hear the case. Because this issue was not raised before the trial court, we will not consider it here. ***Zeller v. Northrup King Co.***, 125 Wis.2d 31, 35, 370 N.W.2d 809, 812 (Ct. App. 1985); ***Capon v. O'Day***, 165 Wis. 486, 490-91, 162 N.W. 655, 657 (1917).

The Seljes also argue that the court never informed them of a deadline for bringing a motion. We reject this argument on two grounds. First, the May 4, 1993 order clearly indicated that the court would retain jurisdiction for sixty days for the purpose of making any determination on costs assessed under the statute. Thus, the Seljes had clear written notice of the time within which they had to request the court to exercise its jurisdiction regarding costs. Even supposing that the Seljes understood this to mean sixty days after costs were assessed by the Village Board's November 8, 1993 resolution of special taxation, the Seljes' motion was more than a year late.

The second reason we reject this argument is that, although a circuit court has the duty to protect the rights of litigants who appear in court, ***Village of Big Bend v. Anderson***, 103 Wis.2d 403, 407, 308 N.W.2d 887, 890 (Ct. App. 1981), a court cannot serve as both advocate and judge. ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992). The right to self-representation is `[not] a license not to comply with relevant rules of procedural and substantive law.' ***Waushara County v. Graf***, 166 Wis.2d 442, 452, 480 N.W.2d 16, 20 (1992), quoting ***Faretta v. California***, 422 U.S. 806, 834 n.46 (1975). The Seljes knew they were proceeding without an attorney, yet they did not inform themselves of the relevant times for bringing a RULE 806.07, STATS., motion.[3]

[3] Because we hold, as we do, that the Seljes' motion was procedurally barred, we need not consider the merits of their position that they are entitled to compensation. Were the

By the Court.—Order affirmed.

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

(..continued)
issue before us, we would entertain grave doubts of their entitlement in light of the language in § 66.05(3), STATS., stating that:

> [t]he remedies provided in this subsection are exclusive remedies and anyone affected by such an order of the inspector shall not be entitled to recover any damages for the razing and removal of any such building and the restoration of the site to a dust-free and erosion-free condition.