

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 22, 1997

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(1), 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. 96-1591

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

VILLAGE OF HATLEY,

Plaintiff-Respondent,

v.

STEVEN ANDERSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Marathon County: RAYMOND F. THUMS, Judge. *Affirmed.*

MYSE, J. Steven Anderson appeals a judgment enjoining operation of his used automobile sales business and requiring he remove all vehicle debris and automobiles from his sales lot located in the Village of Hatley, and imposing a \$10 per day fine from December 17, 1994, to May 2, 1996, with the provision that the fine shall be \$50 a day if Anderson fails to remove his automobiles and debris from the premises as directed by the judgment by May 2, 1996.

Anderson contends that the Village is estopped from enforcing its zoning ordinance because the Village president signed a statement that the property was properly zoned for the operation of such business, which was

submitted as part of his application for a Wisconsin motor vehicle dealers license. In addition, Anderson contends that the trial court erred by refusing to grant him a jury trial and that he was deprived of his right to counsel when the attorney representing Anderson at the proceedings refused to file a brief without the payment of additional fees, which Anderson was unable to pay. Because this court concludes that a claim of estoppel may not be asserted against the Village in the enforcement of its police powers, that there were no contested issues of fact to be submitted to the jury and that Anderson has no right to be represented by counsel at a civil proceeding, the judgment is affirmed.

The facts giving rise to this case are undisputed. Anderson purchased property at 117 Curtis Avenue that was zoned as B-1 business. Hatley's zoning ordinance permits the following businesses to be operated in a B-1 business district:

Banks and financial institutions, business and professional offices,
hardware stores, clothing stores, restaurants, jewelry
stores, drug stores, grocery stores and post offices.

All other uses authorized in the B-1 business district are subject to the issuance of a conditional use permit. Anderson neither applied for nor received a conditional use permit from the Village.

The property had been operated as Ted's Tires during the 1980s. The property was vacant for a substantial period of time when Anderson purchased it to use in operating a used car business. While Anderson denies the village's allegation that he is operating a salvage or junk yard on the premises, it is clear that a variety of automobile debris and damaged vehicles are located on this property.

In 1988, Anderson began operating a used car sales business upon the property that necessitated he obtain a license from the Department of Transportation. As part of his application, the former president of the Village board signed a statement accompanying his application that the property was properly zoned for the operation of the used car business. A license was issued

by the State, and Anderson began operating his business on the Curtis Avenue property.

Neighbors made a series of complaints as to the condition of the Anderson's property to the Village board. A variety of meetings were held between Anderson and the Village board in regard to these complaints, but a satisfactory resolution was not achieved. Anderson was advised as to the necessity of obtaining a conditional use permit but he never made an application. There was a discussion with the Village in regard to fencing his property to screen the property from view. After a substantial delay, the fencing was erected but complaints from the neighbors continued. Ultimately, the Village sought enforcement of its zoning ordinances.

Anderson paid the appropriate fee and demanded a jury trial. The trial court, however, found that there were no disputed issues of fact and that the matter presented solely an issue of law which it then determined. Anderson was represented by counsel during the trial. The court asked for briefs on specific issues and counsel advised Anderson that he was unwilling to submit the briefs to the court without the payment of additional fees. Anderson was unable to meet the demand for the payment of additional monies and no brief was ever submitted by Anderson.

The trial court ultimately determined the issues adversely to Anderson, issued an injunction from further use of the premises by his business and imposed a \$10 per day forfeiture for a specific number of days, but provided the daily forfeiture would be increased to \$50 if Anderson failed to remove his automobiles and automobile debris from the lot by the date specified by the court.

Anderson asserts that the Village was estopped from enforcing the zoning ordinance based upon the Village president's signing a statement that his property was in compliance with the zoning requirements of the Village submitted with his application for a Wisconsin motor vehicle dealers license. Anderson further contends that he was denied the assistance of counsel when his attorney refused to file the briefs requested by the trial court without the payment of an additional retainer and that he was improperly denied his right to a jury trial by the trial court. Because the sole issue is the application of principles of law to undisputed facts, each of these contentions raise issues of

law which this court determines independent of the trial court. *Delta Group, Inc. v. DBI, Inc.*, 204 Wis.2d 515, 521, 555 N.W.2d 162, 165 (Ct. App. 1996).

Anderson first asserts that the Village is estopped from enforcing its zoning ordinance because the Village president signed a statement that the property was properly zoned for the operation of this business which accompanied his application for a Wisconsin motor vehicle sales license. The elements of estoppel are: "(1) action or nonaction by the person against whom estoppel is asserted (2) upon which the person asserting estoppel reasonably relies (3) to that person's detriment." *St. Paul Ramsey Med. Ctr. v. DH&SS*, 186 Wis.2d 37, 47, 519 N.W.2d 681, 685 (Ct. App. 1994).

We need not address whether the president's signature on the form prepared for the State of Wisconsin was a representation or whether Anderson relied on the representation or whether such reliance was reasonable. It is dispositive of this issue that the law provides that the doctrine of estoppel may not be asserted against a municipality in its assertion of ordinances based upon its police power. *Milwaukee v. Leavitt*, 31 Wis.2d 72, 76-77, 142 N.W.2d 169, 171-72 (1966). Here, the Village is attempting to enforce a zoning ordinance which is an exercise of its police power. *See id.* Because the doctrine of estoppel is inapplicable to zoning enforcement, Anderson's contention that the Village is estopped from enforcing its zoning code must fail.

The public policy underlying the court's refusal to enforce the doctrine of estoppel against governments seeking to enforce its police power is that the power is designed to protect the interests of all of its citizens and not the sole interest of the party making the representations. It is well established that in seeking to enforce its police powers the principle of estoppel may not be asserted against a governmental body. *Id.* Accordingly, the trial court correctly concluded that no claim of estoppel would prevent the enforcement of the Village's zoning ordinances.

Anderson next asserts that the trial court erred by refusing to grant his request for a jury trial. A jury is designed to determine disputed issues of fact. *State v. Poellinger*, 153 Wis.2d 493, 505-07, 451 N.W.2d 752, 757-58 (1990). When there are no disputed issues of fact and the only issue before the court is the application of legal principles to undisputed facts, there is no need for a jury

to be convened. See *Tombal v. Farmers Ins. Exch.*, 62 Wis.2d 64, 68, 214 N.W.2d 291, 293 (1974).

In this case, all material facts are undisputed. The application of the zoning ordinances, the provision of those ordinances and the fact that Anderson was operating a business requiring a conditional use permit are uncontested. While there may be some disagreement as to the nature of Anderson's business, whether the business was limited to the sale of used cars or involved the operation of a salvage yard, it is clearly not permitted in a B-1 zone without a conditional use permit issued by the Village. Anderson neither applied for nor received a conditional use permit. Therefore, his use of the Curtis Avenue lot was not authorized by the applicable zoning ordinance.

Potentially there may be factual matters in regard to the nature of the representation made by the Village president, Anderson's reliance upon such representations and the reasonableness of such reliance. Here, however, those issues need not be addressed because the doctrine of estoppel cannot be applied against the Village in the exercise of its police powers. None of these potentially disputed facts is relevant to a determination of Anderson's claim in this regard. Because there was no dispute of material facts, the court properly refused to convene a jury in this case. Finally, Anderson contends that he was deprived of the effective assistance of counsel when his attorney refused to submit the requested briefs without the payment of an additional retainer. There is no constitutional right to legal representation in civil proceedings. *State v. Hildebrand*, 48 Wis.2d 73, 81-82, 179 N.W.2d 892, 896 (1970). Accordingly, while Anderson's best interests may have been served by the submission of a brief by his attorney, this court cannot conclude that the judgment is infirm as a result of Anderson's failure to have representation throughout trial. The risk of proceeding without counsel at any stage of a proceeding in a civil matter rests solely with the litigants and provides no basis for relief upon appeal. See *Waushara County v. Graf*, 166 Wis.2d 442, 451-52, 480 N.W.2d 16, 19-20 (1992).

Anderson also asserts that he was denied the rights of "due process." He, however, fails to identify any specific rights that fall within the rubric of due process nor does he identify how such rights were violated. This court will not address matters that are not fully briefed. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992). Because Anderson failed to identify specific rights, this court assumes that each of the specific allegations

of error made encompasses his assertion that he was denied due process. Because this court concludes those allegations of error to be without merit, there is no merit in the assertion that his due process rights were violated. If Anderson intends to include other unidentified due process rights within this claim, the issue has been waived by his failure to adequately identify those rights or the nature of the claimed violation for appellate review.

Because the doctrine of equitable estoppel is inapplicable against a municipality attempting to enforce its police powers, the court properly refused to convene a jury because the matter submitted to it were resolved as questions of law, and because Anderson's failure to have legal representation throughout the proceedings is not a basis upon which a civil judgment may be reversed, this court is required to affirm the trial court judgment.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.