

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

August 5, 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, STATS.

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

No. 96-2293

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

POLICEMEN RELIEF ASSOCIATION,

PLAINTIFF-APPELLANT,

v.

LINDA L. KRUEGER,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. SKWIERAWSKI, Judge. *Affirmed.*

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

PER CURIAM. The Policemen Relief Association (PRA) appeals from a judgment entered after the trial court granted Linda L. Krueger's motion for summary judgment. The PRA claims the trial court erred when it concluded that Mrs. Krueger was not obligated to return a \$7,000 death benefit payment the PRA issued after her husband died while working as a Milwaukee Police Liaison

Officer. Because the PRA is equitably estopped from seeking return of the \$7,000 death benefit payment, we affirm.

I. BACKGROUND

The PRA is a corporate body organized and existing under Chapter 213 of the Wisconsin Statutes. Its purpose is to provide relief to sick and disabled members of the association and their families, and to pay expenses related to a member's last illness and funeral. *See* § 213.11, STATS. PRA members pay their dues by payroll deductions.

In August 1968, Bill Krueger was sworn to duty as a City of Milwaukee Police Officer. In July 1993, he became a Milwaukee Police Liaison Officer. In May 1994, a PRA dues deduction was taken from his paycheck. On July 27, 1994, Officer Krueger died in a car accident in the line of duty. On the same date, the PRA issued and delivered a check in the amount of \$7,000 to Mrs. Krueger. The check was sent with a cover letter stating that as a member of the PRA, Officer Krueger was entitled to a \$7,000 death benefit for which Mrs. Krueger was named beneficiary. Mrs. Krueger expended the check to pay for her husband's funeral expenses.

In August 1994, the PRA asked the Milwaukee City Attorney for a legal opinion regarding the appropriateness of the PRA's payment to Mrs. Krueger. In its letter to the city attorney, the PRA stated its practice of including liaison officers as members of the PRA.

On October 18, 1994, the PRA sent correspondence to Mrs. Krueger, explaining that the city attorney advised that her husband was not eligible for membership in the PRA because he was not an active member of the police

department. Because he was working as a liaison officer, he was not entitled to the death benefit. The letter enclosed a refund of the dues deduction taken from Officer Krueger's May 1994 paycheck and asked that Mrs. Krueger return the \$7,000. Mrs. Krueger returned the dues check to the PRA, along with a letter from her attorney stating that she would not return the \$7,000.

The PRA filed a complaint against Mrs. Krueger seeking the return of the \$7,000. Both sides filed motions for summary judgment. The trial court granted Mrs. Krueger's motion and dismissed the PRA's complaint. The PRA filed a motion to reconsider, which was also denied. Judgment was entered. The PRA now appeals.

II. DISCUSSION

The trial court's ruling was based on its conclusion that the collective bargaining agreement modified the City Charter so that a liaison officer is to be treated under the same terms and conditions as applicable employees covered by the agreement. In interpreting these documents, the trial court determined that Officer Krueger was entitled to the death benefit that was paid to Mrs. Krueger. Accordingly, the trial court granted summary judgment in her favor.

Summary judgment is governed by § 802.08, STATS. *See Shannon v. Shannon*, 150 Wis.2d 434, 441, 442 N.W.2d 25, 29 (1989). Summary judgment methodology is well established and will not be repeated here. *See Preloznik v. City of Madison*, 113 Wis.2d 112, 115-16, 334 N.W.2d 580, 582-83 (Ct. App. 1983). Our review is *de novo*. *See id.* at 115-16, 334 N.W.2d at 582. In reviewing the record, we conclude that the trial court properly granted summary judgment in favor of Mrs. Krueger. However, we reach our conclusion on

different grounds. Nevertheless, we affirm the judgment. *See Liberty Trucking Co. v. DILHR*, 57 Wis.2d 331, 342, 204 N.W.2d 457, 464 (1973) (we may sustain a trial court's decision for a reason other than that given by the trial court).

The PRA argues that the trial court erred because it based its decision on the interpretation of the City Charter and the collective bargaining agreement between the police and the city. The PRA contends that this was erroneous because the PRA is a separate "body corporate" not privy to the charter or agreement. We need not address this argument, however, because we conclude that the PRA is equitably estopped from seeking the return of the \$7,000. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W.2d 663, 665 (1938) (only dispositive issues need be addressed).

Mrs. Krueger argues that the PRA should be equitably estopped from recouping the death benefit issued to her. We agree. The elements of equitable 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. DHSS*, 186 Wis.2d 37, 47, 519 N.W.2d 681, 685 (Ct. App. 1994). Mrs. Krueger has proven each element by clear and convincing evidence. *See id.*

The PRA took a dues deduction from Officer Krueger's paycheck. It issued a death benefit check when he died based on its long-standing practice of treating liaison officers as members of the PRA. Mrs. Krueger relied on this action. She cashed the check and paid for her husband's funeral expenses with the money. Her reliance was reasonable based on her knowledge that the PRA had taken the annual dues deduction, and on her receipt of the check with a letter indicating that her husband was a member of the PRA entitled to this benefit. She

relied on the action to her detriment because she spent the money. She does not have the \$7,000 to repay the PRA.

Further, the equities do not weigh in the PRA's favor. Between 1972 and 1994, it was the PRA's practice to treat liaison officers as members of the PRA. During that time period, dues deductions were taken from police liaisons' paychecks, and death benefits were paid by the PRA to beneficiaries of liaison officers. The PRA specifically expressed the intent to include liaison officers as members of the PRA. The PRA accepted Officer Krueger's premium and paid the benefit to Mrs. Krueger. Several months later, it attempted to recoup the payment and cancel the benefit. We conclude as a matter of law that the PRA is equitably estopped from recovering the \$7,000 from Linda. Therefore, the trial court's decision is affirmed.

By the Court.—Judgment affirmed.

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

