COURT OF APPEALS DECISION DATED AND FILED

November 18, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2010AP325 **Cir. Ct. No. 2009CV470**

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

TAMMY STACHOWIAK,

PETITIONER-APPELLANT,

JEFFREY STACHOWIAK,

PETITIONER,

V.

SHAWANO COUNTY ZONING BOARD,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Reversed*.

Before Vergeront, P.J., Lundsten and Blanchard, JJ.

¶1 PER CURIAM. Tammy Stachowiak appeals an order dismissing her appeal from a ruling by the Shawano County Board of Adjustment. The dispositive issue is whether the County is equitably estopped from asserting that Stachowiak failed to follow the required procedure to seek review. We conclude it is estopped, and we reverse.

¶2 Stachowiak, then unrepresented, sought review by filing in the circuit court a letter stating that she was requesting an appeal and asking for a trial to the court. She attached copies of some of the papers from the earlier proceedings. The County moved to dismiss on the ground that Stachowiak failed to commence an action in the manner provided in WIS. STAT. §§ 59.694(10) and 801.02(1) and (5). The motion identified the absence of a summons as the most notable flaw.

¶3 At a hearing on the motion, counsel for Stachowiak argued that the County should be equitably estopped from raising this issue because the board's decision included a notice that purported to explain the method for seeking review, but that method was incorrect, and Stachowiak relied on it. The court concluded that the notice was not misleading, and granted the motion to dismiss. The notice in question stated in part that any person aggrieved by the decision "may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality" within thirty days after the decision.

¶4 The parties appear to agree on the applicable law. The proper method for review of the board's decision is to "commence an action seeking the remedy available by certiorari." WIS. STAT. § 59.694(10). An "action" is "commenced as to any defendant when a summons and a complaint naming the

person as defendant are filed with the court." WIS. STAT. § 801.02(1). An action seeking a remedy available by certiorari may be commenced in that manner, or also by other methods. WIS. STAT. § 801.02(5). The parties in this case agree that no summons was filed and the other methods were not followed.

¶5 Equitable estoppel is a court-made doctrine that may be applied when an action or non-action by the party against whom estoppel is asserted induces reasonable reliance by the other party, to that party's detriment. ***Kamps v. DOR***, 2003 WI App 106, ¶20, 264 Wis. 2d 794, 663 N.W.2d 306. The doctrine may be applied to prevent a party from asserting a defense of a statute of limitations when the conduct is so unfair and misleading as to outweigh the public interest in setting a limitation on bringing claims. ***Gonzalez v. Teskey***, 160 Wis. 2d 1, 13, 465 N.W.2d 525 (Ct. App. 1990). The doctrine may be applied to preclude a defendant who has been guilty of fraudulent or inequitable conduct from asserting the statute of limitations, if the aggrieved party failed to commence an action within the statutory period because of his or her reliance on the defendant's representations or acts. ***Hester v. Williams***, 117 Wis. 2d 634, 644, 345 N.W.2d 426 (1984).

¶6 In this case, we conclude that the notice in the decision was inequitable conduct. A reasonable person reading this notice would believe it was telling them what they had to do to obtain judicial review. We regard it as inequitable when a municipality chooses to purportedly inform a losing party of how to appeal, but does so in a plainly erroneous way, and then moves to dismiss for failure to seek review in the proper manner. It is reasonable for a person to rely on a statement that is detailed in this manner as a correct statement for how to appeal.

¶7 As to whether the notice is so unfair and misleading as to outweigh the public's interest in setting limitations on actions, we conclude, in weighing the equities in this estoppel context, that it is. The public's interest is mainly in the ability of its representatives in government to receive timely notice of further proceedings. Weighing the equities in this case, we conclude they favor Stachowiak. Her filing was imperfect, but timely. As to notice, it appears the County was soon aware of her desire for judicial review, because it filed its motion to dismiss approximately one month after her letter. The County has not suggested that it suffered any specific prejudice from her noncompliance, and it does not appear that the County's substantive defenses on the merits of the case have been impaired.

¶8 The County argues that, even if we conclude that the notice was misleading, Stachowiak should still be blocked from judicial review because she also did not follow the procedure described in the notice. In particular, the County notes that the "petition" was not "duly verified" in the sense of being submitted by oath or affidavit, and that it did not specify the grounds of illegality of the decision. However, the County offers no legal support for the proposition that it has the authority to set the requirements for seeking judicial review by placing them in such a notice.

By the Court.—Order reversed.

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