

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 20, 2014

Diane M. Fremgen
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. 2013AP2375

Cir. Ct. No. 2010CV45

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WARREN SLOCUM,

PLAINTIFF-APPELLANT,

V.

TOWN OF STAR PRAIRIE BOARD OF REVIEW,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County:
HOWARD W. CAMERON, JR., Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Warren Slocum, pro se, appeals an order denying a motion to reopen his challenge to a 2009 property tax assessment. Slocum argues there is new evidence showing that his original challenge was not a certiorari

action but, rather, was timely commenced under WIS. STAT. § 74.37.¹ We reject Slocum's arguments and affirm the order.

¶2 On June 17, 2009, Slocum filed an objection to his 2009 property tax assessment with the Town of Star Prairie. The Board of Review sustained the tax assessment and issued its notice of the determination on June 24, 2009. Slocum was personally served with the notice on July 27, 2009. On January 12, 2010, Slocum filed a "Complaint and Summons Appeal of Property Tax assessment," seeking review of the Board's determination. The circuit court dismissed what it deemed to be Slocum's certiorari action because it was not timely filed under WIS. STAT. § 70.47(13) and Slocum failed to appear at a hearing. After his reconsideration motions were denied, Slocum appealed to this court claiming, in relevant part, that the action was timely filed under WIS. STAT. § 74.37.

¶3 In that appeal, we rejected Slocum's claim that he timely filed an action under WIS. STAT. § 74.37, concluding he did not commence or attempt to commence an action under that section. We recounted that a property owner can appeal a decision of the Board of Review in three ways: (1) by certiorari review under WIS. STAT. § 70.47(13); (2) by filing a written complaint with the Department of Revenue pursuant to WIS. STAT. § 70.85; or (3) by paying the tax and filing a claim against the taxation district to recover any amount of property tax imposed as a result of the excessive assessment pursuant to WIS. STAT. § 74.37(2)(a).

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶4 In his complaint, Slocum did not allege that he paid the tax nor did he seek compensation as a result of the excessive assessment. He did not mention WIS. STAT. § 74.37 in either his complaint or his initial motion to reconsider dismissal of the action, and even on appeal he described the matter as a “certiorari action.” We ultimately affirmed the order dismissing Slocum’s untimely certiorari action. *See Slocum v. Town of Star Prairie Board of Review*, No. 2010AP3012, unpublished slip op. (WI App Dec. 13, 2011). Slocum then filed the underlying motion to reopen his challenge to the 2009 assessment, claiming new evidence showed that his original action was timely commenced under § 74.37. The circuit court denied the motion and this appeal follows.

¶5 We review the circuit court’s decision whether to reopen a judgment under the standard for discretionary decisions, considering only whether the circuit court reasonably considered the facts of record under the proper legal standard. *Nelson v. Taff*, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993). Here, the purported “new evidence” consists of an October 20, 2009 letter from Slocum to the Star Prairie Board of Review. The letter, however, is not new evidence providing grounds to reopen the judgment. A new trial shall be ordered on the grounds of newly discovered evidence if the court finds that:

- (a) The evidence has come to the moving party’s notice after trial; and
- (b) The moving party’s failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; and
- (c) The evidence is material and not cumulative; and
- (d) The new evidence would probably change the result.

WIS. STAT. § 805.15(3).

¶6 The subject letter was prepared and signed by Slocum. He was, therefore, aware of its existence at the time he filed his January 2010 summons and complaint and his initial appeal. If Slocum felt the document constituted a “claim” under WIS. STAT. § 74.37, he should have advised the circuit court of that fact in his initial reconsideration motion and he should not have referred to the matter as a certiorari action in his initial appeal to this court. Because the letter is not newly discovered evidence as defined by WIS. STAT. § 805.15(3), the circuit court properly denied Slocum’s motion to reopen the judgment.²

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

² For the first time in his reply brief, Slocum appears to challenge the necessity of the certiorari procedure and also urges discretionary reversal in the interest of justice. This court generally does not consider arguments raised for the first time in a reply brief. See *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998).

