STATE OF WISCONSIN COURT OF APPEALS DISTRICT 2

CITY OF MENASHA, WISCONSIN,

Plaintiff-Appellant,

v.

Appeal No. 2016AP000702
Circuit Court No. 2015CV000017

VILLAGE OF HARRISON, WISCONSIN,

Defendant-Respondent.

ON APPEAL FROM THE CIRCUIT COURT FOR
CALUMET COUNTY,
THE HONORABLE ANGELA W. SUTKIEWICZ

BRIEF OF PLAINTIFF-APPELLANT, CITY OF MENASHA

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STATEMENT OF ISSUES

Does the Plaintiff-Appellant, City of Menasha ("City"), have standing to challenge annexation ordinances of the Defendant-Respondent, Village of Harrison ("Village")?

Trial Court Decision: No.

STATEMENT AS TO ORAL ARGUMENT

This case presents the application of established law to the facts. Oral argument is not requested.

STATEMENT AS TO PUBLICATION

The issue of this case involves established law. Publication is not requested.

STATEMENT OF THE CASE

I. Description of the Nature of the Case

The City brought this case challenging four annexations of Town of Harrison ("Town") territory by the newly incorporated Village as violating the Rule of Reason. The annexations being challenged are located in the City's growth area as defined in a 1999 Intermunicipal agreement with the Town and its sanitary district. Both parties filed cross-motions for summary judgment and oral argument was heard on November 6, 2015. By order entered February 18, 2016, the circuit court dismissed the City's claims based on lack of standing. The trial court concluded that the City of Menasha did not have standing to challenge the Village of Harrison's annexation ordinances since "...only those entities recognized at common law and those specifically designated by statutory provisions are permitted to bring actions to challenge the annexation of property, those being the residents and taxpayers of an annexing municipality; the owners of the land being annexed; and, now, towns and town boards." R-24, p.4; A-Ap, A104.

II. Statement of Facts

On October 28, 1999, the City, Town and the town sanitary district entered into an Intermunicipal Agreement under which terms the City and Town established boundaries and defined "growth areas" of each other for purposes including annexation and incorporation. R-1, p.6-15; R-3¶¶ 4 & 5; A-Ap., A108; A-Ap, A111-A120. Under the agreement, the City's ability to annex Town territory is specifically and well-defined. Since 1999 the City has foregone opportunities to annex Town territory outside of the City's growth areas. The agreement term is thirty years, until 2029.

In 2013, part of the Town incorporated to become the Village. R-3,¶8; R-11, p. 7; A-Ap., A131; A-Ap., A108. The western boundaries of the Village, adjacent to the cities of Appleton and Menasha, were drawn based on the boundary agreements with the cities of Appleton and Menasha. Within months after the incorporation, the Town and Village entered into an intergovernmental agreement whereby all of the remaining areas of the Town became part of the Village with the exception of those areas designated as growth areas under the terms of the intergovernmental agreements with the cities of Appleton and Menasha. R-12, EXHIBIT H; R-11, p. 5; A-Ap., A138-A150; A-Ap,

A132. The four annexations that are the subject of this case consist of parcels that are located within the defined growth area of the City in the 1999 Intermunicipal Agreement. R-11, p. 7; A-Ap., A134.

Further facts are set forth herein as necessary.

III. Standard of Review.

This court's review of a motion for summary judgment granted based on lack of standing is *de novo*. *Chenequa Land Conservancy v. Village of Hartland*, 275 Wis.2d 533, 544, 2004 WI App 144, ¶12, 685 N.W.2d 573 (Wis. App. 2004). "Whether a party has standing to seek declaratory relief is a question of law we review de novo." *Village of Slinger v. City of Hartford,* 650 N.W.2d 81, 256 Wis.2d 859, 865, 2002 WI App 187, ¶8 (Wis. App. 2002).

ARGUMENT

I. The City has standing to test the validity of the Village's annexations since the City has sustained or will sustain some pecuniary loss because of the annexations and that the annexations pose a substantial injury to its interests.

In order to maintain an action for declaratory judgment, there must be a justiciable controversy. *Village of Slinger v. City of Hartford*, 650 N.W.2d 81, 256 Wis.2d 859, 865, 2002 WI App 187, ¶9 (Wis. App. 2002). *Chenequa Land Conservancy v. Village of Hartland,* 275 Wis.2d 533, 543, 2004 WI App 144, ¶11, 685 N.W.2d 573 (Wis. App. 2004). The third element of justiciability, known as standing, is at issue in this case. "In order to have standing to sue, a party must have a personal stake in the outcome, id., [256 Wis.2d 866] and must be directly affected by the issues in controversy." *Village of Slinger v. City of Hartford*, 256 Wis.2d at 865-66; 2002 WI App 187, ¶4.

The *Village of Slinger* case cites to *City of Madison v. Town of Fitchburg,* 332 N.W.2d 782, 112 Wis.2d 224 (Wis. 1983). In reviewing the history of standing, the Wisconsin Supreme Court notes that standard has moved from being narrowly construed to being much more relaxed. *City of Madison v. Town of Fitchburg,*

332 N.W.2d at 785. "Indeed, we have recently recognized that even a trifling interest may be sufficient to confer standing." *City of Madison v. Town of Fitchburg,* 332 N.W.2d at 785. The court then went through analyzing the interests of the City of Madison under the current standing definition comparing it to the interests of other municipalities in older standing cases. The court noted, "Thus interests which were not sufficient to establish standing when Greenfield and Oak Creek were decided may enable a party to maintain an action under current notions of standing." *City of Madison v. Town of Fitchburg,* 332 N.W.2d at 785. Ultimately the Supreme Court concluded, "...Madison has a personal stake in [112 Wis.2d 232] the outcome of this controversy." *City of Madison v. Town of Fitchburg,* 332 N.W.2d at 785.

Under §806.04(12), Wis. Stats., the legislature specifically stated the declaratory judgments act statute is "...to be liberally construed and administered."

The *Village of Slinger* case is an annexation case where the court of appeals considered the issue of standing. The appellants, the Schaefers, were adjacent landowners to the annexation. *Village of Slinger v. City of Hartford*, 256 Wis.2d at 863; 2002 WI App 187, ¶3. The court reviewed case law pertinent to determining whether a

party could maintain a declaratory judgment action under Wis. Stats. §806.04. The court looked to the complaint for allegations that the Schaefers, plaintiff-appellants in the case, "...allege that they have sustained or will sustain some pecuniary loss because of the annexation or that the annexation poses a substantial injury to their interests." *Village of Slinger v. City of Hartford,* 2002 WI App 187, ¶12. The court indicated that it found nothing in the record "...upon which to base an inference that the Schaefers would be adversely affected by the annexation." *Village of Slinger v. City of Hartford* 2002 WI App 187, ¶12. The court concluded that, "The Schaefers lack standing to bring this declaratory judgment action because they have not alleged that the annexation will cause them injury or pecuniary loss." *Village of Slinger v. City of Hartford,* 2002 WI App 187, ¶22. The conclusion in the Village of Slinger case found that the Schaefers lacked standing "...because they have not alleged that the annexation will cause them injury or pecuniary loss." *Village of Slinger v. City of Hartford,* 2002 WI App 187, ¶22.

There is no case law or statute specifically prohibiting a contiguous municipality from challenging an annexation. Case law sets forth a requirement that a party must have standing in order to bring a declaratory judgment action. It is well established that if the

issue of standing is challenged a court must look to the record to determine if the challenger suffers or will suffer direct pecuniary injury or damage as a result of the annexation.

A. There is credible authority or evidence establishing that the City suffers direct pecuniary injury or damage as a result of the annexations.

The primary area identified for new residential development for the City is the area identified as the growth area in the Intermunicipal Agreement, consisting of approximately 120 acres and the annexations that are the subject of this lawsuit make up over one-half of those acres. R-8, p.2; A-Ap., A-122. The "backbone" sewer and water facilities in the City's growth area was paid for by the City with the understanding and expectation that properties annexed to the City would contribute through assessments and the payment of taxes toward the infrastructure expense. R-9, p. 2-3; A-Ap., A126-A127. The City invested in infrastructure, roads, design of subdivisions, placement and construction of parks and recreational facilities and electric utility facilities all in reliance on the Intermunicipal Agreement and the described growth area for the City. R-9, p. 1-3; R-8, p.2; R-10, p. 1-3; A-Ap., A125-A127; A-Ap., A121-A124; A-Ap., A135-A137. This reliance was reasonable given language in the Intermunicipal Agreement that changes in the forms of government of the Town or the City would not affect the

agreement. R-1, p.11; A-Ap. A116, ¶16.a. The two Bodway annexations split off a portion of the City of Menasha creating a permanent city island if left to stand posing substantial service issues for the City. R-11, p. 7; A-Ap., A134.

B. These annexations pose a substantial injury to the City's interest.

There is no case law prohibiting a municipality that will be substantially affected by an annexation from challenging it. The City is contiguous and in fact, completely surrounds some of the annexed parcels. R-11, p. 7; A-Ap., A134. There is no one with greater interests in the outcome of this action. These annexations pose a substantial injury to the City's interests in that the territory will be permanently unavailable for the City to annex even though an Intermunicipal Agreement exists allowing the City to annex the Town territory without challenge through 2029. Pursuant to Wis. Stats. Chapter §66 the City is a municipal entity that has a legally protectable right to annex the same property. The City of Menasha has annexed other property in the vicinity of the annexed property. Governmental entities are able to enter into intergovernmental agreements moving boundaries and designating growth areas of each community for the purposes of future annexation and incorporation. *See* Wis. Stats. §66.0103. These agreements are useful in saving

taxpayer dollars spent on litigating these issues. The annexations being challenged are located in the growth area as defined in a 1999 Intermunicipal agreement with the town of Harrison and its sanitary district.

The City of Menasha has a legally protectable interest in the validity of the Village annexations. The circuit court held that the City of Menasha has no right to be heard as to the validity of the Village annexations. Fundamental issue of fairness dictate that the City of Menasha should have standing in this case. The agreement contemplates that it will continue to apply after any changes in town structure. R-1, p.11; A-Ap. A116, ¶16.a.

The City of Menasha has a personal stake in the outcome of this controversy. This is especially true in this case, as the Town and Village work together on all issues including sharing employees, equipment, buildings, having joint meetings and shared services agreement. R-12, EXHIBIT H; A-Ap., A138-A150. Although they are "technically" two entities, for all practical purposes they act as if they are one. The City of Menasha and its taxpayers must be provided access to the courts in order to protect public rights, and proceedings and procedures to maintain public interests.

CONCLUSION

Taking the non-disputed facts in the record establishes the sort of direct effect the Village annexations have on the City necessary to confer standing. In particular, the boundary will be permanent and the City will lose its opportunity to annex the parcels, collect reimbursement of infrastructure and permanently cause problems with regard to service to its own residents.

Dated this 19th day of July, 2016.

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CERTIFICATION REGARDING ELECTRONIC BRIEF
PURSUANT TO
SECTION 809.19(12)(f), STATS.

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of section 809.19(12), Stats.

I further certify that this electronic brief is identical in content and format to the printed form of the brief as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Date: 7-19-2016

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FORM AND LENGTH CERTIFICATION

I hereby certify that this reply brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font.

The length of this brief is 13 pages and 1,929 words.

Date: 7-19-2016

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