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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

APPEAL No. 2021AP69

GREENWALD FAMILY LIMITED PARTNERSHIP and DARWIN GREENWALD,

Plaintiffs-Appellants-Petitioners,

v.

VILLAGE OF MUKWONAGO,

Defendant-Respondent.

On Appeal from an Order of the Waukesha County Circuit Court, Case No. 2020CV494, The Honorable Lloyd V. Carter, Presiding

LEAGUE OF WISCONSIN MUNICIPALITIES' AMICUS CURIAE BRIEF

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The League of Wisconsin Municipalities ("League") is a non-profit, non-partisan, voluntary association of cities and villages cooperating to improve local government. The League's current membership consists of all of Wisconsin's 190 cities and 402 of Wisconsin's 415 villages. The League sought to file a non-party brief because we believe it is important that this Court affirm the circuit court and court of appeals decisions about how to apply Wis. Stat. § 801.14(2). Municipalities and citizens alike benefit from consistent statutory interpretation and application of procedural rules.

Precedent clearly establishes that strict compliance with procedural statutes is paramount. See Village's brief at p. 16-17 citing *Atkins v. Glendale*, 67 Wis. 2d 42, 226 N.W.2d 396 (1975); *Bailk v. City of Oak Creek*, 98 Wis. 2d 469, 474, 297 N.W.2d 43 (Ct. App. 1980); *519 Corp. v. State Dep't of Trans.*, 92 Wis. 2d 276, 284 N.W.2d 643 (1979). "Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice. If the statutory prescriptions are to be meaningful, they must be unbending." *Emjay Inv. Co. v. Village of Germantown*, 2011 WI 31, ¶ 30, 333 Wis. 2d 252, 797 N.W.2d 844. For the reasons stated below, as well as those stated by the Village, we urge this Court to uphold both the circuit court and court of appeals decisions.

WISCONSIN STAT. § 801.14(2) DOES NOT APPLY TO SERVICE OF SPECIAL ASSESSMENT NOTICES OF APPEAL UNDER WIS. STAT. § 66.0703(12)(a).

Wisconsin Stat. § 66.0703(12)(a) states in pertinent part as follows:

> A person having an interest in a parcel of land **affected by a determination of the governing body**, under sub. (8)(c), (10) or (11), may … appeal the determination to the circuit court of the county in which the property is located. **The person appealing shall serve a written notice of appeal upon the clerk of the city, town or village** …. The clerk, if an appeal

> is taken, shall prepare a brief statement of the proceedings in the matter before the governing body, with its decision on the matter, and shall transmit the statement with the original or certified copies of all the papers in the matter to the clerk of the circuit court. [Emphasis added.]

Wisconsin Stat. § 801.14(2) says in pertinent part:

> Whenever under these statutes, service of pleadings and other papers is required or permitted to be made **upon a party represented by an attorney, the service shall be made upon the attorney** unless service upon the party in person is ordered by the court…." [Emphasis added.]

Greenwald Family Limited Partnership and Darwin Greenwald (collectively, "GFLP") and the Village of Mukwonago ("Village") disagree regarding whether Wis. Stat. § 66.0703(12)(a) and Wis. Stat. § 801.14(2) conflict. The League contends there is no conflict between the two provisions because § 801.14(2) is clearly inapplicable to service of the notice of appeal under § 66.0703(12)(a).

Section 801.14(2) does not apply to service of the notice of appeal under § 66.0703(12)(a) because the clerk is not a "party" as that term is used in § 801.14(2). If the clerk is not a "party," the clerk cannot be a "party represented by an attorney" for purposes of service of the special assessment notice of appeal (see Village's brief on p. 23 referring to SCR 20:1.13 and case law explaining the entity rule). Accordingly, § 801.14(2) cannot apply to the service of a notice of appeal under § 66.0703(12)(a), unless the clerk is a named party, and an attorney has filed a notice of appearance on behalf of the clerk.

Wisconsin's Rules of Civil Procedure do not define "party," presumably because that term is a term of art as used in those chapters, including in § 801.14(2), and the Legislature did not think it necessary to define it. In *Friends*

of Frame Park, U.A. v. City of Waukesha, this Court considered the meaning of the term "prevailing party" for purposes of Wisconsin's public records law. Although the focus was on "prevailing" as that term modifies "party," Justice Hagedorn, with Chief Justice Ziegler and Justice Roggensack concurring, wrote as follows:

> When the legislature uses a legal term of art with a broadly accepted meaning, we generally assume the legislature meant the same thing. *Mueller v. TL90108, LLC*, 2020 WI 7, ¶19, 390 Wis. 2d 34, 938 N.W.2d 566 (noting that terms "with specific and distinct meaning in our common law" should be given "their accepted legal meaning"); Wis. Stat. § 990.01(1) ("[T]echnical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning.").

Friends of Frame Park, U.A. v. City of Waukesha, 2022 WI 57, ¶ 23, 403 Wis. 2d 1, 976 N.W.2d 263.

"Party," as used in Wisconsin's Rules of Civil and Appellate Procedure generally, and as used in Wis. Stat. § 801.14(2) in particular, is a term of art with peculiar meaning in the law and should be construed in accordance with that understood meaning. Black's Law Dictionary (11th ed. 2019) defines "party" as follows:

> One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment; litigant <a party to the lawsuit>. • For purposes of res judicata, a party to a lawsuit is a person who has been named as a party and has a right to control the lawsuit either personally, or, if not fully competent, through someone appointed to protect the person's interests. In law, all nonparties are known as "strangers" to the lawsuit.
>
> Those persons who institute actions for the recovery of their rights, or the redress of their wrongs, and those against whom the actions are instituted, are the *parties* to the actions. The former are, in actions at common law, called plaintiffs, and the latter, defendants.

Generally speaking, in special assessment appeals, and specifically in the case at hand, the clerk is not a named defendant. Section 66.0703(12)(a) makes clear that the right to appeal is for a person having an interest in a "parcel of land **affected by a determination of the governing body** …." Although municipal clerks certainly play a significant role regarding special assessments, it is a clerical or administrative role. Municipal clerks do not determine or impose special assessments. Moreover, the clerk does not become a "party" to a lawsuit by virtue of the Legislature designating the clerk as the official upon whom the written notice of appeal must be served. Similarly, when notices of appeal are filed with a Clerk of Court, the Clerk of Court does not become a "party" in the lawsuit.

In support of its assertion that the clerk is a "party," GFLP cherry-picks a single sentence from *Outagamie County v. Town of Greenville*, 233 Wis. 2d 566 (Ct. App 2000), where the court of appeals refers to the clerk as the "appropriate *party*" to whom service of the notice of appeal should be directed. See GFLP reply brief at pp. 11-12. It seems evident that the court is using the term "party" in a colloquial sense in that sentence, and not as the term of art employed in the statutes. We urge the Court to reject GFLP's misreading of this case.

GFLP asserts that the clerk is a "representative, indeed the official representative of the Village" but cites no authority for that proposition. See GFLP reply brief at p. 4. The League found no authority for that proposition in either case law or in the impressive list of duties given town, village and city clerks in Wis. Stat. §§ 60.33, 61.25 and 62.09(11), respectively.

Special assessment appeals under Wis. Stat. § 66.0703 are generally subject to the civil procedure statutes in Chapter 801. *CED Properties LLC v. City of Oshkosh*, 2014 WI 10, ¶ 28-29, 351 Wis. 2d 613, 843 N.W.2d 382. However, it is clear that Wis. Stat. § 801.14(2) does not apply to serving notices of appeal to the municipal clerk under Wis. Stat. § 66.0703(12)(a). In

addition to the fact that the clerk is not a represented party, as discussed above, there are many instances where the Legislature directs individuals to follow particular procedures in Ch. 801 when commencing litigation against a municipality.

For example, Wis. Stat. § 74.37(2)(b)5 provides that a claim for excessive assessment filed against a taxation district – e.g., a village or city – shall "be **served on the clerk** of the taxation district ... **in the manner prescribed in s. 801.11(4)** …." (emphasis added). Wisconsin Stat. § 125.12(2)(d), which provides for judicial review of a municipality's decision to grant, deny granting, suspend, or revoke a liquor license. Section 125.12(2)(d) states that "[t]he procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the **municipal governing body in the manner provided in ch. 801 for service in civil actions** …." (emphasis added). Similarly, Wis. Stat. § 893.80(1d), which contemplates bringing claims against governmental bodies or officers, provides that no action may be brought or maintained against a municipality unless "written notice of the circumstances of the claim signed by the party, agent or attorney is **served on [the municipality] under s. 801.11**." (emphasis added).

We do not say to this to imply that the Legislature must always point to Ch. 801 for it to apply. But rather, in the context of Wis. Stat. § 66.0703(12)(a), there is no such directive to follow § 801.14(2) or any particular procedure in Ch. 801. That is not because Ch. 801 does not apply to special assessment appeals at all – clearly the rules of civil procedure apply – but rather, because it would not make sense to apply 801.14(2) specifically to 66.0703(12)(a). Accordingly, if the Legislature had wanted to make it clear that the village clerk should be treated as a represented party under § 801.14(2), even when the clerk is not, it presumably would have said so.

Construing "party" under § 801.14(2) to include a clerk simply by virtue of being a municipal officer tasked with receiving the notice of appeal will completely redefine and substantially broaden the term "party," and place the mandatory requirements of §§ 801.14(2) and § 66.0703(12)(a) directly in conflict. Such a broad definition would lead to confusion and potentially open a Pandora's box of competing obligations.

The Legislature has an established practice of drafting specific statutory procedures that involve some sort of delivery or service to statutory officers, such as the clerk. In these procedures, the directive is typically mandatory – e.g., "shall" serve the clerk. If "party" is defined so broadly that the requirement to serve something directly to the clerk makes the clerk a "party" under § 801.14(2), it will make following the rules of civil procedure more onerous and confusing for citizens. In other words, if a specific statutory mandate says you shall serve the clerk, but § 801.14(2) says the clerk is a party and so you shall serve the municipal attorney, individuals will be left wondering which mandatory provision they should follow or whether they must follow both.

The statutory language of § 801.14(2) should not be read in a manner that creates conflicts between statutes that do not otherwise exist. "Conflicts between different statutes, by implication or otherwise, are not favored and will not be held to exist if they may otherwise be reasonably construed." *State ex rel. Hensley v. Endicott*, 2001 WI 105, ¶ 19, 245 Wis. 2d 607, 629 N.W.2d 686. To avoid creating unnecessary statutory conflicts, this Court should construe "party" in § 801.14(2) to have its traditional definition: "One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment." *Party*, Black's Law Dictionary (11th ed. 2019).

This Court has said that "the Legislature is presumed to say what it means and mean what it says." *Wisconsin Legislature v. Palm*, 2020 WI 42, ¶

140, 391 Wis. 2d 497, 942 N.W.2d 900. This Court should not deviate from that principle even though members of this Court may be sympathetic to GFLP's situation.

CONCLUSION

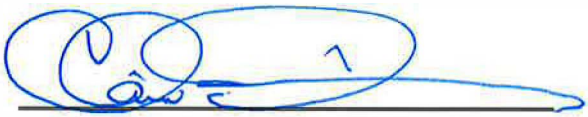
We urge this Court to uphold the circuit court and court of appeals decisions.

Respectfully submitted February 7, 2023.

League of Wisconsin Municipalities

By: 

Maria Davis (State Bar No. 1099072)



Claire Silverman (State Bar No. 1018898)

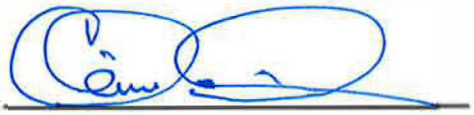
CERTIFICATION

I hereby certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of the brief is 2,050 words.

I further certify that the electronic brief submitted in compliance with the requirements of sec. 809.19(12) is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate is included with the paper copies of this brief filed with the Court and mailed this day to all parties.

Dated: February 7, 2023.



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