SUPREME COURT OF WISCONSIN

Jackson County v. State Department of Natural Resources, 2006 WI 96

717 N.W.2d 713 (2006) · No. Nos. 2004AP2582, 2005AP545 · Decided July 11, 2006

SUMMARY

The Supreme Court of Wisconsin held that Jackson County lawfully issued and accepted a tax deed for property containing a landfill, thereby acquiring fee-simple ownership. The court concluded that the County lacked statutory or home-rule authority to rescind the valid tax deed and unilaterally return ownership to the prior owner without its consent. The court affirmed the circuit court on that issue and remanded the remaining issues to the court of appeals.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Patience Drake Roggensack; Shirley S. Abrahamson; David T. Prosser
JURISDICTION	Wisconsin
DECIDED	July 11, 2006
DOCKET	Nos. 2004AP2582, 2005AP545
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jackson County appealed after the Dane County Circuit Court granted summary judgment to the defendants in a declaratory judgment action concerning ownership of landfill property and the County's attempted rescission of a tax deed. The Wisconsin Court of Appeals certified the question whether a county may rescind a tax deed and return the property to the prior owner without that owner's consent. The Wisconsin Supreme Court accepted certification and decided that issue, remanding the remaining issues to the court of appeals.
STANDARD OF REVIEW	Statutory interpretation and application of statutes to undisputed facts are reviewed independently as questions of law. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential

PARTIES	Jackson County v. State of Wisconsin Department of Natural Resources, Jackson County Sanitary Landfill, Inc., Thomas McNulty

TOPICS

municipal law · real estate · statutory interpretation · home rule · appellate procedure

PRACTICE AREAS

real estate · municipal law · environmental law · appellate procedure

QUESTIONS PRESENTED

1. Whether Jackson County lawfully issued and accepted the tax deed conveying the landfill property to the County.
2. Whether a county may rescind a lawfully issued tax deed under Wisconsin Statutes sections 59.03 or 75.22, or otherwise under county home-rule authority, and thereby unilaterally return ownership to the former owner without consent.
3. Whether the County's attempted rescission affected ownership of the landfill property.

HOLDINGS

1. The County lawfully issued and accepted the tax deed conveying the landfill property to it.
2. Section 75.22 does not authorize cancellation of the tax deed based merely on the County's mistake in failing to appreciate the landfill property's value or the burdens of ownership; cancellation requires a defect affecting the groundwork of the tax.
3. A county has no statutory or home-rule authority to rescind a lawfully issued tax deed after ownership has vested and thereby unilaterally impose ownership of the property on the former owner without consent.
4. The County's attempted rescission had no effect on ownership; the County remained the fee-simple owner of the landfill property.

KEY QUOTATIONS

> *"Because the County has no statutory authority to rescind a tax deed that was lawfully issued and thereby unilaterally impose property ownership on a third party, its attempted rescission has no effect on ownership of the property containing the landfill."* (717 N.W.2d at 713)

> *"Therefore, without statutory authority that changes the common law, we see no authority for the County's attempted rescission of the tax deed."* (717 N.W.2d at 725)

> *"Accordingly, we conclude that the position of JCSL, not that of the County, must prevail."* (717 N.W.2d at 726)

FACTUAL BACKGROUND

Jackson County Sanitary Landfill, Inc. owned and operated a Department of Natural Resources-licensed landfill in Jackson County. After the landfill reached capacity and began closure, JCSL stopped paying real estate taxes, failed to redeem the resulting tax certificate, and received no objection to the County's issuance and acceptance of a tax deed in 2002. More than a year later, after recognizing the potential costs and liabilities associated with the landfill, the County adopted a resolution declaring the tax deed rescinded, but JCSL refused to accept ownership of the property.

PROCEDURAL HISTORY

Jackson County issued, accepted, recorded, and re-recorded a tax deed after Jackson County Sanitary Landfill, Inc. failed to pay real estate taxes and did not redeem the tax certificate. The County later adopted a resolution purporting to rescind the deed after recognizing the potential financial burdens associated with the landfill. The circuit court held that the deed was valid, that the County owned the property, and that the County lacked authority to rescind it; the Supreme Court affirmed those conclusions and remanded the unresolved issues.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment of the circuit court was affirmed and remanded. The court of appeals was directed to decide the remaining issues in the case, including the unresolved issues concerning the County's responsibilities for landfill costs and liabilities.

CASES CITED

- Hayes v. Adams County, 15 Wis. 2d 574, 581, 113 N.W.2d 407 (1962)
- Tahtinen v. MSI Insurance Co., 122 Wis. 2d 158, 166, 361 N.W.2d 673 (1985)
- State v. Cole, 2003 WI 59, ¶ 12, 262 Wis. 2d 167, 663 N.W.2d 700
- Westphal v. Farmers Insurance Exchange, 2003 WI App 170, ¶ 9, 266 Wis. 2d 569, 669 N.W.2d 166
- Baumeister v. Automated Products, Inc., 2004 WI 148, ¶ 11, 277 Wis. 2d 21, 690 N.W.2d 1
- Frederick v. Douglas County, 96 Wis. 411, 416-17, 71 N.W. 798 (1897)
- State ex rel. Conway v. Elvod, 70 Wis. 2d 448, 450, 234 N.W.2d 354 (1975)
- Kyncl v. Kenosha County, 37 Wis. 2d 547, 555, 155 N.W.2d 583 (1968)
- Douglas County v. Industrial Commission, 275 Wis. 309, 313-14, 81 N.W.2d 807 (1957)
- Spaulding v. Wood County, 218 Wis. 224, 226, 260 N.W. 473 (1935)
- State ex rel. Teunas v. County of Kenosha, 142 Wis. 2d 498, 503-04, 418 N.W.2d 833 (1988)
- Mommsen v. Schueller, 228 Wis. 2d 627, 635-37, 599 N.W.2d 21 (Ct. App. 1999)
- State ex rel. Ziervogel v. Washington County Board of Adjustment, 2004 WI 23, ¶¶ 37-40, 269 Wis. 2d 549, 676 N.W.2d 401
- Anchor Savings & Loan Association v. EOC, 120 Wis. 2d 391, 397, 355 N.W.2d 234 (1984)

- U.S. Oil, Inc. v. City of Fond du Lac, 199 Wis. 2d 333, 345, 544 N.W.2d 589 (Ct. App. 1996)
- State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶¶ 44, 46-48, 271 Wis. 2d 633, 681 N.W.2d 110
- Foster v. Sawyer County, 197 Wis. 218, 220-23, 221 N.W. 768 (1928)
- Reiter v. Dyken, 95 Wis. 2d 461, 471, 290 N.W.2d 510 (1980)
- Bauermeister v. Town of Alden, 16 Wis. 2d 111, 114, 113 N.W.2d 823 (1962)
- Oosterwyk v. Milwaukee County, 31 Wis. 2d 513, 518, 143 N.W.2d 497 (1966)
- Welch v. Sackett, 12 Wis. 243, 292-95 (1860)
- Miles v. Mackle Bros., Division Deltona Corp., 73 Wis. 2d 84, 89, 242 N.W.2d 247 (1976)
- Edwards Realty & Finance Co. v. City of Superior, 250 Wis. 472, 477, 27 N.W.2d 370 (1947)
- Kenosha County v. Town of Paris, 148 Wis. 2d 175, 181-83, 434 N.W.2d 801 (Ct. App. 1988)
- Dal Maso v. Board of County Commissioners of Prince George's, 182 Md. 200, 34 A.2d 464, 467 (1943)
- Garcia v. Regent Insurance Co., 167 Wis. 2d 287, 291 n. 2, 481 N.W.2d 660 (Ct. App. 1992)