

SUPREME COURT OF WISCONSIN

Dawson v. Town of Jackson

336 Wis. 2d 318 (2011) · Decided July 19, 2011

SUMMARY

The Wisconsin Supreme Court interprets the phrase "acting together" in Wis. Stat. § 82.21(2), which governs municipal decisions concerning highways located on or across municipal boundaries. The court holds that separate municipal votes may not be aggregated and that approval by both governing bodies is required. It further concludes that certiorari review under Wis. Stat. § 68.13, rather than a declaratory judgment action, was the prescribed method for challenging the refusal to issue a highway order.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	David T. Prosser, J.; Abrahamson; Prosser; Roggensack
JURISDICTION	Wisconsin
DECIDED	July 19, 2011
DISPOSITION	reversed
PROCEDURAL POSTURE	The Town of Cedarburg petitioned the Wisconsin Supreme Court for review of a published court of appeals decision affirming a circuit court summary judgment and declaratory judgment in favor of the Dawsons.
STANDARD OF REVIEW	Summary judgment is reviewed independently under the same methodology as the circuit court; statutory interpretation and jurisdictional questions are reviewed de novo.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	Town of Cedarburg v. Dale Dawson, Gudrun Dawson, Edward Thomas

TOPICS

- municipal law
- statutory interpretation
- writ of certiorari
- appellate procedure
- declaratory judgment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Wis. Stat. § 82.21(2)'s requirement that municipal governing bodies act together requires their separate votes on a town-line highway application to be aggregated as if the bodies were one board.
2. Whether Wis. Stat. § 82.15 requires a party challenging a highway order or refusal to issue one to proceed by statutory certiorari under Wis. Stat. § 68.13 rather than by declaratory judgment.
3. Whether the supreme court should address Cedarburg's equitable-estoppel argument.

HOLDINGS

1. The phrase acting together is ambiguous and does not require separate votes of two governing bodies to be counted in the aggregate as if the bodies voted as one. Approval by both governing bodies is necessary to approve a joint application to lay out, alter, or discontinue a highway on or across municipal lines.
2. Wis. Stat. § 82.15 contemplates statutory certiorari review under Wis. Stat. § 68.13 as the prescribed method for reviewing a highway order or refusal to issue a highway order. The Dawsons should have proceeded under that method rather than seeking a declaratory judgment, and their action was untimely.
3. The supreme court could address the legal interpretation issue despite concluding that the declaratory-judgment action should have been dismissed as untimely under the statutory certiorari procedure.

KEY QUOTATIONS

“We hold, therefore, that the phrase “acting together” in Wis. Stat. § 82.21(2) does not require that separate votes taken by two governing bodies in deciding an application to lay out, alter, or discontinue a public highway on or across municipal lines, be counted in the aggregate as if the two boards voted as one.” (336 Wis. 2d at 341)

“We further conclude that Wis. Stat. § 82.15 contemplates certiorari review under Wis. Stat. § 68.13 as the prescribed method for review of “a highway order, or a refusal to issue such an order.”” (336 Wis. 2d at 348)

FACTUAL BACKGROUND

The Dawsons owned all property bordering a half-mile portion of Wausaukee Road, a public highway located on or across the municipal boundary between Cedarburg and Jackson. At a joint meeting on January 9, 2008, three Cedarburg board members voted against discontinuing the road, while all five Jackson board members voted in favor. Jackson recorded a highway order, but Cedarburg refused to issue one. The Dawsons then sought a declaratory judgment asserting that the joint vote had discontinued the highway.

PROCEDURAL HISTORY

The Dawsons applied to the Cedarburg and Jackson town boards to discontinue a portion of a town-line highway. Jackson approved the application, while Cedarburg denied it. The Washington County Circuit Court granted the Dawsons summary judgment, ruling that the boards' votes had to be aggregated and that the road was

discontinued. The court of appeals affirmed. The Wisconsin Supreme Court reversed, concluding that approval by both boards was required and that the Dawsons' remedy was certiorari review rather than declaratory judgment.

DISPOSITION

reversed

CASES CITED

- Dawson v. Town of Jackson, 2010 WI App 24, 323 Wis. 2d 477, 780 N.W.2d 222
- Blunt v. Medtronic, Inc., 2009 WI 16, 315 Wis. 2d 612, 760 N.W.2d 396
- State v. Johnson, 2009 WI 57, 318 Wis. 2d 21, 767 N.W.2d 207
- Vidal v. LIRC, 2002 WI 72, 253 Wis. 2d 426, 645 N.W.2d 870
- State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- Seider v. O'Connell, 2000 WI 76, 236 Wis. 2d 211, 612 N.W.2d 659
- Karker v. Board of Unified School District No. 1, 51 Wis. 2d 542, 187 N.W.2d 160 (1971)
- Rogers v. Draves, 154 Wis. 23, 142 N.W. 127 (1913)
- State ex rel. City of Madison v. Walsh, 247 Wis. 317, 19 N.W.2d 299 (1945)
- Skrove v. Town Board of Towns of Belmont and Christiana, 154 Minn. 118, 191 N.W. 584 (1922)
- County of Dane v. LIRC, 2009 WI 9, 315 Wis. 2d 293, 759 N.W.2d 571
- Town of Seif v. Town of Eaton, 153 Wis. 657, 140 N.W. 319 (1913)
- Town of Muskego v. Town of Vernon, 19 Wis. 2d 159, 119 N.W.2d 474 (1963)
- Town of Whitewater v. Town of Richmond, 204 Wis. 388, 235 N.W. 773 (1931)
- Hermann v. Town of Delavan, 215 Wis. 2d 370, 572 N.W.2d 855 (1998)
- State ex rel. First National Bank v. M&I Peoples Bank, 82 Wis. 2d 529, 263 N.W.2d 196 (1978)
- Master Disposal, Inc. v. Village of Menomonee Falls, 60 Wis. 2d 653, 211 N.W.2d 477 (1973)
- Hanlon v. Town of Milton, 2000 WI 61, 235 Wis. 2d 597, 612 N.W.2d 44
- League of Women Voters v. Outagamie County, 113 Wis. 2d 313, 334 N.W.2d 887 (1983)
- Thorp v. Town of Lebanon, 2000 WI 60, 235 Wis. 2d 610, 612 N.W.2d 59
- Nodell Investment Corp. v. City of Glendale, 78 Wis. 2d 416, 254 N.W.2d 310 (1977)
- Wisconsin Collectors Ass'n v. Thorp Finance Corp., 32 Wis. 2d 36, 145 N.W.2d 33 (1966)