COURT OF APPEALS DECISION DATED AND RELEASED

June 17, 1993

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to Rule 809.62(1).

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 92-0917
No. 92-1532

STATE OF WISCONSIN — **IN COURT OF APPEALS DISTRICT IV**

No. 92-0917

CITY OF LA CROSSE, a municipal corporation,

Plaintiff-Appellant-Cross Respondent,

v.

CITY OF ONALASKA, a municipal corporation,

Defendant-Respondent-Cross Appellant,

TOWN OF MEDARY, a body corporate and politic, and COUNTY OF LA CROSSE, a body corporate,

Defendants.

WILLIAM M. MELLEIN and DARLENE MELLEIN, CITY OF ONALASKA, a municipal corporation,

Plaintiffs-Respondents-Cross Appellants,

is invalid because the territory annexed is not contiguous to Onalaska. A city may only annex contiguous territory. Section 66.021(2)(intro.), Stats.

The facts relating to the Pralle annexation are not in dispute. The territory is approximately 295 acres, about ninety acres of which is a strip connecting it to Onalaska. The strip is approximately three-quarters of a mile long and 250 feet wide and consists of the rights of way for an interstate highway and two local roads. Based on evidence submitted at trial, the circuit court considered a number of factors in its decision holding the annexed territory contiguous, including the desire of the property owners to be annexed, the character and service needs of the area, and the extent to which services were already being provided or planned for by Onalaska.

Whether the undisputed facts satisfy the statutory requirement of contiguity is a question of law we review without deference to the trial court. La Crosse argues that the annexation in this case is very similar to one rejected as not contiguous by the supreme court in *Town of Mt. Pleasant v. City of Racine*, 24 Wis.2d 41, 127 N.W.2d 757 (1964). We agree.

The annexed territory in *Mt. Pleasant* was 145 acres connected to the city by a strip approximately one-quarter mile long and 152 to 306 feet wide. 24 Wis.2d at 43-44, 127 N.W.2d at 758-59. The *Mt. Pleasant* court measured the

annexation's conformity with the statutory requirement of contiguity in terms of the "rule of reason." *Id.* at 45-46, 127 N.W.2d at 760. The question is whether the proposed boundary lines are reasonable in the sense that they were not fixed arbitrarily, capriciously or in the abuse of discretion. *Id.* at 46, 127 N.W.2d at 760. The *Mt. Pleasant* court stated that "[s]hoestring or gerrymander annexation," while a natural desire of developers, "can lead to annexations which in reality are no more than isolated areas connected by means of a technical strip a few feet wide. Such a result *does not* coincide with legislative intent, and tends to create crazy-quilt boundaries which are difficult for both city and town to administer." *Id.* (emphasis added).

Onalaska argues that a careful reading of *Mt. Pleasant* shows that the court did not simply look at the shape of the annexation and determine that this alone was a violation of the rule of reason. The court also considered the importance of orderly municipal growth and provision of services, Onalaska argues, and the circuit court's review of those factors in this case supports its decision. We conclude that although the *Mt. Pleasant* opinion recounted findings of the trial court related to growth and services, there is no indication that the court placed any weight on those factors in its decision. The opinion does not state that shoestring annexation, under some circumstances, may not coincide with legislative intent. It states that it "does

not" coincide with legislative intent. *Mt. Pleasant* does not save the Pralle annexation.

Onalaska also argues that where property owners initiate direct annexation, the municipality may not be charged with arbitrary action in the drawing of the boundary lines. It relies on *Town of Waukesha v. City of Waukesha*, 58 Wis.2d 525, 531, 206 N.W.2d 585, 587-88 (1973), and *Town of Pleasant Prairie v. City of Kenosha*, 75 Wis.2d 322, 342, 249 N.W.2d 581, 592 (1977). The argument fails for two reasons. First, the annexation in *Mt. Pleasant* was on petition of the property owners, 24 Wis.2d at 42, 127 N.W.2d at 757, but was nevertheless rejected. Second, the cases Onalaska relies on did not involve "shoestring" annexations. There is no indication that the court intended to overrule *Mt. Pleasant*.

Nor is there any such indication in *Town of Delavan v. City of Delavan*, No. 91-1042 (Wis. June 3, 1993). In that case, the court upheld the annexation of territory it concluded was not contiguous. The decision was based on the principle of *de minimis* and because "the unique facts of this particular case render the trivial lack of contiguity insufficient to void the annexation." Slip op. at 9. The court emphasized that its decision "carries no precedential weight for future such disputes." Slip op. at 10. Here the lack of contiguity is not *de minimis*, so *Town of Delavan* is not applicable.