

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 4, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP468

Cir. Ct. No. 2007CV421

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

JOHN P. PADERTA AND ANNE PETRICH,

PLAINTIFFS-APPELLANTS,

V.

GLENWOOD SPRINGS CLUB, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Walworth County:
ROBERT J. KENNEDY, Judge. *Affirmed.*

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. John Paderta and Anne Petrich (hereafter Paderta) appeal from a summary judgment dismissing their claims against Glenwood Springs Club, Inc. arising from the location of a Glenwood Springs structure on Geneva Lake which Paderta contended interfered with his lake access. We agree

with the circuit court that Paderta's response to Glenwood Springs' summary judgment motion was deficient and raised no issue of genuine material fact. We affirm.

¶2 We review decisions on summary judgment by applying the same methodology as the circuit court. *M & I First Nat'l Bank v. Episcopal Homes*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology has been recited often, and we need not repeat it here except to observe that 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. *Id.* at 496-97.

¶3 In 2001, Paderta purchased property in Glenwood Springs, a residential community. Glenwood Springs manages structures on Geneva Lake associated with the Glenwood Springs community. Paderta alleged that he had the right to use and dock watercraft at ramp 2B, but that adjoining shore station 3 impeded his access to ramp 2B and was a safety hazard. Paderta alleged that shore station 3 was approximately twenty feet out of its assigned position as set forth in a 2005 Structure/Owner Location Guide. Paderta sought a declaratory judgment with respect to the proper location of shore station 3 and to compel its relocation. He also alleged an estoppel claim because he relied on information provided by Glenwood Springs about the station's location. In an answer to Paderta's amended complaint, Glenwood Springs denied the majority of the material allegations.

¶4 In support of its summary judgment motion, Glenwood Springs submitted an affidavit from the owner of shore station 3 stating that the station had been in the same location since she purchased her Glenwood Springs property in 1994. Glenwood Springs also submitted the affidavit of the worker who, each

season, installs shore station 3 and the piers on either side of the shore station and has done so since 1994. The piers on each side of the shore station are put into “fixed cribs” or wooden frames affixed to the lake bottom. The worker averred that “[t]he piers are installed in the same spot in the cribs each year. [Shore station 3] is installed in the same spot each year, between the two adjacent piers.”

¶5 In another affidavit, the president of Glenwood Springs asserted that shore station 3 was in the same position noted on a 1979 survey¹ and was in that position when Paderta purchased his Glenwood Springs property in 2001. The president described the Structure/Owner Location Guide as a general, informational directory created as a courtesy to Glenwood Springs residents to show the locations of owners’ lots, shore stations, ramps and piers. The location guide was not a survey and was not drawn to scale. The location guide did not confer any rights or enforceable location information.

¶6 Glenwood Springs also sought dismissal of Paderta’s estoppel claim because there was no evidence that Glenwood Springs made any promises to Paderta that the location of lake structures would be as set forth in the location guide.² In addition, because shore station 3 had not moved during the time Paderta

¹ The validity of this assertion seems in question. The current president of Glenwood Springs refers to a 1979 survey in her affidavit. However, in her deposition, the owner of shore station 3 described the 1979 document as the result of measurements made by former board members, not a survey by a licensed surveyor. The 1979 depiction shows only the dimension of structures on the lake, not their location. Because Paderta did not counter Glenwood Springs’ summary judgment submissions regarding the location of shore station 3, we need address this issue no further.

² On appeal, Paderta does not cite any legal authority in support of the estoppel claim or the declaratory judgment claim. The only authority cited by Paderta has to do with the summary judgment standards. Therefore, we do not consider these claims. See *Riley v. Town of Hamilton*, 153 Wis. 2d 582, 588, 451 N.W.2d 454 (Ct. App. 1989).

owned his property, Glenwood Springs had not impeded Paderta's egress and ingress.

¶7 In opposition to Glenwood Springs' summary judgment motion, Paderta argued that there were material issues of fact relating to whether the location of shore station 3 had changed since 1979, whether he had a legally enforceable right in relation to his use of ramp 2B, and whether the location guide could be relied upon to identify the station's location. For his proof, Paderta cited to the amended complaint, the 2004 and 2005 location guides, and his own pre-suit complaint to Glenwood Springs about the location of shore station 3. However, Paderta did not offer any evidence to counter Glenwood Springs' affidavits that the station has been in the same location since at least 1994, shore station 3 is in its proper location, and that the location guide is merely a directory.

¶8 At the summary judgment hearing, Paderta conceded that he had no proof regarding the proper location of shore station 3 other than the 2004 and 2005 location guides. The circuit court found that there was no evidence that the location guide was either drawn to scale or accurately showed the location of lake structures. The court dismissed Paderta's claims because he submitted no evidence to counter Glenwood Springs' assertions that the station had been in the same spot since at least 1994 and that its current location was a proper placement.

¶9 On appeal, Paderta argues that there are genuine issues of material fact on the question of whether shore station 3 is properly located. "A factual issue is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Baxter v. DNR*, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991) (citation omitted). Paderta's response to Glenwood Springs' summary judgment motion consisted of unauthenticated documents and

his amended complaint. Unauthenticated documents are not evidentiary and can be ignored in a summary judgment analysis. *E.S. v. Seitz*, 141 Wis. 2d 180, 186, 413 N.W.2d 670 (Ct. App. 1987).³ Furthermore, the pleadings themselves do not provide evidentiary facts on summary judgment. See *In re Cherokee Park Plat*, 113 Wis. 2d 112, 119, 334 N.W.2d 580 (Ct. App. 1983).

¶10 As he did in the circuit court, Paderta persists in ignoring the affidavits submitted by Glenwood Springs in support of its summary judgment motion. Glenwood Springs met its initial burden on summary judgment through the affidavits of its president, the owner of shore station 3, and the annual installer of piers and shore stations. Paderta had to counter Glenwood Springs' motion by showing that he had proof to offer at trial regarding the station's location. Relying upon the amended complaint and unauthenticated documents did not meet that burden.⁴

¶11 Paderta argues that notwithstanding his proof problems relating to shore station 3's proper location, there is no question that the station interferes with his ingress and egress to the lake via ramp 2B and is a safety hazard. Paderta did not submit any proof that the station interferes with his lake access or is a hazard. For these propositions, Paderta cited his amended complaint, an insufficient showing on summary judgment, as discussed above.

³ The 2004 and 2005 location guides were submitted via the affidavit of Paderta's counsel. Paderta's counsel conceded at the summary judgment hearing that the documents were not properly authenticated.

⁴ Paderta complains that because Glenwood Springs had complete jurisdiction over all piers and other structures, it had the burden to produce information relating to the placement of these structures. These arguments are unavailing. Paderta had the burden to produce information to survive summary judgment.

¶12 Finally, Paderta contends that he reasonably relied on the location of shore station 3 as set forth in the 2004 and 2005 location guides. The proof on summary judgment is that shore station 3 has not moved since at least 1994, seven years before Paderta purchased his Glenwood Springs property, and that the location guides are merely directories. In addition to his lack of proof in opposition, Paderta cites no legal authority in support of his reasonable reliance claim. We consider it no further. *See Riley v. Town of Hamilton*, 153 Wis. 2d 582, 588, 451 N.W.2d 454 (Ct. App. 1989).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

