

Criminal Procedure Nontestimonial Hearsay – Right to Cross-Examination

State v. Ramirez, 2023 WI App 63 (filed Nov. 15, 2023) (ordered published Dec. 21, 2023)

HOLDING: The defendant's right of confrontation was not violated by the admission of hearsay evidence against him or the limiting at trial of his right to impeach a state witness.

SUMMARY: In a trial that occurred in 2001, the defendant was convicted of sexually assaulting a family member. A federal district court granted the defendant's petition for a writ of habeas corpus, which the U.S. Court of Appeals for the Seventh Circuit affirmed. See *Ramirez v. Tegels*, 963 F.3d 604 (7th Cir. 2020). On remand, the circuit court found that the defendant's confrontation rights had been violated and ordered a new trial. The state appealed.

In an opinion authored by Judge Gundrum, the court of appeals reversed the circuit court and ordered it to reinstate the 2013 amended judgment of conviction.

The first set of issues concerned whether the introduction of hearsay statements made to various people by the victim and the victim's brother that inculpated the defendant violated the defendant's right of confrontation. The court held that either the statements were nontestimonial and hence outside the confrontation right or their admission at trial was harmless (see ¶ 72). The court

carefully considered a variety of factors set forth in earlier cases in finding some of the statements were nontestimonial, for example, an emergency department nurse taking a patient's history, which here included a history of interfamily sexual abuse: "This is just common sense and comports with common experience seeing medical professionals" (¶ 83).

The second issue involved a grant of immunity to a physician, who had felt "intimidated" by a prosecutor's comment that he could be charged for having failed to report suspected child abuse. The physician later was granted immunity and testified on behalf of the state, but the judge also ruled that the defense could not cross-examine him about the grant of immunity. On appeal, the defense and the state agreed that the circuit court erred in so restricting the defendant's right of cross-examination. The error, however, was harmless (see ¶ 99). "Ramirez does not even attempt to develop an argument suggesting what impact such an impeachment effort [the doctor's concerns about prosecution] might have had on the trial" (¶ 96).

Public Records Court Records Pertinent to a Finding of Incompetency – Wis. Stat. § 54.75

Wisconsin Voter Alliance v. Reynolds, 2023 WI App 66 (filed Nov. 9, 2023) (ordered published Dec. 21, 2023)

HOLDING: The records the petitioners sought are court records pertinent to the finding of incompetency and are thus exempt from disclosure under Wisconsin's public records law.

SUMMARY: In a mandamus action, Wisconsin Voter Alliance (the Alliance) sought a court order requiring the Juneau County register in probate to provide public records that would show a discrepancy between individuals deemed ineligible to vote or register to vote as a result of guardianship proceedings in Juneau County and individuals appearing on the list of ineligible voters maintained by the Wisconsin Elections Commission.

The circuit court dismissed the Alliance's writ petition, concluding that the records the Alliance sought are precluded from disclosure pursuant to Wis. Stat. section 54.75, which provides that "court records pertinent to the finding of incompetency" are closed. Under Wis. Stat. section 19.36(1), any record that is exempted

from disclosure by state or federal law is exempt from disclosure under Wisconsin's public records law. In an opinion authored by Judge Nashold, the court of appeals affirmed.

The opinion deals with documents called notice of voter eligibility (NVE) forms (also known as GN-3180 (CCAP) forms). These forms are used in the circuit courts in conjunction with guardianship proceedings under Wis. Stat. chapter 54. They contain information drawn directly from the guardianship proceedings and are part of the circuit court's file. They are also sent to the Wisconsin Elections Commission (WEC). The NVE forms include the case caption; guardianship case number; the individual's name, address, and date of birth; the court's determination as to whether the individual is not competent to exercise the right to register to vote or to vote in an election or has been restored the right to register and vote; and the date on which the court's determination was made.

The court of appeals concluded that these records are "pertinent to the finding of incompetency" because they are created in the context of proceedings in which incompetency is determined for purposes of establishing guardianship (¶ 28) and therefore disclosure of the records is barred under Wis. Stat. section 54.75 (see ¶ 34).

Accordingly, the Alliance did not have a clear legal right to obtain them and the register in probate did not have a plain legal duty to provide them. Thus, the Alliance's writ petition failed to state a claim for which relief may be granted (see ¶ 20). The confidentiality of an NVE form contained in a circuit court file is not affected by the WEC's treatment of a duplicate of that same form (see ¶ 32).

The court of appeals also rejected the Alliance's claim that the circuit judge who handled this case was objectively biased (see ¶¶ 35-45).

Real Property Raze Orders – Final Order – Summary Judgment – Administrative Warrant – Repair *City of New Lisbon v. Muller, 2023 WI App 65* (filed Nov. 2, 2023) (ordered published Dec. 21, 2023)

HOLDING: The circuit court properly granted summary judgment to a city, permitting it to raze a building, and properly awarded the city costs.



BLINKA

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In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize select published opinions of the Wisconsin Court of Appeals. Full-text decisions are available online at www.wisbar.org/wislawmag.

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SUMMARY: The city of New Lisbon began this action to raze a building after an inspector found the building to be “dangerously in disrepair and unreasonable to repair.” The owner did not raze the building as ordered by the city (¶ 1). The circuit court granted summary judgment, authorized the city to raze the building, and awarded costs. The owner represented himself at both the circuit court proceedings and on appeal.

In an opinion authored by Judge Klop-
penburg, the court of appeals affirmed
the circuit court. The court of appeals
began with a summary of the statutes
governing raze orders, which may be
issued by cities and by circuit courts (see
¶ 12).

Turning to the issues on appeal, the
court rejected the city’s contention that
the court of appeals lacked jurisdiction
because there had been no final order.
“By its terms, the written circuit court or-
der explicitly disposes of the entire mat-
ter in litigation between the parties. The
circuit court order explicitly authorizes
the City to ‘enter the real estate contain-
ing the Property;’ ‘to raze the Property;’

and to ‘restore the real estate’ at Muller’s
expense, as the City requested in its com-
plaint. Thus, the circuit court order grants
the City all of the relief that it requested,
and leaves only the execution of its order
authorizing the City to raze the building
on the property at Muller’s expense to be
enforced” (¶ 25).

No substantive issues remained (see
¶ 26). Only the cost of razing remained
to be calculated, but “the circuit order
unambiguously disposes of the entire
matter in litigation between the City and
Muller and, therefore, is final under Wis.
Stat. § 808.03(1)” (¶ 29).

The court also rejected the three is-
sues raised by the owner. First, the grant
of summary judgment was appropriate
and did not deny the owner his right to
a jury trial “on the issue of whether he
was served with the City order to raze
the building on the property” (¶ 39). The
evidence showed that the owner had
been personally served. Thus, there were
no “triable” issues (¶ 40).

Second, the special inspection warrant
was properly issued pursuant to Wis.
Stat. section 66.0119(2). Specifically, “we
conclude that, although Muller did not
expressly refuse entry for inspection, his
four-month-long silence and period of
inaction gave rise to the only reasonable
inference that Muller refused to consent
to entry for inspection.” His refusal just-
ified the special inspection warrant (¶ 48).

Third, given the documented condition
of the property, the circuit court properly
found that the owner had no right to
make repairs; the city’s determinations
that the property was “out of repair” and
“that repairs could not be reasonably
made” were undisputed (¶¶ 49-51).

trust filed a civil action challenging the
town’s decision to disallow the trust’s
claim for a tax exemption under Wis.
Stat. section 74.35. Specifically, the trust
argued that its property was exempt
from general property taxation because it
was “held in trust in public interest.” See
Wis. Stat. § 70.11(20).

After the trust submitted new evidence
in the circuit court, the court reviewed de
novo the trust’s action under Wis. Stat.
section 74.35(3)(d) and reversed the
town’s decision. In an opinion authored
by Judge Gill, the court of appeals
affirmed.

The sole issue before the court of ap-
peals was whether the circuit court prop-
erly reviewed de novo the town’s decision
to deny the trust’s claim for unlawful
taxes. The town argued that the proper
standard of review is common-law certio-
rari, in which the circuit court would be
limited to consideration of the evidence
presented to the town (see ¶ 12). The
trust contended that the proper
standard is de novo review, in which the
circuit court could consider the new evi-
dence the trust presented to the circuit
court.

Wis. Stat. section 74.35(3)(d) provides
that a property owner “may commence
an action in circuit court to recover
the amount of the claim not allowed.”
Consistent with the plain meaning of the
statute’s text, the context in which the
statute is used, and relevant case law, the
court of appeals concluded that “[Wis.
Stat. section] 74.35(3)(d) requires a court
to review de novo a taxation district’s
property tax exemption decision and, if
appropriate, determine the amount the
property owner may recover on the disal-
lowed claim, thus allowing for consider-
ation of new evidence” (¶ 2).

With two exceptions not relevant to
this appeal, Wis. Stat. section 74.35 is the
exclusive procedure for a property owner
to make a claim that a property is exempt
from taxation (see ¶ 15). This can be con-
trasted with the option given to property
owners challenging an excessive tax to
pursue relief through either certiorari
review or de novo review (see ¶ 28). **WL**

**Taxation
Denial of Tax Exemption –
De Novo Review**

**North Cent. Conservancy Tr. Inc. v. Town
of Harrison, 2023 WI App 64 [filed Nov. 7,
2023] [ordered published Dec. 21, 2023]**

HOLDING: Wis. Stat. section 74.35(3)(d)
requires a circuit court to review de
novo a taxation district’s property-tax-
exemption decision and, if appropriate,
determine the amount the property
owner may recover on the disallowed
claim, thus allowing for consideration of
new evidence.

SUMMARY: North Central Conservancy
Trust Inc. (the trust) owns 160 acres of
property in the town of Harrison. The



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