

In the Matter of the

INSTITUTIONAL FUND CREATED BY
THE WILLIAM V. BENJAMIN TRUST
f/b/o THE SHOREWOOD FOUNDATION, INC.

FILED
2 SEP 29 2004
CIRCUIT COURT
MILWAUKEE COUNTY

File No. 04 PR 1348

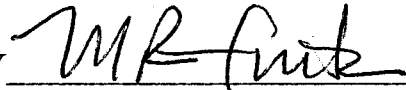
**NOTICE OF MOTION AND MOTION TO RULE
REGARDING LACK OF STANDING**

Petitioner, the Shorewood Foundation, Inc., hereby moves for a ruling that neither James K. Kircher nor any other individual, solely by virtue of his or her residence in the Village of Shorewood, has standing to appear as a party in this action. In support of this motion, Petitioner submits the attached Brief in Support of Motion on Standing.

Dated this 27th day of September, 2004.

REINHART BOERNER VAN DEUREN s.c.

BY



Attorney for Petitioner, the Shorewood
Foundation, Inc.

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BRIEF IN SUPPORT OF MOTION ON STANDING

The Petitioner, the Shorewood Foundation, Inc., submits its brief in support of its position that James K. Kircher lacks standing to appear as a party in this matter.

INTRODUCTION

The Petitioner is a private nonstock corporation which focuses on the improvement of community life in the Village of Shorewood. The Petitioner has received a distribution (the "Benjamin Fund") from the William V. Benjamin Trust (the "Benjamin Trust"), created by William V. Benjamin ("Mr. Benjamin"). Mr. Benjamin died March 22, 2002. The Benjamin Trust imposed upon the Benjamin Fund certain restrictions on the use of those funds.

The Benjamin Fund is an institutional fund under Wisconsin Statutes section 112.10(1)(f). The Petitioner has applied to the Court for modification of the restrictions on the Benjamin Fund as contemplated in section 112.10(7).

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Los Angeles v. Lyons, 461 U.S. 95, 101-102, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983) (The injury or threat of injury must be both real and immediate, not conjectural or hypothetical.) Further, Mr. Kircher has no interest recognized by law.

Wisconsin Statutes section 112.10(7)(b) states that the Attorney General "shall be given an opportunity to be heard," and does not give that opportunity to anyone else. While the Petitioner has chosen to treat the Senior Center and the Village of Shorewood as interested parties as it deliberated, it does not concede that every individual resident of Shorewood has standing in this proceeding.

The doctrine of standing is not a mere procedural artifice. Rather, the doctrine has extremely important policy underpinnings. The doctrine of standing encourages prompt resolution of disputes by involving only the parties who have legally recognized interests which may be affected by the outcome, thus promoting judicial economy as well as economy to the parties in interest. See, Village of Slinger v. City of Hartford, 2002 WI App. 187 9, 256 Wis. 2d 859, 650 N.W. 2d 81, 84; citing City of Madison, 112 Wis. 2d at 228; and Ramme v. City of Madison, 37 Wis. 2d 102, 116, 154 N.W. 2d 296 (1967) (in order to have standing, a party must have a personal stake in the outcome, and must be directly affected by the issues in controversy); and Lake Country Racquet & Athletic Club, Inc. v. Village of Hartland, 2002 WI App 301, 259 Wis. 2d 107, 113, 655 N.W. 2d 189.

In the case at hand, Mr. Kircher does not represent the Village of Shorewood, the Senior Center, nor any other interest which will be directly affected by the Petition. He is acting on his own personal behalf. If he has standing, so would all of the other 14,000 residents of Shorewood, a result which is contrary to the applicable, controlling authorities.

which is Village property. The Shorewood Village Board appoints the seven-member Elder Services Advisory Board ("ESAB"), which makes recommendations to the Village Board regarding the operation and administration of the Senior Center.

In deciding whether to seek the Court's assistance, the Petitioner's Board of Directors deliberated for many months, received advice from counsel and consulted individuals who knew Mr. Benjamin. Also, the Petitioner's Board of Directors held two "listening sessions" to elicit input from Shorewood residents, particularly those residents who use the Senior Center. Specifically, on April 27, 2004 and on May 3, 2004, the Board of Directors gave a brief presentation on the background of the Benjamin Fund and opened the floor for questions and comments from the audience. Both sessions enjoyed good participation and the overwhelming majority in attendance supported broadening the purposes for which the Benjamin Fund can be used.

After the above deliberative process, Petitioner's Board of Directors approved the Petition for filing. On June 3, 2004, the ESAB reviewed the Petition and voted unanimously to support the Petition. Two weeks later, the Petitioner filed the Petition and a hearing was set for July 28, 2004.

At the hearing, Attorney Zieger objected to the Petition on behalf of his client, Mr. Kircher, a resident of Shorewood. Mr. Kircher has not offered any reason why he should have standing to appear as a party in this matter.

ARGUMENT

Mr. Kircher lacks standing to appear as a party in this matter. He has no interest in this matter other than the fact that he resides in the Village of Shorewood.

Wisconsin Statutes section 112.10(7)(b) requires notice of this matter to be given to the Wisconsin Attorney General, who "shall be given an opportunity to be heard." It specifies no other person who is entitled to notice or to participate in the proceedings. The Attorney General's office was properly notified of the Petition.

Even though the Attorney General is the only true interested person, the Petitioner has followed a more practical and inclusive course; the Petitioner has given notice as if this matter were an action to modify a trust.³ Under the law dealing with actions to modify charitable trusts⁴, in addition to the Attorney General, the interested persons include "an established charitable entity to which income or principle must be paid" - in other words, the beneficiary.

However, no one other than the Attorney General has legally recognized standing in this matter. In particular, the 14,000 individual residents of the Village of Shorewood do not have legally recognized standing in this matter.

The recent Wisconsin Supreme Court case of Norquist v. Zeuske, 211 Wis. 2d 241, 564 N.W. 2d 748 (Wis. 1997) summarized the doctrine of standing as follows:

The central standing question is whether "a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." [*Citations omitted*] Wisconsin employs a two-step standing analysis. The analysis requires the court to determine (1) whether the plaintiff has suffered a threatened or actual injury, and (2) whether the interest asserted is recognized by law. [*Citations omitted*] 211 Wis. 2d at 247, 248.

In this case, Mr. Kircher has no injury at all, but simply disagrees with the Petitioner's decision. That is an insufficient basis to create standing.

³ The Benjamin Fund is not a trust. The Benjamin Trust is terminated and the Benjamin Fund is simply the property of the Petitioner, which the Petitioner holds subject to non trust legal restrictions as provided by Wisconsin Statutes section 112.10.

⁴ Wisconsin Statutes section 701.10(2)(e).

This is an *in rem* action involving a nongovernmental charitable entity and its intended beneficiaries, held following notice to the Attorney General.

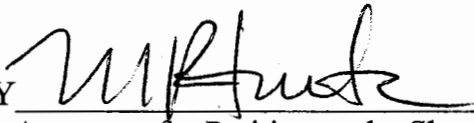
Mr. Kircher's unwarranted intervention has already put Petitioner to considerable expense, and meanwhile Mr. Benjamin's generous provision for the senior citizens of Shorewood sits unused in the face of demonstrable need. Mr. Kircher has had other opportunities to air his concerns. He has no standing to use this proceeding to do so.

CONCLUSION

For the reasons set forth above, Petitioner asks this Court to rule that neither James K. Kircher, nor any other individual, solely by virtue of his or her residence in the Village of Shorewood has standing to appear as a party in this matter.

Dated this 28th day of September, 2004.

REINHART BOERNER VAN DEUREN s.c.

BY 
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Foundation, Inc.

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