

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-2840

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JOHN JOZWIAK,

PLAINTIFF-APPELLANT,

V.

ERNEST SOKIE, AND SELMA SOKIE,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Waushara County:
LEWIS MURACH, Judge. *Affirmed.*

ROGGENSACK, J.¹ John Jozwiak, a real estate agent, appeals from a small claims judgment dismissing his claim for a commission on the sale of property originally owned by Ernest and Selma Sokie. The circuit court found he failed to prove the property was purchased within six months after the listing

¹ This appeal is decided by one judge pursuant to § 752.31(2)(a), STATS.

contract expired by someone acting on behalf of a person with whom Jozwiak had negotiated or to whom he had shown the property while the listing contract was in force. Because we conclude that the circuit court's findings of fact are not clearly erroneous, we affirm.

BACKGROUND

On February 28, 1997, the Sokies entered into a contract with Jozwiak to list their Waushara County property for sale. The listing contract ran from March 1, 1997 until September 1, 1997, and stated that the broker's commission for the sale of the property was \$1,000, if:

as to the property or any part of it, a purchaser is procured, a binding exchange agreement is entered into, or an option which is subsequently exercised is granted, within six months after the expiration of this contract to any person or to anyone acting for any person with whom Seller, Broker or any of Broker's agents negotiated or personally exhibited by showing the property prior to the expiration of this contract and in either case whose name Broker has submitted to Seller in writing by personal delivery or by depositing, postage or fees prepaid, in the United States mail or a commercial delivery system, not later than 24 hours after the expiration of this contract, Seller agrees to pay Broker the commission set forth in this contract....

After Jozwiak and the Sokies signed the contract, Jozwiak listed the property at \$14,900, and placed a "for sale" sign on the property.

On June 25, 1997, Jozwiak notified the Sokies that David Woolbright had offered to purchase the property for \$10,500. The Sokies made a counteroffer of \$13,200. Sometime during these negotiations, David visited the property, and he and Ernest walked the boundary line. David rejected the counteroffer.

On September 1, 1997, the listing contract with Jozwiak expired, and the Sokies listed the property as “for sale by owner.” Sometime thereafter, David called the Sokies and told them that his parents, Walter and Linda Woolbright, were interested in purchasing the property. Because his parents lived in Illinois, David acted as a liaison between his parents and the Sokies. David notified the Sokies that his parents were willing to purchase the property for \$13,000. The Sokies agreed to sell it for that price and did so by land contract, on October 27, 1997. Although David was present at the closing, the land contract and all of the checks for the purchase of the property were signed by Walter and Linda. On February 23, 1998, the Sokies gave Walter and Linda a deed to the property in fulfillment of the land contract. Sometime thereafter, Walter and Linda sold the property to Wisconsin Power and Light.

On May 6, 1998, Jozwiak filed a small claims action against the Sokies seeking a commission of \$1,000, plus costs. He alleged he was entitled to payment under the listing contract because the Sokies had sold the property within six months of the expiration of the listing contract to Walter and Linda who were acting on behalf of David. On September 4, 1998, a trial was held. The court found that Walter and Linda had not purchased the property on behalf of David. Therefore, Jozwiak had failed to prove the listing contract had been breached. This appeal followed.

DISCUSSION

Standard of Review.

Whether Jozwiak submitted sufficient evidence to prove the allegations in his complaint is a question of fact. We will not reverse the circuit

court's findings of fact unless they are clearly erroneous. *State v. Pitsch*, 124 Wis.2d 628, 634, 369 N.W.2d 711, 714-15 (1985); § 805.17(2), STATS.

Circuit Court's Findings of Fact.

The circuit court found that Jozwiak had failed to prove the property was purchased within six months after the expiration of the listing contract by someone acting on behalf of a person with whom Jozwiak had negotiated or to whom he had shown the property while the listing contract was in force. The court based its finding on Ernest's testimony and on the purchase price. That the Sokies had met with David prior to selling the property to Walter and Linda, and that David acted as a liaison between his parents and the Sokies, did not prove, conclusively, that Walter and Linda sought to purchase the property on behalf of David. Based on our review of the record, the circuit court's factual findings were not clearly erroneous. Therefore, we will not disturb them and we affirm the judgment dismissing the complaint.

CONCLUSION

Based on our review of the record, the circuit court's factual findings are not clearly erroneous. Therefore, we affirm its judgment.

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. *See* RULE 809.23(1)(b)4., STATS.

