

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2000

Cornelia G. Clark
Acting 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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1035

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

KENNETH S. WYDERKA,

PLAINTIFF-APPELLANT,

V.

**LUIS GARCIA, GORDON W. GEHRING, A/K/A GORDON
GEHRING AND SHIRLEY A. GEHRING, HIS WIFE,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Washington County: LAWRENCE F. WADDICK, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Kenneth S. Wyderka appeals from the judgment which dismissed his complaint against Luis Garcia, Gordon W. Gehring and Shirley A. Gehring. Wyderka argues on appeal that the circuit court improperly granted the respondents' motion for summary judgment because it did not

correctly interpret a recording statute, WIS. STAT. § 236.34 (1997-98).¹ Because we conclude that the circuit court correctly interpreted the statute, we affirm.

¶2 The parties in this case own adjoining lots of property in the City of Hartford. Lot 1 is owned by Wyderka and lot 2 is owned by the respondents. The two lots were initially recorded in Certified Survey Map (CSM) No. 2296. This map was recorded on August 20, 1980. On September 11, 1980, CSM No. 2296 was superseded by CSM No. 2308.²

¶3 In 1991, the previous owner of lot 1 granted the owners of lot 2 an easement across lot 1. The easement was recorded. The legal description in the easement referred to the first, superseded map and not to the second map. Wyderka brought this action alleging that the easement was invalid because it referred to the superseded map. The circuit court determined that the incorrect identification of the map in the easement was merely a scrivener's error. The court granted summary judgment to the respondents and ordered that the easement be corrected to identify the proper map.

¶4 WISCONSIN STAT. § 236.34, entitled "Recording of certified survey map; use in changing boundaries; use in conveyancing," states in pertinent part:

(3) USE IN CONVEYANCING. When a certified survey map has been recorded in accordance with this section, the parcels of land in the map shall be described by reference to the number of the survey, the volume and page where recorded, and the name of the county, for all purposes, including assessment, taxation, devise, descent and conveyance as defined in s. 706.01 (4).

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² The second certified survey map is identical to the first except that it states that it supersedes the first.

¶5 Wyderka argues that this statute makes mandatory a reference to a recorded certified survey map in a conveyance which affects a parcel of land which has been recorded. We agree. Wyderka next argues that because the easement at issue referenced the incorrect survey map, it is invalid under this statute. We disagree. Wyderka’s argument adds language and requirements to the statute which do not exist.

¶6 The statute requires a reference to a certified survey map. Wyderka admits that the easement contained such a reference. The statute does not state that if such a reference is incorrect, the entire conveyance will be invalid. More importantly, another statute expressly allows a court to correct errors in the description of a conveyance. WISCONSIN STAT. § 847.07 states that “[t]he circuit court of any county in which a conveyance of real estate has been recorded may make an order correcting the description in the conveyances on proof being made to the satisfaction of the court that the conveyance contains an erroneous description, not intended by the parties thereto;” The circuit court properly interpreted the statutes and ordered the conveyance corrected to reference CSM 2308. Therefore, we affirm the judgment of the circuit court

By the Court.—Judgment affirmed.

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

