

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 7, 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. 99-1326-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WAYNE PETERS, D/B/A PETERS REAL ESTATE,

PLAINTIFF-RESPONDENT,

v.

EUGENE M. GOLDEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

¶1 HOOVER, P.J. Eugene Golden appeals a small claims judgment awarded to Wayne Peters.¹ The circuit court concluded that Peters had earned a commission when Golden accepted an offer to purchase a parcel of Golden's real estate subject to a listing contract. Golden's principal contention is that the offer

¹ This is an expedited appeal under RULE 809.17, STATS.

to purchase was not an enforceable contract because it was subject to two unwritten contingencies that excused Golden from performance. This court concludes that this contention is not sufficiently developed for evaluation on appeal. The judgment is therefore affirmed.

¶2 In September 1995, Golden entered into a six-month listing contract with Peters, a real estate broker, for the sale of several parcels of real estate.² The listing price for all of the properties was \$179,900. The contract provided that Peters would be entitled to a commission if, during the term of the contract, Golden would accept an offer that created an enforceable contract for the sale of all or any part of the property.

¶3 On January 31, 1996, Judy Risch tendered an offer to purchase 622 Wisconsin Street for \$69,900. Golden accepted the offer, and a closing date was set. Later, evidently because Golden could not obtain financing to relocate upon sale of the property, he returned Risch's earnest money.³ Peters commenced this action when Golden refused to pay Peters the commission he demanded as a result of Golden accepting Risch's purchase offer.

¶4 The crux of the controversy concerns Golden's claim that his acceptance of Risch's offer was conditioned upon his ability to successfully relocate and obtain financing. He asserts that because of these unmet contingencies, "there was no enforceable contract for sale of any part of the listed properties" Golden concedes that these contingencies do not appear in writing.

² The precise term of the listing contract was from September 8, 1995, to March 31, 1996. The property was identified in the contract as 614-616, 622 and 628 Wisconsin Street.

³ Risch and Golden later completed the transaction many months after the listing contract had expired.

Rather, Golden and Risch testified at the trial that there was a prior understanding or agreement concerning the relocation and financing contingency for Golden. Golden argues that “[t]he modification of the written offer and its acceptance to include the relocation contingency (including financing) is admissible through parol evidence” and that “[m]utual mistake permits admission of parol evidence concerning this prior understanding.” The propositions that Golden does not address, however, are whether the circuit court accepted this testimony as credible⁴ and, if so, whether the modification is legally enforceable. This court declines to abandon its neutrality in an attempt to develop Golden’s argument for him. *See State v. Gulrud*, 140 Wis.2d 721, 730, 412 N.W.2d 139, 142 (Ct. App. 1987).

¶5 Golden’s brief contains several other sections that he characterizes as “arguments.” They are, in fact, for the most part unadorned and disassociated contentions and conclusions that present no discernible grounds for appellate

⁴ Risch’s testimony is equivocal and falls short of acknowledging an agreement to add oral contingencies to the written acceptance. For example, after confirming whether all of her contingencies were met, Risch was asked whether Golden’s were met as well. Risch testified, “I don’t know what contingencies he had on there. Obviously, the contingency to get financing wasn’t, that wasn’t in the contract but that wasn’t met because he didn’t have the financing to move into the new building.” Risch then testified that when she learned Golden was not able to finance a relocation, “that’s when I thought about it and I thought, I mean I didn’t want to put him out of business because they had been in business for fifty years there so I just then at that time decided that it was the right thing to do to leave him stay there so I just figured my business was done. I wasn’t, I wasn’t going to do it.”

It appears that the circuit court did not accept Golden’s testimony that he and Risch agreed to modify the terms of the written transaction documents:

I mean, there was no dispute that the Golden Funeral Home was going to continue to exist somewhere. I mean I never saw that as an issue but it seems to me at the time this finally came down to it, Ms. Risch had an enforceable contract that she could have forced the sale. She chose because of her apparently good naturedness not to do that

relief.⁵ When an appellant's arguments fail to develop themes reflecting legal reasoning or to cite legal or factual authority, but rely only on general assertions of error, the court may decline to consider them. *See State v. West*, 179 Wis.2d 182, 195-96, 507 N.W.2d 343, 349 (Ct. App. 1993); *State v. Pettit*, 171 Wis.2d 627, 646-47, 492 N.W.2d 633, 642 (Ct. App. 1992).

By the Court.—Judgment affirmed.

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

⁵ Golden does suggest the seeds of contentions subject to appellate consideration. The first: “The listing contract disclosed a list price of \$179,900. ... A part of the properties formerly subject to the listing sold for \$69,900 in 1998; the earlier offer was in the same amount. Thus, the list price of the contract had not been met.” The contract, however, permits the sale of a part of the property. The second: Peters's negligence bars any recovery. He fails, however, to offer any legal support for this conclusion, except to assert that an “action for breach of fiduciary duty exists independently of the contractual relationship between the seller and the broker.” He does not contend that he maintained such an action against Peters. Nor does he address the circuit court's findings regarding the claimed negligence or this court's standard of review thereof.

