**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**February 18, 2016**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2015AP1060** **Cir. Ct. No. 2015SC2632**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT IV**

**BRANDON MICHAEL STEELE,**

**PLAINTIFF-APPELLANT,**

**V.**

**RONALD E. LATKO, JR. AND KENDRA C. LATKO,**

**DEFENDANTS-RESPONDENTS.**

APPEAL from a judgment of the circuit court for Dane County: WILLIAM E. HANRAHAN, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Brandon Steele appeals a judgment entered after a bench trial on Steele's small claims replevin action against Ronald and Kendra

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 2013-14 version.

Latko. Steele claimed that the Latkos were in wrongful possession of his salt & pepper giant schnauzer, Molly, and that the Latkos breached a contract relating to Molly. The circuit court rejected Steele's claims, concluding that Steele transferred ownership of Molly to the Latkos in an unambiguous written contract. For the reasons that follow, I affirm the judgment.

¶2 As the circuit court recognized, Steele's claim for replevin of Molly turns on contract interpretation. "'The ultimate aim of all contract interpretation is to ascertain the intent of the parties.'" ***Kernz v. J.L. French Corp.***, 2003 WI App 140, ¶9, 266 Wis. 2d 124, 667 N.W.2d 751 (quoted source omitted). The court "presume[s] the parties' intent is evidenced by the words they choose, if those words are unambiguous." ***Id.*** However, "'[c]ontract language is considered ambiguous if it is susceptible to more than one reasonable interpretation.'" ***Id.***, ¶10 (quoted source omitted). If a contract is ambiguous, then courts use "extrinsic evidence" to determine the parties' intent. ***Id.*** The interpretation of an unambiguous contract is a question of law that an appellate court reviews de novo. ***Town Bank v. City Real Estate Dev., LLC***, 2010 WI 134, ¶32, 330 Wis. 2d 340, 793 N.W.2d 476. Whether a contract is ambiguous is also a question of law that the court reviews de novo. ***Kernz***, 266 Wis. 2d 124, ¶8.

¶3 Here, the circuit court concluded that the following writing drafted by Steele constituted a contract in which Steele unambiguously transferred ownership of Molly to the Latkos:

> I, Brandon Steele[,] am giving Ron & Kendra Latko [a] salt & pepper giant schnauzer named Molly. This is a permanent placement. If it does not work out for [the Latkos] they can let [Steele] know so he can find a place that will take a dog.

Because the circuit court concluded that the contract was unambiguous as to Molly's ownership, the court declined to consider other evidence of the parties' intent on the topic.

¶4 Steele's primary argument is that the contract language is ambiguous as to Molly's ownership and, therefore, the circuit court should have considered extrinsic evidence of the parties' intent as to ownership and "visitation" with Molly. I reject this argument because none of Steele's supporting assertions is persuasive.

¶5 According to Steele, the phrase "permanent placement" in the contract's second sentence is ambiguous as to whether it means "giving" someone a dog. However, any arguable lack of clarity in that phrase is dispelled by the previous sentence, which plainly states that Steele is "giving" a "salt & pepper giant schnauzer named Molly" to the Latkos. When it comes to an animal, the obvious and accepted meaning of "giving" is the transfer of ownership of the animal, at least without additional contract language that is clearly to the contrary.

¶6 Steele relies on the third contract sentence, which, to repeat, provides that "If it does not work out for [the Latkos] they can let [Steele] know so he can find a place that will take a dog." Steele asserts that this provision is inconsistent with a transfer of ownership and instead implies that Steele still owns Molly. I disagree. In context, this language is most reasonably read as an offer by Steele to help the Latkos find yet another owner if the Latkos later decide they no longer want Molly. The language plainly does not require the Latkos to notify Steele if they decide to find another home for Molly ("If it does not work out for [the Latkos] they *can* let [Steele] know …." (emphasis added)). Notably, neither

this provision nor any other language in the contract contemplates Molly's return to Steele.

¶7 Apart from whether there is ambiguity, Steele argues that the circuit court should have considered extrinsic evidence of the parties' intent because of the parties' lack of sophistication. But the only legal authority that Steele cites for this argument does not support it. Rather, the case that Steele points to, ***Bank of Sun Prairie v. Esser***, 155 Wis. 2d 724, 456 N.W.2d 585 (1990), supports a quite different proposition. ***Bank of Sun Prairie*** explains that a fact finder may consider extrinsic evidence in deciding whether a party justifiably relied on a misrepresentation that induced that party to enter into a contract. ***Id.*** at 732-34. Steele has not argued or adequately raised a claim that the Latkos induced him into a contract based on misrepresentation.

¶8 Because Steele fails to persuade me that there is ambiguity or to show any other reason to consider extrinsic evidence, I, like the circuit court, decline to consider such evidence. This means that I do not consider arguments relying on that evidence, including Steele's argument that the Latkos made admissions that they orally agreed or intended to allow Steele unrestricted visitation with Molly at the time of the written contract.

¶9 I note that, even if the Latkos breached some separate, unwritten oral agreement for unrestricted visitation, the existence of such an agreement reinforces the Latkos' position as to Molly's ownership. If the parties' intent were that Steele still owned Molly, why would the parties need to further agree that Steele had the right to visit Molly when he pleased? Steele's briefing fails to provide an answer to this question. Thus, so far as I can tell, any oral visitation

agreement appears *consistent with* a conclusion that the parties intended to transfer Molly's ownership from Steele to the Latkos.

¶10 Further, even if the Latkos breached a separate oral visitation agreement, it is not apparent why Steele's remedy for that breach would be a return of Molly to his ownership or possession. Steele's argument on appeal fails to connect the dots between this alleged breach and a right to replevin. Accordingly, regardless of any alleged breach of a visitation agreement, I conclude that Steele fails to show that he was entitled to replevin of Molly based on a breach of contract theory.

¶11 Finally, Steele argues that the written contract should be invalidated because it lacked consideration, which is one of the prerequisites for forming a valid contract. This is an argument Steele failed to make in the circuit court. I therefore deem it forfeited, and decline to consider it on that basis. *See* ***Schill v. Wisconsin Rapids Sch. Dist.***, 2010 WI 86, ¶45 & n.21, 327 Wis. 2d 572, 786 N.W.2d 177 (explaining that issues not raised in the circuit court are forfeited and supporting the proposition that appellate courts generally do not address forfeited issues). This is not to imply that I think the argument has merit. On the contrary, any merit to this lack-of-consideration argument is far from apparent.

*By the Court*.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.