

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2003AP3523

Cir. Ct. No. 2002CV200

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GLENN PEARSON AND JOHANNA PEARSON,

PLAINTIFFS-APPELLANTS-CROSS-RESPONDENTS,

V.

DAN C. COBB AND TNT LOGGING, INC.,

DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS.

APPEAL AND CROSS-APPEAL from a judgment of the circuit court for Burnett County: MICHAEL J. GABLEMAN, Judge. *Judgment affirmed in part, reversed in part, and cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Glenn and Johanna Pearson appeal that part of a judgment denying their motion for attorney fees and costs under a timber sales contract with Dan C. Cobb and TNT Logging, Inc. (collectively, “Cobb”). In turn,

Cobb cross-appeals the judgment against him and the denial of his motion for judgment notwithstanding the verdict. The Pearsons argue they are entitled to recover attorney fees and costs under the terms of the timber sales contract. We agree and reverse that part of the judgment and remand the matter to the circuit court for a determination of reasonable attorney fees. With respect to the cross-appeal, Cobb challenges the sufficiency of the evidence to support the jury's verdict. We reject Cobb's claims and affirm the judgment against him.

BACKGROUND

¶2 The Pearsons entered into a written timber sale contract with Cobb for the harvesting of timber from the Pearsons' property. After the timber was harvested, Cobb offered the Pearsons \$1,608.92 for the timber. In September 2002, the Pearsons filed suit against Cobb alleging that Cobb had breached the contract by refusing to pay the contract price of \$12,700. In addition to payment of the contract price, the Pearsons demanded actual attorney fees and costs based upon a fee shifting provision contained within the timber sales contract.

¶3 After a trial, the jury found that Cobb had breached the contract and awarded the Pearsons \$6,000. The Pearsons moved for judgment on the verdict plus reasonable attorney fees and costs. The court granted judgment on the verdict, but denied attorney fees. This appeal and cross-appeal follow.

DISCUSSION

¶4 In their appeal, the Pearsons argue that the trial court erred by denying attorney fees under the contract. We agree. Interpretation of a contract is a question of law that we review independently. *Ford Motor Co. v. Lyons*, 137 Wis. 2d 397, 460, 405 N.W.2d 354 (1987). The primary goal in contract

interpretation is to give effect to the parties' intentions. *Johnson Controls v. Employers Ins.*, 2003 WI 108, ¶30, 264 Wis. 2d 60, 665 N.W.2d 257. We ascertain the parties' intentions by looking to the language of the contract itself, *see State ex rel. Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 711, 456 N.W.2d 359 (1990), and contracts are interpreted to give effect to the parties' intent, as expressed in the contractual language. *Danbeck v. American Fam. Mut. Ins. Co.*, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150. Such language is to be interpreted consistently with what a reasonable person would understand the words to mean under the circumstances. *Id.*, ¶22.

¶5 Here, the contract included the following fee shifting provision: "Purchaser shall reimburse Seller and Agent for all costs incurred for the recovery of stumpage monies owed the Seller, including and not limited to attorney's fees, court costs and time." This provision is unambiguous. The trial court nevertheless denied attorney fees under the contract, concluding that Cobb had not acted in bad faith because there was a dispute over the money owed. The contract provision, however, does not include the trial court qualifications. By virtue of the jury trial, the Pearsons recovered additional stumpage monies owed to them. The Pearsons are therefore entitled to reimbursement for attorney fees, court costs and time, as provided under the contract. We will therefore reverse that part of the judgment denying attorney fees and costs and remand this matter to the trial court for a determination of reasonable attorney fees.

¶6 On cross-appeal, Cobb challenges the sufficiency of the evidence to support the jury's verdict. His argument, however, is wholly undeveloped and unsupported by any reference to the record or trial testimony. *See* WIS. STAT. RULE 809.19(1)(e) (2003-04). Because Cobb proffers no argument susceptible to

meaningful appellate review, we affirm the judgment against him. No costs to either party.

By the Court.—Judgment affirmed in part, reversed in part, and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

