

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 10, 2003**

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. 00-2320  
STATE OF WISCONSIN**

**Cir. Ct. No. 98-CV-81**

**IN COURT OF APPEALS  
DISTRICT IV**

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**WESTERN WISCONSIN CAMP ASSOCIATION,**

**PLAINTIFF-APPELLANT,**

**v.**

**NATIONAL SPIRITUALIST ASSOCIATION OF CHURCHES,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Juneau County:  
JOHN W. BRADY, Judge. *Reversed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Western Wisconsin Camp Association (WWCA) appeals a summary judgment in favor of National Spiritualist Association of Churches (NSAC) in WWCA's quiet title action. The judgment set aside a transfer of real property, by quit claim deed, from NSAC to WWCA. The

dispositive issue is whether the transfer was valid even if NSAC held the land in a charitable trust. We conclude it was and therefore reverse.

¶2 WWCA was the long-time owner of property in Wonewoc that it used for religious purposes. In 1964, WWCA affiliated with NSAC, a religious corporation. WWCA subsequently transferred title to the property to NSAC by a deed expressing its intent to convey “the legal title to the above described real estate in recognition and in perpetuation of the ecclesiastical trust, with which said premises are impressed, for the support and promulgation of the Truths, Doctrines and Teachings of the Philosophy, Phenomena and Religion of Modern Spiritualism ....” However, WWCA retained the right to exclusive use and occupancy so long as it remained “duly chartered and active auxiliary in good standing of said Grantor, or its lawful successor....”

¶3 On June 4, 1997, the NSAC board of directors voted to return twenty-one properties to its affiliates, including the Wonewoc land. The president and treasurer of NSAC signed the quitclaim deed to WWCA, dated August 18, 1997, by which NSAC quitclaimed all interest in the Wonewoc property back to WWCA, and NSAC delivered the deed to WWCA. On August 22, 1997, WWCA’s board voted to accept the deed. Following the vote, four of the five NSAC directors voting for the property transfers resigned. The new board refused WWCA’s request for a transfer form so the deed could be recorded. It asserted that the transfer to WWCA was void and sought to rescind it.<sup>1</sup> On June 11, 1998, WWCA sought to obtain record title through this quiet title action. On June 8, 1999, due to continuing difficulties, WWCA voted to disaffiliate from NSAC.

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<sup>1</sup> According to the record before us on appeal, it appears that the other properties that were transferred did not meet with resistance from the NSAC board that WWCA has experienced and NSAC has cooperated in duly recording these conveyances.

¶4 NSAC counterclaimed for possession and an injunction preventing WWCA from further access to the property. Both sides moved for summary judgment. The circuit court held that the 1964 deed created a charitable trust that could be terminated only by the procedures set forth in WIS. STAT. ch. 701 (2001-02).<sup>2</sup> The judgment declared NSAC the owner of the property and extinguished WWCA's claim to title and to possession.

¶5 We review summary judgments *de novo*, using the same methodology applied in the trial court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is proper when, as here, there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *Id.*

¶6 On this appeal, the parties are primarily concerned with examination of the circuit court's conclusion that the 1964 deed from WWCA to NSAC created a valid charitable trust. We have serious doubts about whether the brief sentence about charitable purposes for the use of the land creates any type of trust when the document does not say it is given to NSAC to hold in trust; however, we need not reach that issue. More important to our analysis is what does a quitclaim deed do. *Ritchie v. Davis*, 26 Wis. 2d 636, 133 N.W.2d 312 (1965), cited by WWCA, and a more recent case, *Wynhoff v. Vogt*, 2000 WI App 57, 233 Wis. 2d 673, 608 N.W.2d 400, provide guidance.

¶7 In *Ritchie* the grantor, who was at the time a single man, had executed a deed to Ritchie and Cotter, as joint tenants. The grantor delivered the deed to Cotter and told him not to record it until after the grantor had died, but the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

grantor retained control and possession of the property. Subsequently, the grantor married. When he died a few years after his marriage and the deed was recorded, his widow sought to overturn it. In deciding against the widow, the supreme court explained that in Wisconsin deeds are effective as of the time of delivery to a third party. *Ritchie*, 26 Wis.2d at 641-42, 133 N.W.2d at 315-16. The court concluded, therefore, that:

[t]he test of whether the deed is effective upon delivery to the third person is not whether the grantor has retained possession or control of the property, but rather, whether he has retained possession or control of the deed.

*Id.* at 641-42, 133 N.W.2d at 316.

¶8 In *Wynhoff*, we reviewed a quitclaim deed that the circuit had set aside because it believed there should have been “contingencies and reservations in the deed” that were not stated. *Wynhoff*, 233 Wis. 2d 673, ¶16. However, no party contended that the deed was deficient or ambiguous in regard to the property it conveyed, nor did any party contend that it had been obtained through fraud. In reversing the circuit court, we began by explaining that in Wisconsin “if a party wants to retain an interest in property, it must expressly do so in the document of conveyance.” *Id.* ¶17. We then instructed that:

“once the deed takes effect as of date of delivery, subsequent conduct or remarks of the grantor cannot operate retroactively to change such effect.... ‘[A]s a matter of law there cannot be a conditional delivery of a deed to a grantee; in such a case the delivery becomes absolute.’”

*Id.* (citations omitted).

¶9 We note that the statutes also instruct that a quitclaim deed “shall pass all of the interest in or appurtenant to the land described which the grantor could lawfully convey.” WIS. STAT. § 706.10(4). The quitclaim deed expressed

no restriction or limitation on the transfer of any interest NSAC had. Therefore, there was no contingency to the interest that NSAC conveyed, and no one has alleged that the deed was obtained by fraud. Instead, what has happened is similar to what occurred in *Wynhoff*. The grantor (board of directors of NSAC) had a change of heart in regard to some of the properties it conveyed; and therefore, it refused a transfer form necessary to record the deed. Later, it attempted to “rescind” the transfer to WCCA. However, the uncontradicted affidavits in the record show the transfer was discussed by NSAC’s board; that the board voted five to four in favor of the transfer; that it takes five members of the board to constitute a quorum and that the signatories on the quitclaim deed were duly elected officers and members of the board of directors when they signed the deed. Nothing has been presented in this appeal to show the quitclaim deed was not lawfully executed. *See* WIS. STAT. § 706.03(2) (any officer of a private corporation may sign conveyances in the corporate name). Furthermore, the deed was delivered to the grantee, WCCA. On delivery, the transfer from NSAC to WCCA was absolute. *See Wynhoff*, 233 Wis. 2d 673, ¶17. Therefore, whether the transaction violated NSAC bylaws or harmed its members, as NSAC contends, is an internal corporate matter for this religious organization. Courts are not to venture into religious polity or the provisions governing the ownership of church property. *Jones v. Wolf*, 443 U.S. 595, 603 (1979). The quitclaim deed was a valid transfer to WWAC of whatever interest NSAC held in the land described.

¶10 We note that the supreme court has reviewed a court of appeals decision affecting church property in *Wisconsin Conference Board of Trustees of the United Methodist Church, Inc. v. Culver*, 2001 WI 55, 243 Wis. 2d 394, 627 N.W.2d 469. The majority of the court interpreted WIS. STAT. § 187.15(4) to determine whether a church that had withdrawn from the United Methodist

Church (UMC) was a “defunct” or “dissolved” church under the statutes. In concluding that the Elo church was “defunct” or “dissolved” within the meaning of the statute, the supreme court eschewed interpreting the bylaws of a religious organization that governed church activities. *Id.*, ¶¶20, 21. The court relied solely on the words chosen by the legislature in § 187.15 for its decision that the Elo church could leave the UMC, but as a defunct church it could not take any church property with it. Here, the question of whether WWCA is in a position similar to the Elo church is not before us because at the time that the quitclaim deed was accepted, WWCA was an affiliate of NSAC. It withdrew on June 8, 1999, almost two years after it accepted NSAC’s quitclaim deed.

¶11 NSAC also contends that WWCA’s failure to file a timely pleading in response to its counterclaim provides grounds for affirming the trial court. This court has held, however, that a counterclaiming defendant is not entitled to judgment on the plaintiff’s failure to respond to a counterclaim. *Pollack v. Calimag*, 157 Wis. 2d 222, 235, 458 N.W.2d 591 (Ct. App. 1990). Although NSAC suggests that *Pollack* was wrongly decided, we are bound by its ruling. *See Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). Accordingly, we reverse the judgment of the circuit court and remand for entry of judgment on WWCA’s claim.

*By the Court.*—Judgment reversed.

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

