

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 2, 2010**

David R. Schanker  
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. 2008AP2881**

**Cir. Ct. No. 2007CV971**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**KEITH T. HENRICKSEN,**

**PLAINTIFF-APPELLANT,**

**V.**

**DOUGLAS A. HENRICKSEN, RITA A. HENRICKSEN AND  
PHYLLIS HENRICKSEN,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for St. Croix County:  
SCOTT R. NEEDHAM, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Keith Henricksen appeals a summary judgment granted in favor of Phyllis, Douglas and Rita Henricksen (collectively, Phyllis). Keith argues the circuit court erred by concluding that the proceeds from the sale of Phyllis's homestead were governed by Minnesota's homestead exemption,

MINN. STAT. § 510.07 (2002). We reject Keith's arguments and affirm the judgment.

### BACKGROUND

¶2 The circuit court found the following facts. Keith is the owner of a judgment against Phyllis, arising from a lawsuit involving a family-owned business.<sup>1</sup> The judgment—in the amount of \$110,382.46 plus continuing costs and interest—was originally issued in Minnesota in 1994, and docketed in St. Croix County in August 2007. In June 2006, Phyllis moved from her home in Duluth, Minnesota, to live with her son, Douglas, and his wife, Rita, in New Richmond, Wisconsin. A month later, Phyllis sold her Minnesota homestead, the net proceeds of which were \$158,706.07.

¶3 In order to facilitate the sale and convey clear title to the property, Phyllis and Keith agreed that \$35,000 of the sale proceeds would be applied toward the judgment. The parties' verbal agreement was confirmed in an e-mail that was printed and signed by both parties. The agreement provided, in relevant part:

The parties agree that all sale proceeds received by my client net of the \$35,000 payment to your client, the existing mortgage balance and other closing costs and expenses shall be deemed proceeds arising from the sale of my client's homestead which are exempt for the period of one year after sale pursuant to Minn. Stat. § 510.07.

¶4 From the balance of the proceeds, Phyllis gifted \$100,000 to Douglas, and he applied a majority of the gift to a mortgage on property owned by

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<sup>1</sup> Although the judgment was originally awarded to Kent Henrickson, Kent assigned the judgment to Keith in May 2003.

him and his wife. The remainder of the proceeds was transferred without explanation during the one-year exemption period. Keith filed the underlying suit, alleging that the gift to Douglas was a fraudulent transfer intended to render Phyllis insolvent with no assets to satisfy Keith's judgment.

¶5 Based on the parties' written agreement, the circuit court concluded that the sale of Phyllis's homestead was governed by Minnesota's homestead exemption, which provides, in relevant part: "The owner may sell and convey the homestead without subjecting it, or the proceeds of such sale for the period of one year after sale, to any judgment or debt from which it was exempt in the owner's hands." MINN. STAT. § 510.07. In contrast, under the relevant Wisconsin statute, the homestead exemption "shall extend to the proceeds derived from the sale to an amount not exceeding \$40,000, while held, with the intention to procure another homestead with the proceeds, for 2 years." WIS. STAT. § 815.20(1).<sup>2</sup>

¶6 Therefore, unlike Wisconsin, Minnesota's homestead exemption law does not place restrictions on the use of homestead proceeds or otherwise require a debtor to reinvest proceeds in another homestead. Further, under Minnesota law, a creditor may not contest a debtor's disposition of exempt homestead proceeds, even if there was fraudulent intent by the debtor. *See O'Brien v. Johnson*, 148 N.W.2d 357, 360 (Minn. 1967). Having concluded Minnesota law applied, the court entered judgment in Phyllis's favor on grounds that her gift to Douglas could not constitute fraud as a matter of law. This appeal follows.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

## DISCUSSION

¶7 This court reviews summary judgment decisions independently, applying the same standards as the circuit court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). Summary judgment is granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

¶8 Keith argues the court erred by concluding the parties had contracted for application of Minnesota's homestead exemption to the subject sale proceeds. The construction of a written contract presents a question of law that this court reviews independently. *Rosplock v. Rosplock*, 217 Wis. 2d 22, 30, 577 N.W.2d 32 (Ct. App. 1998). Whether a contract is ambiguous is also a question of law that we decide independently of the trial court. *Id.* A contract is ambiguous if it is reasonably susceptible to more than one meaning. *Id.* When a contract is plain and unambiguous, a court will construe it as it stands without looking to extrinsic evidence to determine the intent of the parties. *Id.* at 31. Courts may not rewrite a clear and unambiguous contract, or use the mechanism of construction to review an unambiguous contract to relieve a party from any disadvantageous terms to which the party has agreed. *Id.*

¶9 Further, parties are generally free to contract for choice of law, although not “at the expense of important public policies of a state whose law would be applicable if the parties['] choice of law provision were disregarded.” *Bush v. National Sch. Studios, Inc.*, 139 Wis. 2d 635, 642, 407 N.W.2d 883 (1987). Among the laws “likely to embody an important state public policy” are

those that “are designed to protect a weaker party against the unfair exercise of superior bargaining power by another party.” *Id.* at 643.

¶10 Here, Keith contends the agreement’s language did not evince the parties’ intent to have Minnesota law govern disposition of the proceeds no matter where Phyllis resided. Rather, he argues that absent specific language regarding the scope of their choice of law, “[t]he agreement merely provides a description of the proceeds as they existed at the time the agreement was prepared, not an agreement that Minnesota’s exemption statute would govern all creditor actions.” We are not persuaded.

¶11 Under the agreement’s clear language, proceeds arising from the sale of Phyllis’s home were exempt for one year under MINN. STAT. § 510.07. If the parties had intended there to be some limitation on the application of Minnesota’s homestead exemption to these proceeds, the contract would have contained language providing such limitation. Contrary to Keith’s claim, the absence of limiting language does not render the parties’ agreement non-binding or otherwise ambiguous.

¶12 We further conclude that the parties’ contractual election of Minnesota’s homestead exemption was not done at the expense of an important state public policy, such as the consumer protection act, or other law “designed to protect a weaker party against the unfair exercise of superior bargaining power by another party.” *See id.* Here, both parties were represented by counsel and agreed that Minnesota’s homestead exemption law would apply to the sale proceeds. Because proceeds from the sale of Phyllis’s homestead were governed by MINN. STAT. § 510.07, the court properly concluded that the gift to Douglas could not constitute fraud as a matter of law.

*By the Court.*—Judgment affirmed.

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

