

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 11, 2002

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. 01-3423

Cir. Ct. No. 01-CV-1

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

REBECCA M. YATES,

PLAINTIFF-APPELLANT,

V.

ESTATE OF LUCY MEDDAUGH AND JEAN MEDDAUGH,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Portage County:
THOMAS T. FLUGAUR, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Rebecca Yates appeals a judgment dismissing her complaint against Jean Meddaugh and the estate of Lucy Meddaugh. Yates presented a claim against the estate for specific performance of a contract, and against Jean for tortious interference with the contract. The trial court dismissed the latter claim and granted limited relief on the former after a bench trial. The

issues are whether the findings of fact that support the trial court's decision are clearly erroneous, and whether the trial court properly exercised its discretion to fashion an equitable remedy on the specific performance claim. We affirm.

¶2 Lucy Meddaugh owned a thirteen-acre rural property. Jean, her daughter, owned an adjacent lot. Lucy's son, Roger Meddaugh, held power of attorney to convey Lucy's land, and contracted to sell it to Yates, Lucy's daughter-in-law, at a price well below market value.¹ Roger and Yates signed the contract to sell the land on July 31, 2000. However, several days before the closing date of September 1, 2000, Lucy quitclaimed a small portion of the property to Jean, causing cancellation of the sale to Yates.²

¶3 Lucy died and Yates filed a claim against her estate seeking specific performance of the July 31 contract. She also commenced an action against Jean for tortious interference with Yates's contract to buy the property.

¶4 The trial court consolidated the claims for trial. Roger testified that he told Jean of his plan to sell the property to Yates, but did not tell her, prior to the quitclaim transaction, that a written contract already existed. Jean testified similarly. The person who drafted the quitclaim deed for Lucy, a surveying firm employee, testified that Lucy first approached him about transferring a portion of land to Jean in May 2000.

¹ The contract sale price of the property was \$21,000. The assessed value was \$65,935.

² The property in question is a thirty-five-foot strip, approximately one acre in size, that adjoined Jean's lot.

¶5 Based on the testimony recounted above, the trial court found that Jean was unaware of the written contract to sell the property when she accepted the quitclaim deed. Consequently, the court concluded that Yates failed to prove that Jean intentionally interfered with the contract. On the specific performance claim, the court ordered the estate to convey the property to Yates, but without that portion of it quitclaimed to Jean. On appeal, Yates claims that she proved Jean's tortious interference with the contract and that the trial court erred by not ordering the estate to convey the entire parcel.

¶6 The facts believed by the trial court support dismissal of the tortious interference claim. Jean testified that she was not aware of the written contract to sell Yates the property before receiving the quitclaim deed, and did not believe she knew of the contract before presenting her deed to the register for recording that same day. The trial court's decision to believe Jean's testimony is a credibility determination. "An appellate court will only substitute its judgment for that of the trier of fact [regarding credibility determinations when the evidence is] inherently or patently incredible—that kind of evidence which conflicts with nature or with fully established or conceded facts." *State v. Daniels*, 117 Wis. 2d 9, 17, 343 N.W.2d 411 (Ct. App. 1983). Nothing in the record renders Jean's testimony inherently or patently incredible. Jean's lack of knowledge resolves the issue because interference with a contract must be intentional to be actionable. *See Dorr v. Sacred Heart Hosp.*, 228 Wis. 2d 425, 456, 597 N.W.2d 462 (Ct. App. 1999).

¶7 The trial court properly limited its remedy on the specific performance claim. Specific performance is an equitable remedy subject to the trial court's discretion. *Anderson v. Onsager*, 155 Wis. 2d 504, 513, 455 N.W.2d 885 (1990). Exercise of that discretion contemplates decisions that are "flexible,

intuitive, and tailored to the particular case.” 1 DAN B. DOBBS, LAW OF REMEDIES § 2.4(1), at 92 (2d ed. 1999). Here, all the parties to both transactions were closely related. The quitclaim deed was intended as a gift, as was the highly discounted land sale. The trial court’s ruling permits Jean to keep the gift from her mother, and Yates will receive more than ninety percent of the land she contracted to buy, for less than one-third its market value. There was no evidence that losing the thirty-five-foot strip of land would substantially impair Yates’s use of the property. Based on these circumstances, the court’s resolution was fair, reasonable, and within its equitable power. It was therefore a proper exercise of discretion. See *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

By the Court.—Judgment affirmed.

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

