

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 26, 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. 02-2345
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-325

**IN COURT OF APPEALS
DISTRICT IV**

DAVID J. GEISLER AND CAROL B. GEISLER,

PLAINTIFFS-RESPONDENTS,

v.

MARC S. BALDWIN,

DEFENDANT-APPELLANT,

VICKI N. ZARING A/K/A VICKI N. TIBBETTS,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Portage County:
FREDERIC FLEISHAUER, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Marc Baldwin appeals a judgment extinguishing his claim to certain real estate and declaring David and Carol Geisler its rightful

owners. Both the Geislers and Baldwin purchased the property from the same owner, within fifteen days of one another. The issue is whether the trial court erred in determining their respective rights. We affirm.

¶2 Vicki Zaring owned a lakefront residence in Portage County. In August 2001, Baldwin presented her with an offer to purchase the property by land contract. Zaring accepted the offer and dated her signature August 13, 2001, although she later testified that she did not actually sign it until August 27, 2001. On August 20, 2001, Zaring accepted the Geislers' offer to purchase the property by warranty deed. On August 27th, Zaring and Baldwin executed a land contract, and Zaring received \$3,000 worth of goods in down payment.

¶3 Early in September, David Geisler learned of Baldwin's land contract, and viewed copies of it and Baldwin's offer to purchase. Nevertheless, the Geislers delivered the purchase price to Zaring on September 11th, and received a warranty deed for the premises. Baldwin did not record the land contract before the Geislers closed.

¶4 The Geislers commenced this action for a judgment declaring them the rightful owners of Zaring's property. Following a bench trial, the trial court determined that the Geislers' August 20th offer had priority over Baldwin's August 13th offer, even if it was accepted on August 13th rather than on August 27th, because the Baldwin offer was unenforceable. The court further held that the August 27th conveyance by land contract to Baldwin also failed to affect the Geislers' priority claim because it was not recorded before their September 11th closing date. Consequently, the court awarded title to the Geislers.

¶5 The facts relevant to the issues Baldwin raises are not in dispute. The appeal therefore presents questions of law that we review de novo. *See Aetna Cas. & Sur. Co. v. Owen*, 191 Wis. 2d 744, 747, 530 N.W.2d 51 (Ct. App. 1995).

¶6 Baldwin first contends that the August 13th offer established him as the priority claimant for the property. However, WIS. STAT. § 706.02(1) (2001-02)¹ provides that any transaction creating an interest in land must be evidenced by a signed conveyance that identifies its material terms. Here, Baldwin's August 13th purchase offer did not identify an interest rate, payment provisions, or length of the proposed land contract. These terms are material to a land contract. We therefore agree with the trial court that Baldwin's August 13th purchase contract conveyed no rights to Baldwin.²

¶7 Baldwin next contends that even if the contract was deficient on its face, the trial court erred because it should have considered extrinsic evidence to fill in the missing terms. *See Gerruth Realty Co. v. Pire*, 17 Wis. 2d 89, 92, 115 N.W.2d 557 (1962) ("A contract is certain which may be made certain from the surrounding circumstances."). The court heard no testimony, however, that established the parties had defined or agreed on the missing terms before Zaring accepted the Geislens' offer. Baldwin testified to a general discussion about the interest rate and the other terms. He "believed" Zaring understood and agreed to them. However, in an earlier deposition he testified that the parties had not

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

² We have assumed, for purposes of argument, that the purchase contract was, in fact, signed by Zaring on August 13th. The trial court made no such finding, however, and left unresolved the conflicting testimony of Baldwin and Zaring to the date of acceptance.

decided on the terms of the offer before signing it. And, as noted, Zaring denied receiving Baldwin's offer until August 27th. The missing terms to a real estate contract must be supplied with reasonable certainty. *See Padgett v. Szczesny*, 138 Wis. 2d 150, 155, 405 N.W.2d 714 (Ct. App. 1987). That did not happen in this case. The trial court properly directed its attention to the written offer.

¶8 Baldwin also contends that the trial court applied the wrong legal standard in determining that the Geislars were entitled to specific performance on their contract with Zaring. Although the trial court did so rule, it was not essential to the judgment. The Geislars' priority as the first to validly contract with Zaring is what determined their right to ownership. The trial court's memorandum decision is unequivocal on that point with which we concur.

¶9 Baldwin makes a final argument regarding unconscionability, but the argument is contingent on our reversing for other reasons. Therefore, we do not address the argument.

By the Court.—Judgment affirmed.

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

