COURT OF APPEALS
DECISION
DATED AND FILED

July 21, 2011

A. John Voelker
Acting 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. 2010AP2788 **Cir. Ct. No. 2007CV134**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ANDREW L. SELENSKE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STANLEY L. SCHULIST,

PLAINTIFF-APPELLANT,

V.

ROBERT E. SCHULIST AND AGNES B. SCHULIST,

DEFENDANTS-RESPONDENTS.

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

Before Vergeront, P.J., Sherman and Blanchard, JJ.

¶1 VERGERONT, P.J. Andrew Selenske, as personal representative of the Estate of Stanley Schulist (the Estate), appeals the order of the circuit court determining that the homestead titled in the name of Robert Schulist consists of forty acres. The Estate argues that the court erroneously exercised its discretion

when it concluded that Robert[1] was not required to argue in favor of his application to split the forty-acre parcel into an approximately two-acre homestead parcel and a thirty-eight-acre farmland parcel. We conclude the circuit court properly exercised its discretion. Accordingly, we affirm.

BACKGROUND

¶2 The Estate[2] initiated this action for reformation of the quit claim deed transferring all the property owned by Stanley Schulist and his wife, Agnes, to their son, Robert. The complaint named Agnes and Robert as defendants (collectively, the defendants) and alleged unjust enrichment. After a trial to the court, the circuit court issued a written order in October 2009 stating that the parties could present a stipulation to the court providing for a sale of the property or the court would implement a constructive trust. The court then held a hearing and, as a result of this hearing, the parties agreed to an amended written order dated February 17, 2010.

¶3 The February 17 order required the parties to arrange for a survey of the real estate to parcel out a homestead. Pursuant to the order, "[t]he 'homestead' … shall mean the dwelling and so much of the land surrounding the dwelling that constitutes the minimum acreage required by the Town and County for a separate homestead parcel, but no less than two acres nor more than 40 acres."[3] In

[1] We refer to individual members of the Schulist family by their first names.

[2] Stanley Schulist initiated this action, but died subsequent to filing this appeal. Selenske, the personal representative of Stanley's estate, was substituted as plaintiff for the appeal. For ease of reference, we refer to the Estate as the plaintiff in the circuit court as well as on appeal.

[3] Pursuant to this order, all of the farmland in excess of the forty-acre parcel at issue on appeal has been sold.

addition, the order provided that Stanley and Agnes each had a life estate in the homestead, and Robert had the remainder ownership interest in the homestead.

¶4 At a hearing on March 5, 2010, the parties attempted to define "homestead" more specifically. Robert submitted a map drawn by Portage County Zoning Administrator Tracy Pelky (Pelky map). The Pelky map includes in the homestead the house and approximately two acres of land. Robert argued that the court should accept this map as a map of the homestead. In an oral ruling, the circuit court stated, "We're going to adopt the Pelky map as the map of the homestead. We're going to sell it by April 10; that's the order."

¶5 The parties auctioned the thirty-eight acres of the forty-acre parcel that did not include the two acres shown on the Pelky map. Leonard Schulist, another son of Stanley and Agnes, was the successful bidder. Leonard signed an offer to purchase the property, which he subsequently assigned to Stanley. In compliance with the court's February 17 order, the accepted offer to purchase provided that the sale was "subject to zoning property split approval" (capitalization omitted).

¶6 Pursuant to the accepted offer to purchase, Robert subsequently filed an application with the Town of Sharon to split the forty acres into two parcels: a two-acre homestead parcel to remain in Robert's name, and a thirty-eight-acre farmland parcel to be sold to Stanley. This split required rezoning of the two-acre parcel. At its June 1, 2010, meeting, the Town of Sharon plan commission discussed Robert's application. Stanley, Agnes, Robert, and Myron Schulist, another son of Stanley and Agnes, attended this meeting. Robert avers that Stanley, Robert, and Myron each told the plan commission that they wanted the homestead to remain forty acres, and the minutes of the meeting indicate that the

"Schulist family seemed to be in agreement to maintain the '40' as the homestead." A committee member moved to deny the split because it was not permitted by the zoning ordinance. This motion passed by a unanimous vote. At the town board meeting on June 8, 2010, the board followed the plan commission's recommendation to deny Robert's request to split the forty-acre parcel, voting unanimously to "leave the property as is." Robert subsequently moved to amend the February 17 order to define the homestead as the entire forty-acre parcel.

¶7 At the hearing on this motion, the Estate argued that Robert was required to request the property split in good faith and had failed to do so. The court concluded that Robert did not have "any obligation to argue in favor of a split that was contrary to his self-interest" and declined to order him to do so. The court stated that Robert had made the application to the town board, the board made the decision and, thus, the matter was closed. The court issued an order on August 18, 2010, in which it found "that the [February 17] Amended Order does not require amending since 'homestead' was defined in the Amended Order as 2 to 40 acres. Therefore, the Amended Order properly defines the homestead as 40 acres." The Estate appeals from the August 18 order.

DISCUSSION

¶8 On appeal, the Estate argues that the circuit court erroneously exercised its discretion in defining the homestead parcel as forty acres. It contends that the circuit court's decision was not reasonable because Robert breached the contract and the "spirit and meaning" of the February 17 order when he argued against the parcel split at the plan commission meeting.

¶9 We first address the standard of review. The Estate contends the issue in this case concerns the circuit court's exercise of discretion. A court's decision whether to grant equitable relief in an action for unjust enrichment is discretionary. ***Buckett v. Jante***, 2009 WI App 55, ¶9, 316 Wis. 2d 804, 767 N.W.2d 376 (citation omitted). The circuit court exercised its discretion in providing the parties with a choice between a constructive trust and an agreement regarding the sale of the property. We affirm discretionary decisions if the circuit court examined the relevant facts, applied the proper law, and using a rational process, reached a conclusion that a reasonable judge could reach. ***Id.*** The defendants argue that the issue on appeal is whether Robert had a legal duty to support his property split application before the plan commission, which presents a question of law subject to de novo review. The defendants' argument ignores the fact that Robert's duty to apply for a property split ultimately arises from the court's discretionary order. We conclude that the proper standard of review is that of discretionary decisions.

¶10 The parties present somewhat differing statements of the issues on appeal. The Estate contends the issue is whether Robert's conduct in "arguing" against his application for a property split precludes the circuit court's decision that the homestead is forty acres. The defendants present multiple issues related to the existence and extent of Robert's duty of good faith to support his application. We conclude that neither statement properly describes the issue. The issue is whether there was any wrongful conduct by Robert that subverted the court's order, which turns on Robert's responsibilities pursuant to the order.

¶11 Pursuant to the February 17 order, the homestead was defined as the "minimum acreage required by the Town and County for a separate homestead parcel, but no less than two acres nor more than 40 acres." Thus, the size of the

homestead was dependent on town and county approval. On March 5, 2010, Robert presented the Pelky map to the court and argued that this map would comply with the court's February 17 order and represented the only way to draw the homestead and still have the minimum two acres. The court adopted the Pelky map as the map of the homestead.

¶12 The Estate first contends that the circuit court erroneously exercised its discretion by reversing its March 5 oral ruling in its August 18 order. The Estate asserts that, in the court's March 5 oral ruling, the court ordered that the homestead was the two-acre parcel illustrated by the Pelky map and that the remaining thirty-eight acres were to be sold. However, at the hearing on August 10, 2010, the court stated that it did not "think there was any court order with regard to" adoption of the Pelky map, and it directed the parties to rely on the February 17 order describing the homestead as between two and forty acres.

¶13 We conclude the relationship between the March 5 oral ruling and the February 17 written order is ambiguous. The March 5 oral ruling does not expressly amend or overrule the February 17 order. We defer to a circuit court's interpretation of its own ambiguous orders as long as the interpretation is reasonable. ***Thorp v. Town of Lebanon***, 225 Wis. 2d 672, 683, 593 N.W.2d 878 (Ct. App. 1999).

¶14 The circuit court's interpretation of its March 5 oral ruling is that, to the extent it adopted the Pelky map as the map of the homestead, it did so in relation to its initial order. We conclude this is a reasonable interpretation of its March 5 oral ruling. Accepting this interpretation, adoption of the Pelky map was contingent upon town and county approval of the property split. The March 5 oral ruling is therefore consistent with the February 17 order. The town board denied

Robert's application for a property split, and accordingly, the Pelky map did not satisfy the requirement in the February 17 order that the homestead be the "minimum acreage required by the Town and County." Because the February 17 order and the March 5 oral ruling are consistent with one another, the court's August 18 order affirming its February 17 order is also consistent with its March 5 oral ruling. The court did not amend or overrule its March 5 oral ruling and therefore cannot have erroneously exercised its discretion in doing so.

¶15 Next, the Estate contends the circuit court erroneously exercised its discretion because it reached an unreasonable result. The Estate argues that Robert had a duty under the February 17 order, the March 5 oral ruling, and the accepted offer to purchase to pursue a property split in good faith. Robert filed an application for the property split with the Town of Sharon, but, the Estate contends, he acted in bad faith when he "argued" against his application at the plan commission meeting. The circuit court concluded that Robert was not required to argue in favor of his application, and the Estate contends that this conclusion was unreasonable. We do not agree.

¶16 Robert entered into the offer to purchase pursuant to the February 17 order. We therefore do not consider Robert's duties under the contract in isolation. Rather, the inquiry is what obligations the circuit court intended to impose on the parties for carrying out its order. Both the February 17 order and the March 5 oral ruling are ambiguous regarding Robert's obligations. While both contemplate splitting the parcel into a homestead parcel and a farmland parcel, neither discusses the process for doing so. Neither explicitly requires Robert to pursue a property split. However, the requirement that the homestead be the minimum allowed by the town and county reasonably implies that Robert, as the record owner of the property, seek the property split. The circuit court expressly

concluded during its August 10, 2010, hearing that Robert's only obligation in regard to the property split was to submit an application, and it declined to require Robert to argue in favor of the application. As we stated earlier, we defer to a circuit court's interpretation of its own ambiguous orders as long as that interpretation is reasonable. ***Thorp***, 225 Wis. 2d at 683.

¶17 The Estate contends the circuit court's interpretation is unreasonable for two reasons: (1) Robert's actions violated his duty of good faith pursuant to the accepted offer to purchase and thus undermined the February 17 order; and (2) Robert's argument against his application influenced the town board's decision to deny the application and he should not be allowed to benefit from his bad conduct. Neither argument persuades us that the court's interpretation is unreasonable.

¶18 The Estate's first argument relies on the contractual duty of good faith. As we have already stated, the accepted offer to purchase is not to be considered in isolation, but as an implementation of the court's order. The court concluded that, pursuant to its order, Robert was not required to argue in support of his application. There is nothing in the accepted offer to purchase inconsistent with this conclusion. Thus, Robert's actions did not undermine the court's order.

¶19 The Estate fails to provide any evidentiary support for its second argument and simply asserts that Robert's conduct "necessarily affected the ultimate decision of the town board to deny his rezoning petition." The Estate ignores undisputed evidence in the record that Stanley also argued against the property split. Thus, the board had before it opposition to the property split regardless of any position taken by Robert. Furthermore, the plan commission minutes reflect that the commission voted to deny the application because the

property split would violate the zoning ordinance. Accordingly, a factual premise for this second argument is lacking.

CONCLUSION

¶20 We conclude the circuit court did not erroneously exercise its discretion when it concluded that Robert was not required to argue in favor of his application for a property split. Accordingly, we affirm the circuit court's August 18, 2010, order finding that its earlier order "properly defines the homestead as 40 acres."

By the Court.—Order affirmed.

Not recommended for publication in the official reports.