COURT OF APPEALS
DECISION
DATED AND FILED

February 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1901-FT

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

JERRY CHANDLER,

PLAINTIFF-APPELLANT,

V.

LARRY GAPINSKI, D/B/A L & L CUSTOM PERFORMANCE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Columbia County: LEWIS W. CHARLES, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Roggensack, JJ.

PER CURIAM. Jerry Chandler appeals from a judgment dismissing his complaint following a bench trial. The issue is whether Larry Gapinski, d/b/a L & L Custom Performance (L & L Custom), breached their contract for the restoration of Chandler's 1955 Chevrolet Bel Air (1955 Chevy). We conclude that

the contract was ambiguous and that the trial court's factual findings were not clearly erroneous. Therefore, we affirm.[1]

Chandler contracted with L & L Custom to restore his 1955 Chevy for $5,500. The relevant excerpts of L & L Custom's estimate and repair order, signed by both parties, directed L & L Custom to "Disassemble. Strip. Restore Body and underside to original all steel configuration" for "$5,000 - $5,500." Chandler testified that the phrase meant that the car would be restored to show quality. Gapinski acknowledged that L & L Custom did not restore the 1955 Chevy to show quality. Gapinski testified that he understood that Chandler's "top dollar figure" was $6,000 to restore the car so "that he could take [it] to the car shows on weekends ...." Both parties' experts testified that the estimated amount was consistent with a cosmetic restoration, not a restoration to show quality. There was also considerable expert testimony that the restoration was worth significantly more than the contractual estimate. After a bench trial, the trial court concluded that there was no breach of contract because Chandler "got what [he] bargained for." Chandler appeals.

Whether a contract is ambiguous is a question of law. *See* ***Mattheis v. Heritage Mut. Ins. Co***., 169 Wis.2d 716, 720, 487 N.W.2d 52, 54 (Ct. App. 1992). We review questions of law without deference to the trial court. *See* ***id.*** If a contract is ambiguous, the fact-finder resorts to extrinsic evidence to determine the parties' intent. *See* ***Jones v. Jenkins***, 88 Wis.2d 712, 722, 277 N.W.2d 815, 819 (1979). Because the trial court was the fact-finder, this court will not reverse its factual findings unless they are clearly erroneous. *See* § 805.17(2), STATS.

[1] This is an expedited appeal under RULE 809.17, STATS.

The contract's operative phrase is: "Restore Body and underside to original all steel configuration." Based on our independent analysis, we conclude that the trial court correctly decided that the contract was ambiguous. We then review the trial court's factual determinations of the parties' intent from the extrinsic evidence. The parties did not use the phrase "show quality," or "cosmetic restoration" in their contract. Consequently, we are not persuaded that the trial court's determination that Chandler "got what [he] bargained for" was predicated on clearly erroneous facts, in view of the contract's phraseology and estimated amount, or that the court's determination is inconsistent with the expert testimony that the value of L & L Custom's restoration was worth significantly more than what it charged Chandler.

Because we conclude that the contract was ambiguous and that the trial court, as fact-finder, did not clearly err when it determined that L & L Custom did not breach the parties' contract, we necessarily reject Chandler's alternative contention that L & L Custom did not substantially perform its obligations. We also reject Chandler's claim that the trial court dismissed his complaint on the basis of a waiver. Although the trial court was "mystified" about why Chandler did not mention his dissatisfaction to Gapinski on one of several occasions when they were together, the trial court's dismissal was not predicated on waiver.

By the Court.—Judgment affirmed.

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