

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 14, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

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.*

No. 99-2195-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RON STEWART AND SHARON STEWART,

PLAINTIFFS-RESPONDENTS,

v.

VISION COMMUNICATIONS, LLC,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Reversed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Vision Communications, LLC, appeals a declaratory judgment ruling that it does not have a prescriptive easement to provide cable services to Ron and Sharon Stewart's mobile home park tenants.¹

¹ This is an expedited appeal under WIS. STAT. RULE 809.17.

Because we conclude that WIS. STAT. § 893.28(2)² creates a prescriptive right to provide the tenants with cable service, we reverse the judgment.³

¶2 WISCONSIN STAT. § 893.28(2) establishes a “prescriptive right to continue the use” when a domestic corporation furnishes telecommunications service for ten years. Vision and its predecessor provided the tenants with cable services under a contract with the Stewarts for twelve years at the time this action was commenced. Therefore, § 893.28(2) created a “prescriptive right” to continue to provide that service.

¶3 The Stewarts argue that WIS. STAT. § 893.28(2) requires adverse use to establish a prescriptive right and that their contract with Vision constitutes permissive use. We conclude that § 893.28(2) does not require adverse use to establish the prescriptive right. The statute’s language does not include the term “adverse,” even though that term is used in WIS. STAT. § 893.28(1). When a word is used in one subsection and not in another, we must conclude that the legislature specifically intended a different meaning. *See Oney v. Schrauth*, 197 Wis. 2d 891, 901-02, 541 N.W.2d 229 (Ct. App. 1995). The title of the statute, “Prescriptive Rights by Adverse User” is not a part of the statute and is not considered when determining whether adversity is required because the text of the statute is not ambiguous. *See Pulsfus v. Poultry Farms, Inc. v. Town of Leeds*, 149 Wis. 2d 797, 805-06, 440 N.W.2d 329 (1989). The word “prescriptive” does not connote adversity, but merely an interest in the property. In effect, the

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

³ Because we conclude that WIS. STAT. § 893.28(2) resolves the issue, we do not address the applicability of 40 U.S.C. § 541(a)(2) (the Cable TV Act of 1984), or WIS. STAT. § 66.085(2), a recently passed “Access to Cable Service” law.

legislature chose to allocate to the tenants control over the utilities they receive once the services have been provided for ten years, regardless of whether the owners consented to the services. By leasing the property to others, the owners forfeit their right of control. Their compensation comes from the rents they receive.

By the Court.—Judgment reversed.

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

