

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 2000

Cornelia G. Clark
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. 99-2674

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ROBERT L. PRADER,

PLAINTIFF-APPELLANT,

V.

KENNETH L. KEENLANCE, AND SHIRLEY M. KEENLANCE,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Waushara County:
LEWIS MURACH, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Roggensack, JJ.

¶1 PER CURIAM. Robert Prader appeals from a judgment dismissing his claims for punitive damages or rescission arising from the breach of a leaseback provision in a land contract. He claims he was entitled to punitive

damages because Kenneth and Shirley Keenlance acted in bad faith, and that he was entitled to rescission because the land subject to the lease was unique. We reject his contentions and affirm.

BACKGROUND

¶2 Prader sold 57 acres of vacant land to the Keenlances for \$30,000, plus a contribution toward closing costs. Prader had used the land primarily for hunting. However, the parties agreed that the Keenlances would lease 3.5 acres of the land back to Prader at rent of \$1 per year so Prader could use the land to graze livestock.

¶3 Shortly after the sale, the Keenlances contacted several government agencies about the possibility of adding ponds and restoring the land to wetlands. They eventually sold a conservation easement to the DNR for \$38,000 plus reimbursement of construction costs. The excavation of the land encroached on approximately 2500 square feet of the leasehold, and rendered it unsuitable for grazing.

¶4 When Prader brought the encroachment to the Keenlances' attention, they offered him alternate grazing land. Prader refused the offer, and filed suit seeking compensatory and punitive damages or rescission of the contract with damages for unjust enrichment. The trial court awarded Prader \$420 in compensatory damages for the market value of the grazing rights, but denied his claims for punitive damages or rescission of the land contract.

STANDARD OF REVIEW

¶5 Whether punitive damages are available is a question of law which we decide de novo. *See Loehrke v. Wanta Builders, Inc.*, 151 Wis. 2d 695, 701,

445 N.W.2d 717 (Ct. App. 1989). Rescission, however, is an equitable remedy which lies within the trial court's discretion. See *Whipp v. Iverson*, 43 Wis. 2d 166, 168, 168 N.W.2d 201 (1969); *Lueck's Home Improvement, Inc. v. Seal Tite Nat'l, Inc.*, 142 Wis. 2d 843, 847, 419 N.W.2d 340 (Ct.App.1987). We sustain discretionary determinations so long as the trial court considered the facts of record under the proper legal standard and reasoned its way to a rational conclusion. See *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991).

ANALYSIS

¶6 Except in certain insurance cases, Wisconsin does not allow recovery of punitive damages for a breach of contract unless the conduct constituting the breach also constitutes a tort for which punitive damages are available. See *Autumn Grove Joint Venture v. Rachlin*, 138 Wis. 2d 273, 281-82, 405 N.W.2d 759 (Ct. App. 1987).

¶7 Prader alleges that the Keenlances misrepresented to the DNR that they held unencumbered title to the land subject to the leaseback. However, he cites no authority to support the proposition that punitive damages may be awarded on a contract claim based on tortious conduct to third parties, and we are aware of none. In addition, the trial court's finding that the encroachment was an oversight, rather than maliciously intended, was supported by evidence and was not clearly erroneous. We therefore concur in the trial court's conclusion that punitive damages were not available.

¶8 Recession is available when a breach is so substantial as to destroy the essential objects of a contract. See *Appleton State Bank v. Lee*, 33 Wis. 2d 690, 692-93, 148 N.W.2d 1 (1967). Rescission is not available to remedy a breach

of contract which may be compensated by money damages. *See Meas v. Young*, 138 Wis. 2d 89, 98, 405 N.W.2d 697 (Ct. App. 1987).

¶9 Prader challenges the trial court's reliance on parol evidence to establish that the leaseback was incidental, rather than essential, to the land contract. We need not reach this argument, however, because we are satisfied Prader's successful claim for compensatory damages under the contract precluded rescission. *See Meas* at 98. As the trial court noted, Prader failed to show why his animals could not graze on other land. Thus, despite the unique location of the leaseback land adjacent to Prader's barn, there was no reason that Prader could not have his animals graze elsewhere and he was awarded \$420 in damages from the Keenlances for the loss of grazing rights.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

