COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2080

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

ALEXANDER OLSON, A/K/A ALEX OLSON, AND MARY OLSON,

PLAINTIFFS-RESPONDENTS,

V.

WESLEY OLSON AND ELEANOR OLSON,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Barron County: JAMES C. EATON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Wesley and Eleanor Olson appeal a judgment entered in favor of Alexander and Mary Olson finding that an option to purchase contained in a farm lease is valid. Wesley and Eleanor argue that (1) enforcement

of the option violates the statute of frauds; (2) the option results in unjust enrichment; (3) Alexander is estopped from enforcing the option; and (4) the option must fail for lack of consideration. Because the record supports the trial court's award of equitable relief pursuant to WIS. STAT. § 706.04,[1] we affirm the judgment.

I. BACKGROUND

¶2 In its written decision following a bench trial, the court made the following findings. Wesley and Eleanor own a 240-acre farm in Barron County that they operated with their son, Alexander, under a 1982 partnership agreement. The agreement provided for equal distribution of salaries and equity earned. As years passed, the parties revised their agreement. This case arises from the battle between Wesley and Eleanor on the one hand, and Alexander on the other, over the contract they signed in 1991, but had admittedly been operating under since 1990. The contract, entitled "Farm Lease Agreement" purportedly contains an option to purchase upon which this lawsuit centers.[2]

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[1] All statutory references are to the 1999-2000 version unless otherwise noted.

[2] The "Farm Lease Agreement" reads in part:

> 17. OPTION TO PURCHASE. Lessor grants to Lessee an option to purchase the property described Appendix "A" and/or Appendix "B" during the term of this lease in accordance with the terms and conditions hereinafter set forth on Appendix "A" and /or Appendix "B." This option to purchase shall be available to Lessee only in the event that Lessee is in full compliance with all of the provisions of this agreement at the time of the exercise of said option. Exercise of the option by Lessee shall be given to Lessor by written notice at least thirty (30) days before the purchase date or termination of this agreement whichever is earlier. The purchase price shall be $50,000.00 plus assumption of all outstanding mortgages against the premises. Said amount shall be payable as follows: Zero percent (0%) of the purchase price shall be payable at closing. The mortgages shall be paid in

(continued)

¶3 Appendices "A" and "B" were to be attached to the lease/option to purchase agreement and provide the farm's legal description and list of farm equipment. Due to an oversight, however, they were never attached. On June 4, 1998, Alexander gave his parents written notice that he intended to exercise the option. They tore up the notice and this litigation ensued.

¶4 Wesley and Eleanor claimed that the option was invalid under the statute of frauds because the descriptions to be contained in the appendices were not attached. The trial court rejected this contention, explaining:

> First, no one has ever raised even a possibility that the full 240 acres were not included, and with perhaps a lukewarm exception as to the pottery shop, no one seriously contended that its attendant fixtures were not included. Second, a plat map of the entire acreage was available early on for attachment to the document. Third, [Alexander] actually farmed the entire farmstead and had been doing so since inception of the partnership. Fourth, [Alexander] paid taxes on all the real estate and paid utilities for all of the fixtures. Fifth, I found Defendant Wesley disingenuous. His statements with respect to the farm fair market value, his son's contribution to its enhancement, his comments to the effect that his son should feel privileged to be able to work the farm, all debilitated his credibility.

¶5 The trial court also found that Wesley's claim that the option was never valid was undercut by his signature on the agreement, his never telling Alexander of his contrary position, and by his failure to simply cross out paragraph 17 to put Alexander on notice. The court found that, instead, Wesley

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> accordance with the terms thereof at the respective leading institutions. The balance thereof shall be payable in monthly installments calculated on the basis of a 25 year amortization bearing interest on the outstanding principal balance at the rate of 6% per annum with the entire balance due 25 years after the date of closing.

and Eleanor signed the agreement "without equivocation." The court noted that the attorney who represented the parties in drafting the agreement testified that the lease/option agreement included the entire 240-acre farm. In addition, the tax returns, tax payments and utility payments established that all the property, both real and personal, was to be included within the parameters of the option to purchase.

¶6 In addition, the court found reliance on Alexander's part.

> [H]e worked like a Trojan to make good on his portion of the commitment. He made the payments to the banks and to [Wesley and Eleanor]. He paid the taxes, he risked his neck physically, risked his wallet economically and furthermore, he stayed where he was. If [Wesley and Eleanor] had been forthcoming, [Alexander] could have found another place to apply his profession or he could have continued to negotiate with [them]. Either way, he relied on both their action and non-action.

The court found that if the option were to be invalidated, Alexander's ten years of effort would be virtually invalidated. It determined that the elements of equitable estoppel had been met and entered judgment pursuant to WIS. STAT. § 706.04.[3]

[3] WISCONSIN STAT. § 706.04 provides:

> **Equitable relief.** A transaction which does not satisfy one or more of the requirements of s. 706.02 may be enforceable in whole or in part under doctrines of equity, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:
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> (1) The deficiency of the conveyance may be supplied by reformation in equity; or
>
> (2) The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or
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> (3) The party against whom enforcement is sought is equitably estopped from asserting the deficiency. A party may be so estopped whenever, pursuant to the transaction and in good faith reliance thereon, the party claiming estoppel has changed his or her position to the party's substantial detriment under circumstances such that the detriment so incurred may not be

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The judgment awarded Alexander and Mary specific performance under the terms of the option to purchase.

II. DISCUSSION

A. Equitable Alternative to the Statute of Frauds

¶7 Wesley and Eleanor first argue that the option to purchase is void under the statute of frauds, WIS. STAT. § 706.02, for failing to include the real estate description.[4] This argument misses the mark. It was undisputed at trial that

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> effectively recovered otherwise than by enforcement of the transaction, and either:
> (a) The grantee has been admitted into substantial possession or use of the premises or has been permitted to retain such possession or use after termination of a prior right thereto; or
> (b) The detriment so incurred was incurred with the prior knowing consent or approval of the party sought to be estopped.

[4] WISCONSIN STAT. § 706.02 Formal requisites:

> (1) Transactions under s. 706.001 (1) shall not be valid unless evidenced by a conveyance that satisfies all of the following:
> (a) Identifies the parties; and
> (b) Identifies the land; and
> (c) Identifies the interest conveyed, and any material term, condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered; and
> (d) Is signed by or on behalf of each of the grantors; and
> (e) Is signed by or on behalf of all parties, if a lease or contract to convey; and
> (f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01 (7) except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage; and
> (g) Is delivered. Except under s. 706.09, a conveyance delivered upon a parol limitation or condition shall be subject thereto only if the issue arises in an

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the farm lease agreement lacked the appendices that provided the farm's legal description. Because the transaction did not satisfy § 706.02, the trial court proceeded under WIS. STAT. § 706.04. This statute provides for enforcement in equity of a transaction that does not satisfy one or more of the requirements of the statute of frauds, § 706.02. Consequently, our review focuses on the court's award of equitable relief pursuant to § 706.04.

¶8 In ***Gillespie v. Dunlap***, 125 Wis. 2d 461, 373 N.W.2d 61 (Ct. App. 1985), we applied WIS. STAT. § 706.04 to a lease/option-to-purchase agreement, where the agreement lacked the parties' signatures contrary to the statute of frauds' requirements. We concluded that equitable relief in the form of specific performance was appropriate, explaining: "substantial performance of an oral contract conveying land can be enforced if the elements of the contract are clearly and satisfactorily proved so that the contract falls within one of the exceptions to the statute of frauds." ***Id.*** at 466.

¶9 The ***Gillespie*** case applied a mixed standard of review: "Appellate courts separate trial court fact-finding from conclusions of law and apply the appropriate standard of review to each." ***Id.*** at 465. The trial court's findings of fact "will not be upset unless clearly erroneous, but appellate courts give no

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> action or proceeding commenced within such 5-year period and commenced prior to such death.
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> (2) A conveyance may satisfy any of the foregoing requirements of this section:
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> (a) By specific reference, in a writing signed as required, to extrinsic writings in existence when the conveyance is executed; or
>
> (b) By physical annexation of several writings to one another, with the mutual consent of the parties; or
>
> (c) By several writings which show expressly on their faces that they refer to the same transaction, and which the parties have mutually acknowledged by conduct or agreement as evidences of the transaction.

deference to a trial court's conclusions of law." ***Id.*** (footnote omitted). "Statutory construction presents a conclusion of law." ***Id.***[5]

¶10 In ***Spensley Feeds v. Livingston Feed & Lumber***, 128 Wis. 2d 279, 287, 381 N.W.2d 601 (Ct. App. 1985), we referred to WIS. STAT. § 706.04 as the "equitable alternative." In that case, we reviewed the award of specific performance of an oral contract for the sale of a farm supply business. We observed that two requirements under § 706.04 must be met to qualify a real estate transaction for the equitable alternative. ***Id.*** at 288. They are: (1) the elements of the transaction must be clearly and satisfactorily proved, and (2) the transaction must fall within one of three exceptions. ***Id.***

> Each of the three exceptions requires application of an equitable doctrine. The first exception pertains to reformation in equity: that "[t]he deficiency of the conveyance may be supplied by reformation in equity." Section 706.04(1), Stats. The second applies the equitable doctrine of unjust enrichment: that "[t]he party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied." Section 706.04(2). The third is equitable estoppel: that "[t]he party against whom enforcement is sought is equitably estopped from asserting the deficiency." Section 706.04(3).

Id.

¶11 With respect to the third exception, equitable estoppel, "[t]here are essentially three elements required to prove equitable estoppel: (1) action or inaction which induces, (2) good faith reliance by another, (3) to that person's detriment." ***Gillespie***, 125 Wis. 2d at 466.

[5] We recognize that case law exists indicating that the application of an equitable remedy is addressed to trial court discretion. Because Wesley and Eleanor do not address this issue, we apply ***Gillespie v. Dunlap***, 125 Wis. 2d 461, 373 N.W.2d 61 (Ct. App. 1985).

¶12 We conclude that the trial court correctly awarded equitable relief under WIS. STAT. § 706.04. First, the elements of the transaction were clearly and satisfactorily proved. WIS. STAT. § 706.04. Wesley conceded that despite his challenge to the validity of the agreement, the parties operated under its terms since 1990. The record is undisputed that with the exception of July 1998, Alexander performed according to its terms in all respects.[6] Despite the lack of a legal description, Wesley's tax returns established that Alexander was renting the entire 240-acre farm. Also, the attorney who drafted the agreement testified that the description of the farm was to have been supplied by a copy of the plat book. He further testified that the $50,000 option price was included in the lease agreement to protect Alexander from a change in the farm's purchase price. We conclude that the record supports the court's finding that the transaction's elements were clearly and satisfactorily proved.

¶13 Second, the court properly found that the elements of equitable estoppel were met. WIS. STAT. § 706.04(3). Alexander's testimony supports the court's finding that Wesley's and Eleanor's conduct induced Alexander's good faith reliance. Alexander maintained that after the parties had signed the agreement, there was never any suggestion that the option was invalid. When he wanted to make improvements to the farm, his parents would tell him and his wife to "go ahead [and] do what ever we wanted. It was ours anyway." Alexander further testified that when his parents began building a new home on the property,

[6] The agreement required Alexander to make two payments, one, a $2,200 dairy assignment to the Bank of Barron to pay the farm's mortgage, and one for $800 directly to his parents, and to be responsible for all real estate taxes. There is no dispute that Alexander made each payment starting January 1, 1990, through March 2000, with the exception of July 1998, and paid all real estate taxes. The parties dispute whether the July 1998 payment was made.

Alexander reminded him that it would be included in the premises subject to the option to purchase, but that his parents built it anyway.

¶14 Alexander testified that he had signed the lease/option agreement with the understanding that the option to purchase guaranteed that he would eventually own the farm. Since 1990, he performed according to its terms and made improvements to the farm amounting to $87,329.47. Alexander stated that he would not have made those improvements if not for an enforceable option to purchase the farm. He further testified that he made $6,320.43 improvements to the old farmhouse and would not have done so absent the option. Alexander stated that because his parents lived on the premises, they knew of his efforts and the improvements he made. Based upon this testimony, the trial court was entitled to find that Alexander's good faith reliance was to his detriment. Because the trial court properly applied WIS. STAT. § 706.04, we do not overturn its decision on appeal.

¶15 Wesley and Eleanor argue, nonetheless, that the agreement should be found in violation of the statute of frauds because it lacks appendix "B" as well. They argue that the evidence demonstrates that appendix "B" was to contain the list of personal property to be transferred. Because this essential element is lacking, they claim that the entire agreement is unenforceable.[7] We disagree.

¶16 The parties' accountant testified that in 1989, at the termination of the partnership, the real estate was transferred to Wesley and Eleanor and the

[7] Wesley and Eleanor do not address the issue of divisibility of a contract that covers both land and personalty. *See* ***Spensley Feeds v. Livingston Feed & Lumber***, 128 Wis. 2d 279, 381 N.W.2d 601 (Ct. App. 1985). Additionally, they raise no issue with respect to WIS. STAT. §§ 401.206 or 402.201.

cattle and farm equipment were transferred to Alexander. Consistent with that division, after 1990, Alexander claimed depreciation on the farm personalty, and Wesley and Eleanor claimed none. Based on the testimony of Alexander and the accountant, the trial court properly found that the personalty had been transferred to Alexander before 1990 when the parties ended their partnership relationship. Therefore, the court was entitled to find that there was no personalty to be transferred and the lack of appendix B was not fatal to the enforceability of the agreement under WIS. STAT. § 706.04.

¶17 Interwoven in their statute of frauds' argument, Wesley and Eleanor contend that there is insufficient evidence to determine the parties' intention, "i.e. whether there was a meeting of the minds." They quote portions of the record that they claim support their contention. We interpret this argument as a challenge to the court's factual finding that the elements of the transaction were clearly and satisfactorily proved. We defer to the trial court's assessment of weight and credibility of evidence. WIS. STAT. § 805.17(2). To the extent the testimony conflicts, it is the trial court's function to resolve the conflicts. Appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. ***In re Estate of Dejmal***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). We conclude that the trial court was entitled to rely on those portions of Alexander's and the accountant's testimony that supported its findings.[8]

[8] Wesley and Eleanor also suggest, without developing the issue separately, that the trial court erred by accepting extrinsic evidence. However, their brief fails to establish that this issue was preserved for appellate review by raising it before the trial court. ***Anderson v. Nelson***, 38 Wis. 2d 509, 514, 157 N.W.2d 655 (1968).

B. Unjust Enrichment

¶18 Next, Wesley and Eleanor claim that the trial court erred because it failed to consider the unjust enrichment to Alexander and Mary by enforcing the option to purchase.[9] They complain that the court failed to consider that the building of their new home unjustly enriches Alexander and Mary. They claim the value of the new home is $175,000 and, with its mortgage of $110,000, it added $65,000 to the farm's equity. They argue that "Alex did nothing when Wesley and Eleanor built their home on the farm property in 1994."

¶19 The elements of an unjust enrichment claim are (1) a benefit conferred; (2) knowledge or appreciation by the receiving party of the benefit; and (3) acceptance or retention by the receiving party of the benefit under circumstances making it inequitable to retain the benefit without payment of its value. ***Puttkammer v. Minth***, 83 Wis. 2d 686, 688-89, 266 N.W.2d 361 (1978). A review of an unjust enrichment claim presents issues of fact and law, which we review separately. ***Halverson v. River Falls Youth Hockey Ass'n***, 226 Wis. 2d 105, 115, 593 N.W.2d 895 (Ct. App. 1999).

¶20 The record fails to support Wesley's and Eleanor's unjust enrichment argument. The court's findings were abundantly clear that it rejected Wesley's testimony on credibility grounds.[10] Alexander testified that when

[9] Wesley and Eleanor do not clarify the procedural posture in which they are offering this argument. On the one hand, they could be offering it as a defense to Alexander's claim for equitable relief. One the other hand, it could be interpreted as a separate counterclaim. In either event, our conclusion is the same. Based on the record, the court was entitled to reject the argument.

[10] For example, at one point, without reference to any appraisal, Wesley testified that the farm was now worth $1,000,000.

Wesley and Eleanor built the new home next door to the old one, Alexander warned them that the house would be subject to his option to purchase rights. Also, the record shows that Wesley and Eleanor financed $110,000 to build the house by increasing the debt secured by the farm's mortgage. Alexander testified that the value of the new home was in the range of $100,000 to $125,000. Part of the $2,200 mortgage payment Alexander paid to the Bank of Barron every month applied to the debt created by Wesley and Eleanor's new home. Alexander testified that he paid all real estate taxes and insurance on the entire farm, including his parents' new house. He also paid the electric bills for the entire farm, including his parent's new house. Based upon Alexander's testimony, the trial court could reasonably have concluded that any benefit to Alexander was minimal in view of the added financial burden of taking responsibility for the mortgage, real estate taxes, insurance and utility expenses associated with the new house.

¶21 Wesley and Eleanor further contend that Alexander was unjustly enriched because at the time of the signing of the agreement, the equity in the farm exceeded $50,000. However, they acknowledge that the attorney who represented them with respect to drafting the lease agreement testified that at the time he drafted the agreement, the parties agreed that $50,000 accurately reflected the farm's equity.

¶22 The trial court made no specific finding of the amount of equity in the farm in 1990, because it concluded that the issue was not relevant to a determination whether the elements of the transaction are clearly and satisfactorily proved. We agree. The alleged defect with respect to the lease/option concerned the appendices that were to contain the descriptions of the real estate and equipment, if any, to be conveyed. Accordingly, it was unnecessary for the trial

court to make a specific finding as to the equity in the farm in 1990.[11] We conclude that it was reasonable for the court to conclude that under the circumstances, fairness dictated that the parties be held to their agreement.

C. Estoppel as Applied to Alexander's Claim

¶23 Next, Wesley and Eleanor argue that the trial court erroneously found that the equities weighed in Alexander's favor. First, they challenge the credibility of Alexander's testimony that he relied in good faith on the lease/option to purchase agreement. This argument must be rejected, however, because the trial court, not this court, assesses credibility. WIS. STAT. § 805.17(2).

¶24 Wesley and Eleanor also claim that the court ignored their fifty years of building up the farm's value. We are unpersuaded. The court apparently believed the testimony of the parties' former attorney who drafted the agreement. He testified that the lease/option agreement was tax-driven. At the time he drafted the agreement, he had discussions with the parties, who agreed that $50,000 represented the farm's equity at that time. He further testified that the lease/option agreement was advantageous to Wesley and Eleanor in that they would get $180,000 in debt paid off, "[a]nd every day that [Wesley's] debt got paid off, that was a better deal for him." He explained that had Wesley and Eleanor entered into an outright sale of the farm for $230,000 to a third party, they would have netted $50,000 from the sale, but would have ended up with much less due to the substantial capital gains on the $180,000 that was used to pay off debt. Additionally, the court considered testimony to the effect that Alexander's efforts

[11] In any event, the attorney's testimony that the parties agreed that $50,000 fairly reflected the farm's equity in 1990 would support a finding to this effect.

were critical to maintaining the farm as a viable enterprise. Based upon the record, the trial court was entitled to reject Wesley and Eleanor's claim that Alexander should be estopped from enforcing the option.

D. Consideration

¶25 Finally, Wesley and Eleanor claim that the lease/option agreement is unenforceable due to a lack of consideration. We disagree. Consideration may take the form of a change in position taken by one to his detriment and in reliance on an agreement.

> The requirement ordinarily stated for the sufficiency of consideration (sometimes referred to as the "reality" of consideration) to support a promise is, in substance, a detriment incurred by the promisee or a benefit received by the promisor at the request of the promisor.
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> ….
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> Both benefit and detriment have a technical meaning. Neither the benefit to the promisor nor the detriment to the promisee need be actual. "It would be a detriment to the promisee, in a legal sense, if he, at the request of the promisor and upon the strength of that promise, had performed any act which occasioned him the slightest trouble or inconvenience, and which he was not obliged to perform."

First Wisconsin Nat'l Bank v. Oby, 52 Wis. 2d 1, 5-6, 188 N.W.2d 454 (1971) (citation omitted).

¶26 We are satisfied that the record supports the court's finding that Alexander, on the strength of the promise contained in the lease/option agreement, "worked like a Trojan" to make good on his commitment. This finding demonstrates sufficient consideration. Although Wesley and Eleanor claim that Alexander's efforts were required under the terms of the lease alone, Alexander

testified that, absent the option, he would not have performed the agreement. The court was entitled to accept Alexander's version of the facts on credibility grounds. WIS. STAT. § 805.17(2). As a result, Wesley and Eleanor's argument fails.

III. CONCLUSION

¶27 Without labeling them as such, Wesley and Eleanor's arguments consist of a series of what are essentially challenges to the trial court's factual findings. They are asking us to substitute their version of the facts for the trial court's. Because the record, however, provides ample support for the trial court's findings, its factual findings are not clearly erroneous.

¶28 Additionally, the court correctly applied applicable law. It recognized that in equity,

> [a] contract for the transfer of an interest in land may be specifically enforced notwithstanding failure to comply with the Statute of Frauds if it is established that the party seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by specific enforcement.

Spensley Feeds, 128 Wis. 2d at 290 n.5 (citation omitted). Because the trial court applied properly found facts to the correct legal standard, we do not overturn its decision on appeal.

By the Court.—Judgment affirmed.

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