

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 6, 2001

Cornelia G. Clark
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. 00-3266

Cir. Ct. No. 99-CV-349

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GHEORGHE JUGUREANU AND TUDORITA JUGUREANU,

PETITIONERS-RESPONDENTS,

V.

JOHN CRETU AND MICHAELA CRETU,

RESPONDENTS-APPELLANTS.

APPEAL from a judgment and an order of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. John and Michaela Cretu appeal from a judgment in favor of Gheorghe and Tudorita Jugureanu and from an order denying their motion to reconsider. The issues are: (1) whether the trial court misused its discretion in refusing to continue the trial; (2) whether the trial court properly

partitioned the property; and (3) whether the trial court properly denied the motion for reconsideration. We affirm.

¶2 The Cretus and the Jugureanus, as tenants in common, own two lots with a residential structure designed for two families on Lake Redstone, in Sauk County. They also own a condominium in Illinois as tenants in common. The Jugureanus filed an action for partition of the property on Lake Redstone. After a trial to the court, the trial court awarded Lot 10, with a value of \$46,000, to the Cretus, and Lot 11, with a value of \$125,000, to the Jugureanus, and ordered the Jugureanus pay the Cretus \$39,500 to make up for the difference in valuation between the two lots. The residence is located on Lot 11. The trial court also reduced the \$39,500 payment by \$2,494 to reimburse the Jugureanus for costs they had incurred to maintain the property.

¶3 The Cretus first argue that the trial court misused its discretion in refusing to continue the trial. Whether to grant a request for a continuance is committed to the trial court's discretion. *Robertson-Ryan & Assocs., Inc. v. Pohlhammer*, 112 Wis. 2d 583, 587, 334 N.W.2d 246 (1983). The trial court misuses its discretion if it "fail[s] to exercise its discretion or if there [is] no reasonable basis for its decision." *Id.* John Cretu requested the continuance on the first day of trial, contending that he believed a mediation agreement between the parties had settled the matter outside of court, and he was therefore unprepared to present evidence. The Jugureanus argued that the trial court should not continue the trial because the Cretus had not taken steps necessary to effectuate the mediation agreement, and the Jugureanus had therefore withdrawn from mediation and had informed the Cretus by letter that they had done so. The trial court refused to continue the trial because the case had been scheduled for trial for over three months, and the parties had not informed the court that they had entered

into a mediation agreement that would possibly affect the scheduling of the trial. The trial court explained the basis for its decision, and its decision was reasonable. Therefore, there was no misuse of discretion.

¶4 The Cretus next argue that the trial court erred in partitioning the property. The Cretus contend that the trial court should have partitioned the house down the middle and drawn a boundary line between the two lots to equalize the size and lake frontage of the two lots. The trial court denied the Cretus' request because the Cretus and Jugureanus were unable to cooperate, an assertion well-supported by the record, and the partition proposed by the Cretus would only exacerbate the problems between them. The trial court awarded the Jugureanus the lot with the dwelling because evidence had been presented that they had lived at the property, while the Cretus had not finished the inside of their half of the residence and had only recently shown interest in the property. The trial court's partition order and the offsetting payment it ordered comply with WIS. STAT. ch. 842 (1999-2000),¹ the partition statute, in all respects. The trial court properly applied the statute to the facts of this case and explained its reasons for ordering the partition as it did. Therefore, there is no merit to the Cretus' claim.

¶5 Finally, the Cretus argue that the trial court should not have denied their request for reconsideration. After partition was ordered, the Cretus obtained appraisals showing that Lot 11 had a substantially higher value than that found by the trial court. The trial court properly refused to consider this new information because the Cretus had failed to make an adequate showing that their failure to

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

present this evidence at trial was justified. The Cretus contend that a new trial should be held to revise the \$39,500 equalizing payment, which was offset by \$2,494 in maintenance costs, to take into account money they spent maintaining a property in Illinois. Any dispute between the parties regarding the Illinois property was beyond the scope of this partition action. The Cretus are not entitled to a new trial.

By the Court.—Judgment and order affirmed.

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

