COURT OF APPEALS
DECISION
DATED AND FILED

June 26, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2560 **Cir. Ct. No. 00-CV-176**

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

B.B.C., L.L.C.,

PLAINTIFF-RESPONDENT,

V.

LILA MAY WOLLINE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed*.

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Lila May Wolline appeals from a judgment terminating her life estate in property owned by B.B.C., L.L.C. Because Wolline's life estate was subject to terms set out in a settlement agreement between the parties and Wolline failed to comply with the settlement agreement, we affirm the judgment terminating her life estate.

¶2 Wolline owned and lived in a home and attached property in Elkhorn, Wisconsin, for sixty-three years. B.B.C. purchased Wolline's property at a foreclosure sale and leased the property back to Wolline with an option to purchase. Wolline defaulted under that lease, and B.B.C. sued Wolline. The parties settled that suit by entering into a settlement agreement that granted Wolline a life estate in the foreclosed property. Under the terms of the settlement agreement, Wolline was to escrow monthly payments for real estate taxes and insurance and pay real estate taxes and insurance for the term of the life estate. Wolline was also "responsible for all major and minor repairs and maintenance, and all utilities on said property." The settlement agreement further provided that if she "fails to pay real estate taxes when due, or maintain insurance, or perform all major and minor maintenance and repairs and keep the utilities current, the Life Estate will terminate."

¶3 After B.B.C. determined that Wolline had failed to comply with the terms of the settlement agreement, B.B.C. commenced a declaratory judgment action asking the circuit court to determine whether the life estate could be terminated. After an evidentiary hearing, the circuit court found that Wolline violated the settlement agreement by not performing maintenance or escrowing for and paying taxes as required. The court ruled that the life estate was conditioned on the terms of the settlement agreement, terminated the life estate, and granted B.B.C. possession of the property. Wolline appeals.

¶4 On appeal, Wolline argues that because she was granted a life estate, the common law of life estates should control and she was only obligated to maintain the property, not improve it. *See* ***Milwaukee Protestant Home v. Ober***, 210 Wis. 109, 115, 245 N.W.2d 122 (1933). Wolline contends that she was only obligated to maintain the property in the condition it was in at the time the life

estate commenced. We disagree with Wolline's premise that the settlement agreement's terms are not relevant to her obligations under the life estate.

¶5 An instrument creating a life estate may impose duties on the life tenant other than those which are traditionally associated with a life estate. ***Banaszak v. Banaszak***, 133 Wis. 2d 358, 362, 395 N.W.2d 614 (Ct. App. 1986). Here, the settlement agreement created the life estate. That agreement is a contract, and construction of an unambiguous contract presents a question of law which we decide independently of the circuit court. ***Id.*** at 362-63. The settlement agreement unambiguously requires Wolline to pay the real estate taxes and insurance for the term of the life estate. The agreement also makes Wolline "responsible for all major and minor repairs and maintenance, and all utilities on said property." The settlement agreement further provides that if she "fails to pay real estate taxes when due, or maintain insurance, or perform all major and minor maintenance and repairs and keep the utilities current, the Life Estate will terminate." Having held that the terms of the settlement agreement control Wolline's obligations as a life tenant, we turn to the circuit court's findings of fact that Wolline did not maintain the property or pay real estate taxes.

¶6 We will uphold the circuit court's findings of fact if they are not clearly erroneous. WIS. STAT. § 805.17(2) (1999-2000). The circuit court as the trier of fact was responsible for determining the weight of the evidence and the credibility of the witnesses. ***Micro-Managers, Inc. v. Gregory***, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988).

¶7 At the evidentiary hearing in this matter, Ryan Zenk testified on behalf of B.B.C. that he toured the property in September 2000 with the property inspector and was very concerned about the lack of maintenance on the property. He found

obvious damage to the foundation, basement, ceilings, floors, roof, gutters and downspouts. In addition, there was water damage throughout the house and there were safety issues relating to electrical service to the house and property. A property inspector hired by B.B.C. also testified regarding the poor condition of the property. Wolline testified that the property's condition was largely unchanged since the time she became a life tenant, although she conceded that she had not made any repairs or performed any maintenance in most of the areas identified by Zenk and the property inspector.

¶8 The court found that the condition of the property had deteriorated since Wolline became a life tenant. The court found that Wolline did not perform major and minor repairs and maintenance relating to the roof, gutters, downspouts, fascia and soffit, siding, porch deck, windows and window sills, front door handle, railings, barn, residential interior ceilings, and electric service and wires. She also did not landscape to address water in the basement or defects in the foundation. These findings are not clearly erroneous based upon the record before this court.[1] It is clear from the circuit court's findings that the court gave greater weight to the testimony of Zenk and the property inspector and to the photographs and videotape of the property.

¶9 Wolline also argues that the circuit court misused its discretion when it terminated the life estate. She suggests that because a declaratory judgment action sounds in equity, *see* ***Baxter v. DNR***, 165 Wis. 2d 298, 303 n.5, 477 N.W.2d 648 (Ct. App. 1991), the circuit court had to do equity. Equity, as Wolline sees it,

[1] The court also found that Wolline did not have the financial means or, at eighty-six years of age, the physical wherewithal to address the property's maintenance and repair needs.

requires a remedy short of terminating the life estate. Again, Wolline premises her argument upon her view that the settlement agreement's terms are not relevant to her obligations. B.B.C. sought a declaratory judgment that Wolline had violated the settlement agreement. The circuit court had to construe the settlement agreement and apply it to the facts as found. Applying the terms of the settlement agreement was not inequitable.

¶10 Wolline argues that the circuit court should have appointed a receiver instead of terminating her life estate and giving possession of the property to B.B.C. *See* ***Roberts v. Roberts***, 247 Wis. 431, 433, 19 N.W.2d 868 (1945) (appointment of receiver can be a remedy when a life tenant fails to pay taxes and make required repairs). We have already held that the terms of the settlement agreement govern.

¶11 We do not see any error by the circuit court in enforcing the settlement agreement. Wolline was represented by counsel when she entered into the settlement agreement, and she does not argue that the agreement was procured by fraud or was otherwise flawed.[2]

By the Court.—Judgment affirmed.

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

[2] To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").