

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 17, 2004

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. 04-0283

Cir. Ct. No. 01CV001172

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**MORTGAGE LENDERS NETWORK, D/B/A FAMILY
CREDIT CONNECTION,**

PLAINTIFF-RESPONDENT,

V.

**SANDRA J. WANGERT-FITZGERALD AND JOSEPH J.
FITZGERALD,**

DEFENDANTS,

**JANET DREWS, DARYL L. WANGERT, AND WISCONSIN
WOMEN'S BUSINESS INITIATIVE CORP.,**

ADDED-DEFENDANTS,

IOLA WANGERT,

ADDED-DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
MARK GEMPELER, Judge. *Affirmed.*

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

¶1 ANDERSON, P.J. Iola Wangert appeals from summary judgment entered in favor of Mortgage Lenders Network (MLN), d/b/a Family Credit Connection, which foreclosed Wangert's claimed interest to a parcel of real estate located in Menomonee Falls. Iola essentially raises two arguments on appeal. First, she argues that genuine issues of material fact still exist as to whether she has an interest in the property superior to MLN's interest. Next, Iola argues that she is entitled to equitable relief under WIS. STAT. § 706.04 (2001-02).¹ We reject both arguments and affirm.

FACTS

¶2 Iola is the widow of the late Harold Wangert, who died in July 1996. Harold's daughter, Sandra J. Wangert-Fitzgerald, acted as the personal representative in the probate of Harold's estate. Harold's will devised a one-third interest in the Menomonee Falls parcel of land that is the subject of this dispute to each of his three children, including Sandra. The will also devised certain personal property and a life estate interest in the Menomonee Falls parcel to Iola. Harold's estate was ultimately probated by informal administration.

¶3 Sandra, as personal representative, mailed two Receipt and Release forms to Iola and to her attorney, for the purpose of acknowledging receipt of certain personal property as well as receipt of a life estate interest in the Menomonee Falls property. Iola executed and returned the Receipt and Release

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

for the personal property, but she did not return the Receipt and Release for her life estate interest. The three Wangert children, including Sandra, also executed and filed Receipt and Release forms for their respective one-third interests in the subject property. In 1997, Sandra recorded a Personal Representatives Deed with the Register of Deed's Office conveying a one-third interest in the property to each of the Wangert children. This document does not reflect a life estate reservation for Iola. Immediately thereafter, each of the three Wangert children conveyed their one-third interests to Sandra and her husband by way of recorded quitclaim deeds. None of these quitclaim deeds reflect a life estate reservation for Iola. Harold's probate file was closed in March 1998 with notice to all interested parties, including Iola.

¶4 In January 1999, MLN recorded a mortgage in the Register of Deed's office as security for a loan to Sandra and her husband in the sum of \$113,900. In April 1999, Iola filed an Affidavit of Interest, in which she declared that she held a life estate in Lot 12 of the Menomonee Falls property. Iola later conceded that the proper lot number is Lot 13. Sandra and her husband ultimately defaulted on the mortgage loan, and MLN then filed this foreclosure action. A judgment of foreclosure and sale against the interests of Sandra and her husband was entered in January 2002. Following entry of the judgment, MLN filed an amended complaint adding as defendants the two other Wangert children and Iola. Iola filed an answer to the amended complaint, alleging that she had a valid owner's interest in the mortgaged premises pursuant to the life estate bequeathed to her in Harold's will and that her life estate interest was superior to the mortgage from MLN.

¶5 MLN filed a motion for summary judgment arguing that Iola failed to establish a claim to the Menomonee Falls property and therefore it was entitled

to judgment as a matter of law. MLN argued that the probate record established that Iola never acquired a life estate in the property, that the Affidavit of Interest failed to establish the existence of a life estate because it contained an incorrect legal description of the subject property and that as a good faith purchaser it was entitled to protection from Iola's claim under WIS. STAT. § 706.08. Iola responded that summary judgment was inappropriate because there were genuine issues of material fact and she was entitled to equitable relief pursuant to WIS. STAT. § 706.04.

¶6 The trial court, after acknowledging its position as a court of equity, nonetheless granted MLN's motion. The trial court found that at the time the mortgage was executed, delivered and recorded, Sandra and her husband were the owners of the property as joint tenants in fee simple absolute. The court determined that Iola had provided an incorrect description of the property in her Affidavit of Interest and that she had no "title, interest or estate whatsoever" in the Menomonee Falls property. The court further declined to assist Iola because she had other alternative avenues of relief, including possible recourse against her attorney in the probate matter or Sandra for failing to fulfill her duties as personal representative. Iola appeals from that decision.

STANDARD OF REVIEW

¶7 We review summary judgment decisions de novo, applying the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). That methodology is well established and need not be repeated here. *See, e.g., Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751. It is sufficient to say that summary judgment is appropriate if there are no genuine issues of material fact

and the moving party is entitled to judgment as a matter of law. *Green Spring Farms*, 136 Wis. 2d at 315. An issue is “genuine” if the evidence is such that reasonable jurors could return a verdict for the nonmoving party. *Baxter v. DNR*, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991). A “material fact” is one that is “of consequence to the merits of the litigation.” *Michael R. B. v. State*, 175 Wis. 2d 713, 724, 499 N.W.2d 641 (1993).

DISCUSSION

Genuine Issues of Material Fact

¶8 We begin by addressing Iola’s contention that the trial court erred in determining that no genuine issues of material fact exist that would necessitate a trial. Iola first argues that issues of fact exist as to whether Sandra properly performed her fiduciary duties as the personal representative of her father’s estate. Next, Iola claims that issues of fact exist as to whether the Affidavit of Interest put MLN on notice of her claimed interest in the subject property.

¶9 Neither of Iola’s alleged factual disputes are of consequence to the merits of the litigation. MLN claims a superior interest in the property as a good faith lender pursuant to WIS. STAT. § 706.08. *See* § 706.08(1) (“[E]very conveyance that is not recorded as provided by law shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate ... whose conveyance is recorded first.”). A good faith purchaser is “one without notice of existing rights in land.” *Grosskopf Oil, Inc. v. Winter*, 156 Wis. 2d 575, 584, 457 N.W.2d 514 (Ct. App. 1990). Even if Sandra was remiss in her duties as personal representative and even if the Affidavit of Interest established Iola’s claimed life estate interest, the fact remains that at the time

MLN properly recorded its mortgage, a search of the record title would not have revealed the existence of Iola's life estate.

¶10 A search of the record title at the time the mortgage was recorded would have revealed that Sandra and her husband owned the property in fee simple by virtue of the quitclaim deeds the other Wangert children filed. A further search would indicate that Sandra and her siblings received their interests in the property by virtue of the personal representatives deeds. None of these conveyances preserved a life estate for Iola. Although Harold's will evidences an intent to devise a life estate to Iola, MLN did not have the duty to dig through the probate record to determine whether Sandra, as personal representative, had properly distributed the property in accordance with the terms of the will. *See* WIS. STAT. § 860.01 ("The rights and title of any purchaser, mortgagee or lessee from the personal representative are not affected by any provision in a will of the decedent or any procedural irregularity or jurisdictional defect in the administration of the decedent's estate."); WIS. STAT. § 865.15 ("If property distributed in kind or a security interest therein is acquired from a distributee by a purchaser, or lender, in good faith, for value and without actual notice that the distribution was improper, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. *Purchasers and lenders have no duty to inquire whether a distribution was proper.*" (Emphasis added.)). Furthermore, because the Affidavit of Interest was not filed until after MLN had recorded its mortgage, it could not have served to alert MLN to Iola's claim. Because Iola's alleged factual disputes are not of consequence to MLN's rights and title to the property as a good faith lender, Iola's first challenge to summary judgment must fail.

Equitable Relief

¶11 Iola submits that she is entitled to equitable relief under WIS. STAT. § 706.04 and the trial court erred in refusing to reform, in equity, the deficiencies in the real estate transactions related to her life estate.² She argues that she is entitled to equitable relief because she lived on the property and paid the taxes on

² WISCONSIN STAT. § 706.04 provides:

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:

(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

(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 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.

the property and Sandra failed to properly carry out her duties as personal representative.

¶12 Although the trial court did not explicitly reference WIS. STAT. § 706.04 in its oral ruling, the court acknowledged its position as a court of equity and examined the relative positions of the parties using equitable principles as its guide. Having carefully reviewed the record and the parties' arguments, we see no reason to disturb the trial court's determination that the balance of the equities of the case tipped in favor of MLN.

¶13 The bottom line is that MLN is a good faith lender who had a right to rely on the record chain of title. Although Sandra failed to create the life estate in accordance with Harold's will, it was not MLN's duty to investigate whether Sandra had properly distributed the property. An attorney represented Iola during the course of probate, and it was up to her attorney to protect her interests. Furthermore, as the trial court noted, Iola has other alternative avenues available for relief. Iola may have an action against Sandra for failing to fulfill her duties as personal representative and against her attorney for failing to represent her interests during probate. Because Iola has these alternatives available to her and MLN was a good faith lender, we uphold the trial court's determination that Iola was not entitled to equitable relief under WIS. STAT. § 706.04.³

By the Court.—Judgment affirmed.

³ In the context of her WIS. STAT. § 706.04 argument, Iola also seems to suggest that the MLN mortgage does not come within the ambit of WIS. STAT. ch. 706. However, in her apparent attempt to make this argument, Iola scarcely goes beyond quoting the statute she says supports her assertion. Because her argument is not fully developed, we decline to address it further. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

Not recommended for publication in the official reports.

