COURT OF APPEALS
DECISION
DATED AND RELEASED

June 20, 1995

No. 94-1961

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

ROBERT KREUTER and
ROBERT YUNKER,

Plaintiffs-Appellants,

v.

CITY OF FRANKLIN and
SCOTTSDALE INSURANCE COMPANY,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Milwaukee County: GEORGE A. BURNS, JR., Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Robert Kreuter and Robert Yunker, the City of Franklin, and the Estate of Helen Datka executed a well agreement in 1979. The well agreement established the respective rights and duties of the parties with regard to a water system to be constructed by Kreuter and Yunker. In the present litigation, Kreuter and Yunker sought to recover the costs associated

with oversizing the water system to serve the Datka Estate land and other unidentified lands. The trial court granted the City's motion for declaratory judgment and barred the recovery of any costs associated with oversizing the water system for the unidentified lands. Kreuter and Yunker appeal from the judgment, contending that the circuit court misconstrued the well agreement. We reject their claim and affirm the judgment.[1]

Kreuter and Yunker owned property that they developed as the Whitnall Edge subdivision. The City required them to construct, at their expense and subject to the City's standards, a water system to serve the proposed subdivision and adjacent land owned by the Datka Estate. Kreuter and Yunker claim that the City also required a system capacity that exceeded the needs of the identified lands. By affidavit, William C. Frazier, the engineer who supervised construction of the well for Kreuter and Yunker, stated that the excess capacity of the water system was 350 residential units. Frazier also indicated that because of the size of pipes required by the City, the excess capacity could be increased to 1,200 residential units by simply increasing the pump size.

At issue in this appeal is whether Kreuter and Yunker are entitled to reimbursement for the costs of building excess capacity into the water system beyond that necessary to satisfy the needs of their land and the Datka Estate's land. They base their claim on paragraphs 6(c) and 7 of the well agreement. The following portions of those paragraphs are relevant to this issue:

6. Connection Fees, Reimbursement

(c) In the event that [Kreuter and Yunker] and [the Datka Estate] construct the Water System with a capacity in excess of that necessary to satisfy the water requirements of the properties described in Paragraph 3, the City shall charge a water connection fee based on the [equivalent multi-family persons] described herein for each property,

[1] The well agreement provided a mechanism for Kreuter and Yunker to recover the costs associated with oversizing the water system to accommodate the Datka Estate land. This portion of the lawsuit was ultimately settled and is not before us on appeal.

other than those described in Paragraph 3, and except as provided herein, which connects to the Water System, including extension thereof, of not less than the following amounts, which amounts shall be paid by the City to [Kreuter and Yunker], or [the Datka Estate] as the case may be, upon the City's collection thereof, and which collection shall be made prior to the connection to the Water System.

....

7. (a) Reimbursement Formula

The total reimbursement to [Kreuter and Yunker] and [the Datka Estate], pursuant to Paragraph 6 shall not exceed the reimbursement amount as determined by the following formula:

$\frac{A - B}{A}$ x Costs + 8% per annum = Reimbursement Amount;

where "A" is the actual water capacity of the Water System as determined by test, "B" is the amount of water capacity required by the properties described in Paragraph 3, and "Costs" includes [Kreuter and Yunker's] and [the Datka Estate's] total costs (including labor, materials, engineering and supervision) of the Water Syste[m], less the cost of the water main....

(b) The reimbursement shall be for a period of ten (10) years from the date of transfer of title and after ten (10) years from the date of the transfer, no reimbursement shall be made by the City.

Paragraph 3 provided as follows:

3. Properties Involved: In City of Franklin, Milwaukee County Wisconsin (See annexed exhibit)

> Such other properties as the City Engineer shall agree in writing to include in the system upon written application therefore from [Kreuter and Yunker] and [the Datka Estate]. No additional properties shall be included under this agreement after the City assumes ownership of the water system.

No exhibits are attached to the copies of the agreement contained in the record. The parties agree, however, that the agreement covered lands owned by Kreuter and Yunker and by the Datka Estate.

Citing the above provisions, Kreuter and Yunker argue that their right to reimbursement from water connection fees was triggered when the water system was constructed "with a capacity in excess of that necessary to satisfy the water requirements of the properties described in [p]aragraph 3," i.e., Kreuter and Yunker's property and the Datka Estate's land. Further, the connection fees are chargeable to non-paragraph 3 property connected to the water system within ten years from the date title to the water system was transferred to the City. Kreuter and Yunker alleged that although the City had assumed operation of the water system, actual title has not been transferred.

The City argued that the well agreement was unambiguous and under its terms, the connection fee applied only to units located on property added to the agreement pursuant to paragraph 3. The City also argued that the right to add additional properties was cut off when the City assumed operations. The City assumed operation of the water system in December 1990. Prior to that time, no additional lands were added; consequently, no reimbursement was due.

The trial court held that title to the system was effectively transferred to the City when it assumed operations in 1990. The court rejected Kreuter and Yunker's argument that the addition of land to the well agreement was not a prerequisite to reimbursement. The court stated, "[U]nder [p]aragraph 3, the intendment of the contract is clear that no additional property serviced by the City should be included under the formula for reimbursement after the City assumes ownership of the water system."

Kreuter and Yunker contend that the trial court's construction of the well agreement viewed paragraph 3 in isolation and ignored other provisions of the agreement. In addition to arguing that they are entitled to reimbursement based upon the language of subparagraph 6(c) and paragraph 7, they argue that construction of excess capacity is tantamount to adding land under paragraph 3. They also argue that the trial court's construction negates the ten-year payout period for reimbursement. They do not, however, challenge the trial court's conclusion that assumption of operations was the equivalent of transfer of title.

Construction of a contract presents a question of law, and appellate courts need not defer to the trial court's interpretation. ***Waukesha Concrete Prods. Co. v. Capitol Indem. Corp.***, 127 Wis.2d 332, 339, 379 N.W.2d 333, 336 (Ct. App. 1985). The court's objective when construing a contract is to ascertain the intent of the parties from the contract language. ***Id.*** A basic tenet of contract construction is that the court should select a construction that gives effect to each word or provision of the contract. ***Jones v. Jenkins***, 88 Wis.2d 712, 722, 277 N.W.2d 815, 819 (1979). Similarly, the meaning of a particular contract provision is ascertained by reference to the contract as a whole. ***Crown Life Ins. Co. v. LaBonte***, 111 Wis.2d 26, 36, 330 N.W.2d 201, 206 (1983).

Read in isolation, subparagraph 6(c) and paragraph 7 appear to support Kreuter and Yunker's claim. The total potential reimbursement amount is the cost of oversizing the water system beyond the needs of Kreuter and Yunker's property and the Datka Estate's land. Subparagraph 7(a). The reimbursement is derived from water connection fees for properties not described in paragraph 3, and subparagraph 6(c) does not specifically limit the connection fees to those for land added to the well agreement under paragraph 3.

Our review of the entire well agreement, however, convinces us that the parties' intent was to limit reimbursement to connection fees from land added to the well contract. Subparagraph 4(a) establishes the construction requirements for the water system. It provides that Kreuter and Yunker would bear the expense of constructing a system sufficient to serve the Whitnall Edge subdivision and that the Datka Estate would be responsible for expenses necessary to oversize the system to serve the Estate's lands. The subparagraph also provides that "[i]f additional lands are added to the system under

paragraph c [sic] of this agreement, the system capacity shall be increased under recognized engineering design standards to include the additional land." Subparagraph 4(b) sets forth the system capacity in terms of gallons per minute for fire supply and for the domestic needs of the two identified tracts of land. The subparagraph also provides that "[i]f additional land is added to the service area as provided for in paragraph 3 of this agreement, the capacities as stated above shall be increased to reflect the added services area." Additionally, neither Kreuter and Yunker nor the Datka Estate were guaranteed full reimbursement of their costs. Subparagraph 7(e) expressly provided that "[t]he City in no way guarantees [Kreuter and Yunker] nor [the Datka Estate] that they will be totally reimbursed for the cost within the ten (10) years."

As the above discussion indicates, the requirements for the construction of the water system were defined in paragraph 4. The capacity was to be increased if additional land was added to the system under paragraph 3. Paragraphs 6 and 7 provided the mechanism for reimbursement to Kreuter and Yunker if the system was oversized for the additional land. The well agreement did not provide a mechanism for reimbursement when the water system was oversized for unidentified land. Therefore, the trial court decision is affirmed.

By the Court. – Judgment affirmed.

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