COURT OF APPEALS
DECISION
DATED AND RELEASED

September 28, 1995

No. 95-0507

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

JOEL E. BOHRINGER,

Plaintiff-Respondent,

v.

DANIEL J. BOHRINGER,

Defendant-Third Party Plaintiff-Appellant,

WAUKESHA STATE BANK,

Third Party Defendant.

APPEAL from a judgment of the circuit court for Grant County: GEORGE S. CURRY, Judge. *Affirmed*.

Before Eich, C.J., Dykman and Vergeront, JJ.

PER CURIAM. Daniel J. Bohringer appeals from a judgment declaring Joel E. Bohringer the owner of a disputed one-half acre parcel. The

dispositive issue is whether the trial court's findings of fact in support of the judgment are clearly erroneous. *See* § 805.17(2), STATS. Because we conclude that they are not, we affirm.

The parties are brothers and the disputed property was once the family homestead. In 1984, Joel purchased it and a separate twenty-acre parcel from his sister. For the next several years, Daniel testified that he frequently visited the property and invested substantial time and effort in repairing the homestead, which had fallen into ruin. As a result of his efforts, the one-half acre parcel increased in value from nothing to $3,000, according to a Grant County tax assessor.

Joel commenced this action in 1991 to evict Daniel from the renovated premises after Daniel began staying there from time to time. Daniel defended and counterclaimed on the grounds that he owned the property. As proof, he produced a quitclaim deed signed by Joel dated April 25, 1988, giving him title to the twenty-acre parcel. He testified that the one-half acre parcel was omitted by mistake and asserted that the deed should be reformed to award him both parcels.

Joel testified that he never intended to convey either parcel and did not know how his signature got on the document, although he admitted that it was his signature. The trial court found that the parties intended the deed to be "an equitable deed of trust as security for the repayment of the $3,000 Daniel invested in the property." The court also found that the parties intended that the deed include both parcels. The resulting judgment allowed Joel clear title to both parcels once he paid Daniel the $3,000.

Both Daniel and Joel appealed. We held on appeal that the quitclaim deed conveyed only the twenty-acre parcel to Daniel. We then remanded for a determination whether the deed should be equitably reformed under § 706.04, STATS., to convey the one-half acre parcel to Daniel as well. ***Bohringer v. Bohringer***, No. 92-2591, unpublished slip op. at 4-5 (Wis. Ct. App. Feb. 10, 1994) (***Bohringer I***).

On remand, the trial court found that there was no credible evidence that Joel ever intended that the quitclaim deed convey the one-half acre parcel. The court also concluded that equitable considerations did not favor Daniel's claim. Accordingly, Joel received quiet title to the property.

In order for a real estate transaction to be reformed and made enforceable under § 706.04, STATS., the claimant must prove by clear and satisfactory evidence that the grantor or grantors assented to it. ***Nelson v. Albrechtson***, 93 Wis.2d 552, 561, 287 N.W.2d 811, 816 (1980). The trial court resolved that issue in Joel's favor, based on his testimony that he never intended to transfer the parcel. That credibility determination is not subject to review. ***Leciejewski v. Sedlak***, 116 Wis.2d 629, 637, 342 N.W.2d 734, 738 (1984). Our deference to it renders it impossible to hold the court's finding on intent clearly erroneous.

Daniel points out that the trial court's finding on Joel's intent contradicts its finding on that issue in the decision we reversed in ***Bohringer I***. Daniel contends that the court could not later change its finding having once ruled that Joel intended to transfer both parcels. However, when we reversed the court's decision in ***Bohringer I***, we necessarily set aside the findings that supported that decision. Nothing, therefore, prevented the court from re-evaluating the evidence and reconsidering its initial findings on remand.

Because we affirm the trial court's finding on Joel's intent, and because that finding precludes relief under § 706.04, STATS., we need not review the court's alternative grounds for denying relief.

By the Court.—Judgment affirmed.

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