

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 2008

David R. Schanker
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. 2007AP1457

Cir. Ct. No. 2006PR51

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE ESTATE OF KURT B. LUEDTKE, DECEASED:

RUBY LUEDTKE,

APPELLANT,

V.

MICHAEL STERN AND ALLEN STERN,

RESPONDENTS.

APPEAL from orders of the circuit court for Clark County: JON M. COUNSELL, Judge. *Affirmed.*

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Ruby Luedtke appeals orders resolving a dispute over the estate of her son, Kurt Luedtke, who died intestate. The issue is whether

Kurt's interest in a farm, received by deed from Ruby just before Kurt's death, belongs to the estate, or reverts to Ruby. We affirm the trial court's determination that the disputed property belongs to the estate.

¶2 The parties stipulated to the following facts. Ruby owned a 120-acre farm, and Kurt lived on the farm with her. On December 6, 2005, Ruby quit-claimed a life estate interest in the farm to herself, and an individual remainder interest to Kurt. On December 7, 2005, Kurt died, intestate, in an automobile accident. Ruby became personal representative of the estate. Kurt's two minor sons claimed his interest in the farm as the heirs to his estate. Ruby disputed the claim, and asserted that Kurt's interest reverted to her on his death.

¶3 Accompanying the deed was an agreement setting forth the rights and responsibilities of each party to the deed while Ruby maintained her life estate interest.

¶4 Ruby contended that the interest she deeded to Kurt was a remainder interest subject to the condition that he survive her. However, the trial court concluded that Kurt's remainder interest was an "indefeasibly vested remainder interest," as defined in WIS. STAT. § 700.05(1) (2005-06),¹ and nothing in the deed or accompanying agreement showed an intent to exempt it from the laws of inheritance. Ruby appealed after the trial court denied reconsideration. She contends on appeal that the terms of her agreement with Kurt clearly and unambiguously provide that Kurt's remainder interest was not his to pass on until Ruby died, and therefore reverted to her when he predeceased her.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶5 The interpretation of a contract presents a question of law. *Rock Lake Estates Unit Owners Ass’n v. Township of Lake Mills*, 195 Wis. 2d 348, 355, 536 N.W.2d 415 (Ct. App. 1995). If the contract is unambiguous, we determine the parties’ intent by examining the terms of the contract, without consideration of extrinsic evidence. See *Huml v. Vlazny*, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807. What the parties believed the contract to be is not determinative because objective rather than subjective intent is the test. *Shelley v. Moir*, 138 Wis. 2d 218, 222, 405 N.W.2d 737 (Ct. App. 1987).

¶6 A real estate contract must identify any “condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered.” WIS. STAT. § 706.02(1)(c). More specifically, remainder interests are subject to the laws of inheritance, if the owner predeceases the owner of the life estate, unless a valid condition or limitation provides that the remainder interest ends at death. WIS. STAT. §§ 700.06 and 700.07. Any such condition or limitation cannot be proven by extrinsic evidence, but must be expressed in the document of conveyance. See *Baraboo Nat’l Bank v. State*, 199 Wis. 2d 153, 160, 544 N.W.2d 909 (Ct. App. 1996).

¶7 Ruby identifies three parts of her agreement with Kurt that, in her view, clearly express an intent that Kurt’s interest ended with his death, and reverted to her. Section 4 provides that “[Kurt] does not have the right, without written approval of [Ruby], to possession, ownership or control of the real property, except upon the death of [Ruby], or, [Ruby moves from the premises and remains away for more than six months].” Section 9 provides that “[Kurt and Ruby], during the life estate interest of [Ruby], ... agree they shall not convey, dispose, [or] assign ... the subject real property nor allow the ... execution of any interest in the subject real property by any third person ... without written

approval of [Kurt and Ruby].” Section 12 provides that the agreement “is not transferable, nor assignable, nor attachable” except by mutual consent.

¶8 These sections of the contract between Kurt and Ruby defined the nature and limits of the remainder interest while both parties remain alive. There were, indisputably, limitations on Kurt’s ownership rights to the remainder interest. For example, he could not sell it. However, the limits contained in Sections 4, 9 and 12 do not clearly and unambiguously state that the remainder interest ended with Kurt’s death, or that the interest reverted to Ruby in that event. In fact, those sections do not address the consequences of Kurt’s death in any way. Nor do any other sections of the contract. The only reasonable construction of the contract is that the parties failed to contemplate Kurt’s death before Ruby’s, and reached no agreement on the consequences should it occur. Therefore, the contract contains no condition or limitation that prevents the interest from passing to Kurt’s heirs upon his death.

By the Court.—Orders affirmed.

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

