

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 29, 2009

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. 2008AP780

Cir. Ct. No. 2004CV10968

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

INNA LEBEDINSKY,

PLAINTIFF-APPELLANT,

V.

SHUKHRAT AKHMEDOV,

DEFENDANT-RESPONDENT,

RANO DJURAEVA,

DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. DWYER, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 KESSLER, J. Inna Lebedinsky appeals from a judgment dismissing her claims for unjust enrichment and conversion.¹ She argues that the trial court erroneously exercised its discretion when it denied her claims based on the “clean hands doctrine,” having concluded that Lebedinsky lacked clean hands. We affirm.

BACKGROUND

¶2 Lebedinsky brought this action against Shukhrat Akhmedov, with whom she had worked and had been friends. She alleged that she purchased a condominium in February 2003 via a foreclosure sale. First, Lebedinsky put her daughter’s name on the title; later, she changed it to a female friend. In August 2003, Lebedinsky arranged to transfer the condominium to Akhmedov via a quit claim deed. She freely admitted at the court trial,² and states again on appeal,³ that the reason she transferred the property to other people was to keep it out of the marital estate at issue in her contested divorce action.

¶3 During the court trial, the trial court heard extensive testimony concerning the circumstances under which Lebedinsky came to transfer the

¹ The trial court also dismissed Lebedinsky’s claims for breach of contract, specific performance, declaration of interest in real property and judicial rescission. On appeal, she states that she is not challenging the dismissal of those claims. Therefore, we will not discuss them.

² Lebedinsky testified that after she separated from her husband in September 2001, her lawyer told her that everything she purchased while the divorce was pending would be separate property. She said that she subsequently learned from another lawyer that that was not the case. Thus, she explained, to avoid having the condominium in the marital estate as she went through the divorce, she decided to title the property in the names of other people. The transfer of the title from the female friend to Akhmedov occurred when the woman said she no longer wanted the property in her name.

³ Her brief states: “Lebedinsky transferred the condominium to Akhmedov in order to avoid the condominium from becoming part of the divorce estate.”

property to Akhmedov. Lebedinsky claimed that Akhmedov had never paid Lebedinsky anything for the condominium and had refused to relinquish it. In contrast, Akhmedov asserted that he had paid Lebedinsky \$50,000 in cash for the property.

¶4 The trial court found that neither Lebedinsky nor Akhmedov was credible.⁴ It stated: “Miss Lebedinsky’s credibility is nonexistent, she simply has none.” With respect to Akhmedov’s alleged transfer of \$50,000 in cash, the trial court found that the transfer did not occur. Without resolving every disputed fact, the trial court offered its opinion of what had likely happened:

What I think happened is Miss Lebedinsky, who was trying to hide this property from her ex-husband and the Court, ran out of the scheme she had in place ... [involving her female friend], and needed somebody else. At the time Mr. Akhmedov was an ally and friend and agreed to take title to the property as a favor to her. That remained the state of being ... until mid[-]2004, whereupon something changed. I have no idea what that was. I speculate that it might have been that Mr. Akhmedov, who is getting more and more shrewd about the ways of America,⁵ might start to figure that he’s got a deed in his name which gives him entire control of this property.

⁴ The trial court’s oral decision detailing its findings and conclusions was not included in the appellant’s appendix. This constitutes a failure to follow WIS. STAT. RULE 809.19(2)(a) (2007-08), which requires that the appendix contain “at a minimum, the findings or opinion of the circuit court and limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court’s reasoning regarding those issues.” As a result, the judges on this court were unable to review the trial court’s findings and conclusions without retrieving the actual transcript from the appellate record. This imposes an unnecessary burden on this court, as we explained in detail in *State v. Bons*, 2007 WI App 124, ¶¶20-25, 301 Wis. 2d 227, 731 N.W.2d 367. Once again, we remind all counsel that the Rules of Appellate Procedure must be followed precisely, and the failure to do so may result in sanctions.

⁵ Both Lebedinsky and Akhmedov emigrated to the United States from the former Soviet Union.

¶5 The trial court then found that Lebedinsky’s claims were barred by the clean hands doctrine. It explicitly found that Lebedinsky had “unclean hands with regard to the ownership of the property.” It recognized that if Lebedinsky had not tried to improperly keep the property out of the divorce, “she would not need the assistance of the Court.”

¶6 The trial court was not persuaded by Lebedinsky’s suggestion that the clean hands doctrine should not apply because her hands were unclean only “as between herself and the [divorce] Court, or herself and her husband,” and not “as between herself and Mr. Akhmedov.” Therefore, the trial court dismissed Lebedinsky’s claims for unjust enrichment and conversion based on the clean hands doctrine. This appeal follows.

DISCUSSION

¶7 Lebedinsky argues that the trial court erroneously exercised its discretion when it dismissed her claims for unjust enrichment and conversion based on application of the clean hands doctrine. The clean hands doctrine refers to “the equitable doctrine that a plaintiff who seeks affirmative equitable relief must have ‘clean hands’ before the court will entertain his plea.” *S & M Rotogravure Serv., Inc., v. Baer*, 77 Wis. 2d 454, 466, 252 N.W.2d 913 (1977). “For relief to be denied a plaintiff in equity under the ‘clean hands’ doctrine, it must be shown that the alleged conduct constituting ‘unclean hands’ caused the harm from which the plaintiff seeks relief. *Security Pac. Nat’l Bank v. Ginkowski*, 140 Wis. 2d 332, 339, 410 N.W.2d 589 (Ct. App. 1987). In other words, ““it must clearly appear that the things from which the plaintiff seeks relief are the fruit of its own wrongful or unlawful course of conduct.”” *Id.* (citation and emphasis omitted).

¶8 “Whether to award equitable relief is within the trial court’s discretion.” *Timm v. Portage County Drainage Dist.*, 145 Wis. 2d 743, 752, 429 N.W.2d 512 (Ct. App. 1988). On appeal, “[w]e will uphold the trial court’s discretionary decision if it examined the relevant facts of record, applied the correct legal standard, and reached a conclusion that a reasonable judge could reach.” *Hall v. Gregory A. Liebovich Living Trust*, 2007 WI App 112, ¶10, 300 Wis. 2d 725, 731 N.W.2d 649. “We will not overturn a discretionary decision simply because we would have decided the matter differently.” *Id.*

¶9 Applying these standards here, we conclude that the trial court did not erroneously exercise its discretion when it dismissed Lebedinsky’s claims. It is undisputed that Lebedinsky arranged for the condominium to be transferred to Akhmedov to try to prevent it from being divided as part of her marital estate, and that this was improper. Lebedinsky’s argument on appeal is that the clean hands doctrine should not be applied against her because “[e]ven though [she] committed a wrong against her ex-husband, she committed no wrong against Akhmedov.” She argues: “[T]he trial court wrongly used the clean hands doctrine to automatically deny relief to a plaintiff who has engaged in some wrong unrelated to the equitable relations in the present action.”

¶10 We are not persuaded. Lebedinsky’s “conduct constituting ‘unclean hands’” is *precisely* what “caused the harm from which the plaintiff seeks relief.” *See Ginkowski*, 140 Wis. 2d at 339. According to Lebedinsky’s version of the facts, she put the property in her daughter’s name, then in her friend’s name, and then finally arranged to transfer the property to Akhmedov, all so that the condominium would not be included in her marital estate. Now, Akhmedov refuses to return it. The alleged harm—Akhmedov’s failure to return the property—was the fruit of Lebedinsky’s own wrongful course of conduct. *See id.*

¶11 We are also unpersuaded that *Luebke v. Salzwedel*, 157 Wis. 601, 147 N.W. 831 (1914), compels a different result. In *Luebke*, the Wisconsin Supreme Court upheld a judgment canceling a recorded deed where a daughter had fraudulently obtained possession of an undelivered deed from her father. *See id.* at 602-03. The complicated facts and holding were as follows:

[Luebke] got title by deed from his first wife, who thereafter died. [Luebke] married again and with his second wife conveyed the land to [Luebke]'s brother. His second wife secured a divorce, and [Luebke], contemplating making a contract for his support and maintenance with his daughter Emma, who is [the] defendant, procured a warranty deed from his brother running to this daughter, but left it in the custody of another daughter for safe-keeping with instructions not to deliver it. The last mentioned daughter fraudulently and without the knowledge or consent of [Luebke] delivered the deed to Emma, who, without [Luebke]'s knowledge or consent, had it recorded and then refused to enter into any agreement with [Luebke] for his support and maintenance. [Luebke]'s brother then executed another deed of the land directly to [Luebke]. There is evidence to support these findings, and the conclusion based thereon that [Luebke] is [the] owner and that the deed to Emma is void for want of delivery and a cloud on [Luebke]'s title and should be annulled follows legitimately.... It is argued that [Luebke] caused the deed which he and his second wife executed to [Luebke]'s brother and the deed from the latter to Emma to be executed for the purpose of defrauding this wife in the divorce suit soon to be instituted and therefore he should not be heard in equity. But this is a misapplication of the equity rule or rules which deny equity to the worker of iniquity, refuse to aid those in equal delict, and require suitors to reach for their rights with clean hands. Neither of these rules considers inequitable conduct in other or different transactions a bar to relief in the particular transaction under investigation if [Luebke] is otherwise entitled to that relief. Concretely, if Carl Luebke cheated or attempted to cheat his second wife out of this land by a conveyance thereof which he neither delivered nor recorded, that is no reason why his daughter should be permitted to cheat him out of the land by fraudulently or without his consent obtaining possession of the undelivered deed. It is found as a fact resting upon evidence that there

was no delivery of the deed by [Luebke] or by any one for him to Emma.

Id. (italics omitted).

¶12 We reject Lebedinsky’s suggestion that *Luebke* requires trial courts to provide equitable relief to plaintiffs who acted fraudulently in a separate action but did not defraud the individual who was the defendant in the equitable action. As noted, equitable relief is within a trial court’s discretion. See *Timm*, 145 Wis. 2d at 752. Exercising that discretion requires the trial court to examine the circumstances of each case carefully, weighing all the unique facts. In *Luebke*, the court found compelling the fact that Luebke neither personally delivered the deed to Emma nor recorded it. See *id.* at 603. *Luebke* also involved multiple family members who were involved in transferring or delivering the deed. Based on the facts presented, the court in *Luebke* determined that the plaintiff was not barred from seeking equitable relief. See *id.*

¶13 Conversely, the instant case involved Lebedinsky’s transfer of the property first to her daughter, then to her friend and then to Akhmedov—all actions that were taken to keep the condominium out of the marital estate, thereby defrauding the divorce court and Lebedinsky’s husband. When the divorce was over, Lebedinsky tried to elicit the trial court’s help in reversing the fraudulent transfer to Akhmedov. The trial court’s decision to deny Lebedinsky’s request for equitable relief was reasonable and we decline to disturb it.

¶14 Finally, as noted earlier, the trial court also dismissed Lebedinsky’s conversion claim on a ground not related to clean hands. The trial court explained that to the extent Lebedinsky was seeking a legal remedy for conversion (as opposed to an equitable remedy), that claim was denied because Lebedinsky

“failed to meet her burden of proof that she had an entitlement to have the property returned.” Although Lebedinsky has appealed the dismissal of her conversion claim, she does not offer any argument concerning the trial court’s second basis for dismissing that claim. We therefore conclude that Lebedinsky has abandoned any objection she had to the trial court’s dismissal of the conversion claim on the second ground. *See Reiman Assocs., Inc. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981) (issue raised but not briefed is deemed abandoned).

¶15 For the foregoing reasons, we affirm the judgment dismissing Lebedinsky’s claims against Akhmedov.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

