COURT OF APPEALS
DECISION
DATED AND FILED

December 18, 2012

Diane M. Fremgen
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. 2012AP80 **Cir. Ct. No. 2008PR8**

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

IN RE THE ESTATE OF JAMES G. KOEFERL:

ESTATE OF JAMES G. KOEFERL, BY GREGORY J. KOEFERL, PERSONAL REPRESENTATIVE,

APPELLANT,

V.

CHRISTINE OLEINIK,

RESPONDENT.

APPEAL from an order of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. The Estate of James Koeferl appeals the final order resolving Christine Oleinik's[1] claims against the Estate. The Estate argues the circuit court erroneously granted partial summary judgment determining that James and Christine held certain real estate as joint tenants, rather than tenants in common. We reject the Estate's argument, and affirm.

BACKGROUND

¶2 James and Christine cohabitated from 1991 through James's death in January 2008. The two were never married, but Oleinik nonetheless used the name Christine Koeferl. In 2001, the two purchased a farm together. The conveyance provision in the deed provided, in relevant part: "Grantors[] convey and warrant to JAMES G. KOEFERL and CHRISTINE V. KOEFERL, husband and wife, as survivorship marital property, Grantees …."

¶3 The Estate and Christine disputed whether she and James held the property as joint tenants or tenants in common, and each party moved for summary judgment. The Estate argued the deed was ambiguous because James and Christine were not, in fact, married. The circuit court granted Christine's motion, reasoning that application of WIS. STAT. § 700.19[2] to the deed's language mandated the conclusion that Christine and James held the property as joint tenants. The Estate now appeals.

[1] Because Christine Oleinik also went by the last name Koeferl, we will refer to her and James Koeferl throughout the decision by their first names.

[2] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

DISCUSSION

¶4 The parties dispute the proper interpretation of the deed granting the farm to James and Christine. The rules of contract construction apply to interpreting a deed, "which shall be construed according to its terms[.]" WIS. STAT. § 706.10(5); *see also* ***Schorsch v. Blader***, 209 Wis. 2d 401, 409, 563 N.W.2d 538 (Ct. App. 1997). "Our first step in construction of a deed is to examine what is written within the four corners of the deed, for this is the primary source of the [parties'] intent …." ***Rikkers v. Ryan***, 76 Wis. 2d 185, 188, 251 N.W.2d 25 (1977). Where a deed is susceptible to only one interpretation and therefore unambiguous, extrinsic evidence may not be referred to in order to show the parties' intent. ***Id.***; ***Grosshans v. Rueping***, 36 Wis. 2d 519, 528, 153 N.W.2d 619 (1967). Determining whether a deed is ambiguous presents a question of law that we determine independent of the circuit court. ***AKG Real Estate, LLC v. Kosterman***, 2006 WI 106, ¶14, 296 Wis. 2d 1, 717 N.W.2d 835.

¶5 The circuit court applied WIS. STAT. § 700.19 to the deed and determined that James and Christine owned the farm as joint tenants. The Estate does not appear to dispute that, if applicable, the statute mandates such a conclusion. Instead, the Estate primarily argues the statute does not apply because the deed language is ambiguous based on an affidavit from the document's drafter. That argument is a nonstarter.

¶6 This issue is as simple and straightforward as they come. As noted above, in authority taken from the Estate's own brief, we cannot consider the extrinsic evidence upon which the Estate's argument relies. Because we look to the four corners of the deed to determine whether it is ambiguous, extrinsic

evidence cannot render the document ambiguous. *See* ***Huml v. Vlazny***, 2006 WI 87, ¶¶52, 55, 293 Wis. 2d 169, 716 N.W.2d 807.

¶7 Alternatively, the Estate argues the deed is ambiguous because the deed's language—husband and wife, as survivorship marital property—"cannot be applied to determine ownership." The Estate asserts that because James and Christine were not married "these words cannot be applied as written" and "are a legal impossibility." The Estate does not, however, provide any authority for its assertions or, for that matter, explain what it is that the language cannot be "applied" to. Rather, it simply declares, "Words that are legally impossible make the deed ambiguous." We reject arguments that are inadequately briefed or not supported by legal authority. ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

¶8 In any event, the Estate is mistaken. The language is made a "legal possibility" by virtue of *applying* WIS. STAT. § 700.19. Subsection 700.19(1) provides: "GENERALLY. The creation of a joint tenancy is determined by the intent expressed in the document of title, instrument of transfer or bill of sale. …" Subsection 700.19(2), in turn, provides:

> HUSBAND AND WIFE. If persons named as owners in a document of title, transferees in an instrument of transfer or buyers in a bill of sale are described in the document, instrument or bill of sale as husband and wife, or are in fact husband and wife, they are joint tenants, unless the intent to create a tenancy in common is expressed in the document, instrument or bill of sale. …

Pursuant to subsection (2), James and Christine held the property as joint tenants if either they were "in fact" married, or if they were "described in the [deed] as husband and wife." Here, the deed described James and Christine as "husband and wife." As the Estate does not argue that the deed elsewhere expresses an

intent to create a tenancy in common, the only plausible conclusion is that James and Christine held the property as joint tenants.[3]

By the Court.—Order affirmed.

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

[3] In an alternative argument, Christine argues her WIS. STAT. § 867.045 recorded application for administrative termination of James's interest in the joint tenancy constituted a final order for purposes of appeal, and the Estate's appeal was therefore untimely. Were we to reach this issue, we would be inclined to reject it. That statute does not suggest that the recorded application constitutes a final order. Rather, it merely indicates the document has the same effect of termination as a certificate issued by a court under WIS. STAT. § 867.04. Moreover, WIS. STAT. § 863.27 explicitly requires the court to address terminations of joint tenancies in the final judgment if no certificate was issued under § 867.04.