

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 20, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-0794

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GERALD W. SHEPARD AND SANDRA L. SHEPARD,

PLAINTIFFS-APPELLANTS,

V.

DONNA J. RETZLOFF,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dunn County:
DONNA J. MUZA, Judge. *Reversed and cause remanded with directions.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. This action arises out of a boundary dispute. Gerald and Sandra Shepard appeal a judgment declaring that Donna Retzloff owns the disputed parcel. They argue Donna conveyed the disputed parcel to a third party, Karen Retzloff, and to the extent the property description in the land contract was ambiguous, the parties' intent as to the parcel conveyed prevails. We

agree. Therefore, we reverse and remand with directions to the trial court to enter judgment declaring that Donna has no rights in the disputed parcel.

The Shepards commenced this action to resolve their dispute with Donna concerning the ownership of a .33 acre parcel between the Shepards' property and property that Donna conveyed to Karen.¹ At trial, Donna testified that she sold Karen her property that contained a tavern and a ball field. At the time of the sale, she believed this property consisted of approximately ten acres. She testified that she intended to sell "every bit of property" surrounding the tavern. She knew where the north boundary was, but testified that she did "not really" know where the western boundary was. The western boundary is in dispute.

The land contract between Karen and Donna did not contain an accurate metes and bounds description. Anticipating problems with the legal description, the land contract provided:

It is agreed that the description of the parcels of real estate above described will upon acceptance by the Purchaser be better described as a Certified Survey and it is further agreed that the description of the real estate located in the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE1/4) 3-29-12 will be corrected by the said Certified Survey upon acceptance thereof by the Purchaser.

Karen and the Shepards met and reached an agreement as to the west line of the land conveyed by the land contract. Karen obtained and recorded a certified survey, CSM #521, which was recorded. Subsequently, in satisfaction of the land contract, Donna delivered to Karen a warranty deed using the legal description

¹ Karen Retzloff, the purchaser, is related to Donna's late husband.

contained in CSM#521. Because of other discrepancies in the description, the Shepards quitclaimed a small parcel (.001 acre) of the ball field to Donna so that it could be included in her conveyance to Karen.

Some time thereafter, the Shepards hired surveyor Joe Nelson to survey their property. In the course of his survey, Nelson believed that Donna still retained legal title to a pie shaped parcel that lay to the west of the western boundary of the tavern parcel deeded to Karen.² The legal description contained in the warranty deed, as derived from CSM#521, did not contain the disputed parcel. Nonetheless, until Donna received a call from Nelson disclosing his determination, Donna believed that she had conveyed all of the tavern property, including the disputed area, to Karen. When the Shepards requested a deed from Donna to clarify the boundary, Donna refused. This action ensued.

The Shepards argue that Donna conveyed the disputed parcel to Karen upon execution of the land contract. We agree. This issue requires the application of undisputed facts to a legal standard, a question of law we review de novo. *In re Cheryl F.*, 170 Wis.2d 420, 425, 489 N.W.2d 636, 637-38 (Ct. App. 1992). As early as 1855, our supreme court applied these equitable principles to determine the relation between the parties to an ordinary land contract. See *Button v. Schroyer*, 5 Wis. 598, 598-99 (1855). Even though the vendor holds legal title to the property, "the vendee must be regarded as the real owner" for a variety of purposes. *City of Milwaukee v. Greenberg*, 163 Wis.2d 28, 37, 471 N.W.2d 33, 36 (1991). Further, because only the vendee has full

² The metes and bounds description in the deed under which Donna took title to the disputed property did not close. The record does not disclose how Nelson determined that Donna owned the parcel in question.

rights over the land from the date of the contract, we have held that the vendor merely "has an interest in personalty equivalent to a mortgagee's interest" *See id.* (quoting *Mueller v. Novelty Dye Works*, 273 Wis. 501, 507, 78 N.W.2d 881, 884 (1956)).

Therefore, "[w]e start with the premise that a vendor's interest in a land contract is personalty and not real estate under the doctrine of equitable conversion, and that the vendor holds the bare legal title merely as security for payment of the unpaid purchase price." *In re Fischer*, 22 Wis.2d 637, 642, 126 N.W.2d 596, 599 (1964). The parties do not dispute that the legal description contained in the land contract was ambiguous. "When a writing is shown to be only a partial integration of the agreement reached by the parties, it is proper to consider parol evidence which establishes the full agreement, subject to the limitation that such parol evidence does not conflict with the part that has been integrated in the writing." *Production Credit Ass'n v. Rosner*, 78 Wis.2d 543, 548, 255 N.W.2d 79, 81 (1977) (quoting *Morn v. Schalk*, 14 Wis.2d 307, 314, 111 N.W.2d 80, 84 (1961) (emphasis omitted)). In *Clay v. Bradley*, 74 Wis.2d 153, 159, 246 N.W.2d 142, 145 (1976), our supreme court held that when the contract for sale of land contained an indefinite description of property, extrinsic evidence as to description of property was admissible to show property which parties intended to convey.

Thus, the question whether a land contract included the disputed parcel is a matter of the intention of the parties. *See Smith v. Osborn*, 66 Wis.2d 264, 272, 223 N.W.2d 913, 917 (1974). Because the land contract was ambiguous with respect to the western boundary of the land conveyed, the intentions of the parties controlled. *See Johnson v. Westrick*, 200 Wis. 405, 409-10, 228 N.W.

499, 501 (1930); *Lintner v. Office Supply Co.*, 196 Wis. 36, 219 N.W. 420 (1928).

Here, the record is undisputed with respect to the parties' intentions. The parties agree that the legal description in the land contract was inaccurate. Nonetheless, at the time of the execution of the land contract, there was no misunderstanding as to the location of the land intended to be conveyed. Donna testified that she intended to and believed she did convey the entire parcel of land surrounding the tavern south of an identified northern boundary and that her intent was to convey every bit of her land surrounding the tavern to the south of the northern boundary.

It is evident that, to the extent the property was conveyed to Karen under a standard land contract, Donna did not retain any ownership rights other than the bare legal title merely as security for payment of the unpaid purchase price. Once payment was made, and Donna executed a deed in satisfaction of the land contract, her interest was extinguished. Consequently, Donna has no rights, equitable or legal, in the property conveyed to Karen under the terms of the land contract. Therefore, we reverse the judgment and remand with directions to enter judgment declaring that Donna has no rights in the disputed property.

By the Court.—Judgment reversed and cause remanded with directions.

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

