

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 20, 2011

A. John Voelker
Acting 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. 2010AP2858

Cir. Ct. No. 2009CV318

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WILLIAM READ, CHRISTINE R. GREBE AND PAMELA R. MILLEN,

PLAINTIFFS-RESPONDENTS,

V.

SHEILA R. KRONBERG,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Oneida County:
PATRICK F. O'MELIA, Judge. *Reversed and cause remanded with directions.*

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

¶1 PER CURIAM. Sheila Kronberg appeals a judgment in favor of her siblings for her share of unpaid real estate taxes. She asserts the circuit court erred by including her alleged unpaid 2004 taxes in the judgment and by ordering her to

make the payment to her siblings instead of the Oneida County Treasurer's Office. We agree and reverse and remand with directions.

BACKGROUND

¶2 Kronberg owns 27.75% of a property located in Minocqua, Wisconsin. Her siblings, William Read, Christine Grebe, and Pamela Millen own the remaining percentages. In June 2009, the siblings brought suit against Kronberg, alleging, in part, that she "has failed to pay, and is refusing to pay her share of the property taxes back to 2005."

¶3 At the time of trial, the outstanding taxes on the property totaled \$9,456.40. Read testified and introduced evidence showing he, Grebe, and Millen were current on their share of the taxes. He explained Kronberg made one payment of \$1,116.32 in 2009 toward the tax bill, she had been given credit for this amount thereby reducing the taxes owed to \$9,456.40, and this balance was her responsibility. Specifically, Read testified that the outstanding balance represented Kronberg's share of unpaid taxes from 2004 to 2009. Read explained Kronberg's share of the 2004 taxes was \$1,717.29.

¶4 Kronberg objected to the inclusion of the 2004 unpaid taxes in Read's \$9,456.40 amount. She asserted the siblings' complaint alleged only that she had not paid taxes from 2005 onward. The court agreed and determined the trial was limited to unpaid taxes from 2005 and any allegations regarding an unpaid 2004 tax bill would not be considered.

¶5 Kronberg also introduced evidence showing the one payment she made in 2009 was \$1,250, not \$1,116.32. Finally, she contended that any

outstanding tax bill was not solely her responsibility because her siblings had improperly allocated penalties and interest to her.

¶6 The court found that, although Kronberg paid \$1,250 for her share of the real estate taxes, she remained responsible for the outstanding \$9,456.40 balance. Kronberg objected, asserting the \$9,456.40 amount still included her alleged unpaid tax bill from 2004 and, as such, the amount should be reduced by \$1,717.29—her share of the 2004 tax bill. Kronberg also argued that any award should be paid to Oneida County, not the siblings, because the taxes Kronberg allegedly owed were still outstanding.

¶7 The court rounded the outstanding taxes to \$9,456 and reduced that amount by \$1,117 for a total of \$8,339. It stated \$1,117 represented the “rounded off amount” of \$1,116.32, which it noted was the amount Kronberg had previously paid in 2009 for the taxes. Citing equities, the court ordered Kronberg to pay \$8,339 to her siblings “hopefully [to be] attributed to the current tax liability.”

DISCUSSION

¶8 On appeal, Kronberg argues the court erred by failing to reduce the \$9,456.40 amount by her alleged share of the 2004 taxes, and penalties and interest. In her brief to this court, she argues the \$9,456.40 amount should be reduced by \$1,717.29. She also asserts the court erred by ordering she pay the award to her siblings, who have not paid these taxes, including the interest and penalties, and when the bill remains outstanding.

¶9 A circuit court’s factual findings in support of a judgment will not be set aside unless clearly erroneous. *See* WIS. STAT. § 805.17(2).¹ A factual finding is clearly erroneous when it is against the great weight and clear preponderance of the evidence. *Wisconsin Auto Title Loans, Inc. v. Jones*, 2006 WI 53 ¶25, 290 Wis. 2d 514, 714 N.W.2d 155. Kronberg argues that because the court determined she was responsible for the entire \$9,456.40 balance, which represents her unpaid taxes from 2004-2009, the court erred by failing to reduce this amount by her share of the 2004 taxes. We agree.

¶10 Here, the circuit court determined that unpaid taxes from 2004 remained outside the scope of the trial because they were not included in the siblings’ complaint. As a result, when the court determined Kronberg was responsible for the outstanding \$9,456.40 tax bill, which Read testified represented Kronberg’s share of taxes from 2004-2009, the court should have reduced the outstanding amount by the unpaid 2004 taxes. We remand to the circuit court with directions to reduce the \$9,456.40 amount by \$1,717.29, Kronberg’s share of the 2004 taxes.²

¶11 Kronberg next asserts the court erred by directing her to make the payment to her siblings. Specifically, she contends the tax bill remains outstanding and the siblings “cannot be compensated for a loss that they have not

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² We also observe that the evidence shows the \$9,456.40 amount already accounted for any payment Kronberg previously made. Therefore, when the court reduced the outstanding tax bill by what it determined Kronberg previously paid, it essentially gave her a double credit for any alleged payment. Further, we note the court determined Kronberg previously paid \$1,250 but then reduced the outstanding tax bill by \$1,117.

incurred.” She asks that we direct that the judgment award “be ordered paid directly to the Oneida County Treasurer’s Office.” The siblings do not dispute Kronberg’s assertion that the tax bill remains outstanding.

¶12 We recognize that the siblings, as joint owners of the property, remain liable to Oneida County for the unpaid taxes. However, the siblings offer no legal authority for the proposition that Kronberg’s payment should be made to them when they have not directly paid these taxes or incurred the loss. Consequently, on remand, we accept Kronberg’s request on appeal and direct the court to grant judgment ordering her to pay the outstanding taxes directly to the Oneida County Treasurer’s Office.

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

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

