COURT OF APPEALS
DECISION
DATED AND FILED

January 9, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1621 **Cir. Ct. No. 2010SC419**

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

MELISSA A. BRADLEY,

PLAINTIFF-APPELLANT,

V.

NICOLE L. MUSICK AND WILLIAM R. DAVIS,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Melissa Bradley appeals pro se from the circuit court's order transferring all right, title, and interest in a vehicle to respondents

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Nicole Musick and William Davis.[2] The court further ordered that the clerk of courts release $290 in posted funds to satisfy a lien on the vehicle. Bradley argues that the circuit court erred in awarding Musick a free and clear title. She also argues that the court erred in awarding the $290 in funds to the lienholder instead of to her. I reject both arguments and affirm.

Background

¶2 The parties' dispute over the vehicle in this case dates back a number of years. However, the focus of this appeal is on the interpretation of a March 2010 written "stipulated dismissal" (the "stipulation") under which Musick agreed to make payments to Bradley totaling $1,443.50, and Bradley agreed to transfer the vehicle's "title" to Musick immediately upon full payment. There is no dispute that, prior to the March 2010 stipulation, Bradley had taken out a loan on the vehicle resulting in the lien and that Musick was aware of the lien. The parties subsequently disputed compliance with the stipulation. I reference additional facts as needed in the discussion below.

Discussion

Free And Clear Title

¶3 Bradley argues that she agreed in the stipulation only to transfer "title" to Musick. She argues that she never agreed to transfer a "free and clear title."

[2] I refer only to "Musick" regardless whether I mean Musick individually or both Musick and Davis.

¶4 Although Bradley fails to provide a legal framework for her arguments, I will liberally construe them as raising questions of contract interpretation. "'The ultimate aim of all contract interpretation is to ascertain the intent of the parties.'" ***Kernz v. J.L. French Corp.***, 2003 WI App 140, ¶9, 266 Wis. 2d 124, 667 N.W.2d 751 (quoted source omitted). The court "presume[s] the parties' intent is evidenced by the words they choose, if those words are unambiguous." ***Id.*** However, "'[c]ontract language is considered ambiguous if it is susceptible to more than one reasonable interpretation.'" ***Id.***, ¶10 (quoted source omitted). If a contract is ambiguous, then courts use "extrinsic evidence" to determine the parties' intent. ***Id.*** Extrinsic evidence may include the parties' "'acts and deeds … as well as … their words.'" ***Id.*** (quoted source omitted).

¶5 The interpretation of an unambiguous contract is a question of law that an appellate court reviews de novo. ***Town Bank v. City Real Estate Dev., LLC***, 2010 WI 134, ¶32, 330 Wis. 2d 340, 793 N.W.2d 476. Whether a contract is ambiguous is also a question of law the court reviews de novo. ***Kernz***, 266 Wis. 2d 124, ¶8. If, however, a contract is ambiguous, the parties' intent is a question of fact for the fact finder, here the circuit court. *See* ***Town Bank***, 330 Wis. 2d 340, ¶32. This court accepts the circuit court's factual findings unless those findings are clearly erroneous. ***Lellman v. Mott***, 204 Wis. 2d 166, 170-71, 554 N.W.2d 525 (Ct. App. 1996).

¶6 The circuit court held an evidentiary hearing addressing the topic of whether the parties intended that Bradley transfer a free and clear title to Musick. Musick testified that, when the parties entered into the stipulation, Bradley stated on the record before a court commissioner that she would transfer a free and clear title as part of the stipulation. Bradley, in contrast, testified that she did not say that she would transfer a free and clear title.

¶7 As I read the circuit court's decision, the court made two, alternative rulings. First, the court concluded as a matter of law that the only reasonable way to read the stipulation was as intending the transfer of a free and clear title. Second, the circuit court made a factual finding that, even if the stipulation was ambiguous, Musick's testimony showed that the parties intended the transfer of a free and clear title. The court expressly credited Musick's testimony and expressly discredited Bradley's testimony.

¶8 Bradley may mean to argue that the circuit court erred because the stipulation's reference to "title" clearly and unambiguously refers to a title that is not necessarily a free and clear title. If that is one of her arguments, I disagree. Even if that were a reasonable interpretation, it would not be the only reasonable interpretation. I agree with the circuit court that the most reasonable interpretation is that the stipulation's reference to "title" means free and clear title.

¶9 Further, assuming without deciding that Bradley's apparent interpretation of "title" is reasonable and that the stipulation is, therefore, ambiguous, Bradley still loses. Even assuming ambiguity, the circuit court found Musick's testimony on the topic credible and found as a factual matter that the parties intended the transfer of a free and clear title.

¶10 Bradley disputes the circuit court's credibility findings, asserting that the circuit court was acting "in direct contravention of" its ethical and legal responsibilities by basing its decision on its beliefs regarding the parties' credibility. On the contrary, the circuit court was properly fulfilling its duties by deciding between conflicting testimony. And, I must defer to the circuit court's credibility findings. That court is the final arbiter of witness credibility when acting as the fact finder:

> [Q]uestions as to weight of testimony and credibility of witnesses … are matters to be determined by the trier of fact and their determination will not be disturbed where more than one reasonable inference can be drawn from credible evidence. Such deference to the trial court's determination of the credibility of witnesses is justified, the court has said, because of "… the superior opportunity of the trial court to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony."

Johnson v. Merta, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980) (citations and quoted source omitted).

¶11 Bradley points out that during a prior, non-evidentiary hearing the circuit court asked Musick whether anything in the stipulation expressly said that the "title" had to be "clear title" and that Musick admitted that it did not. As I read this exchange, however, the court and Musick were at most acknowledging that the stipulation *might* not be clear on its face. Regardless, as I have already explained, even assuming ambiguity, the court resolved the ambiguity against Bradley at the subsequent evidentiary hearing.

¶12 Bradley asserts that we previously concluded that she "was the only owner and only one entitled to possession of the vehicle." She is apparently referencing our decision in ***Musick v. State Farm Bank***, No. 2008AP2386, unpublished slip op. (WI App Oct. 8, 2009). It is true that we made such a statement in ***Musick***. *See* ***id.***, ¶16. We noted, however, that we were not addressing additional disputes regarding the vehicle that had developed while that appeal was pending. ***Id.***, ¶16 n.8. As far as I can discern, the issues now before me relate to those additional disputes. In any event, Bradley fails to explain why our 2009 statement in ***Musick*** should limit her obligations under the later March 2010 stipulation.

$290 Paid To Lienholder

¶13 It is undisputed that Musick posted $290 in funds with the clerk of courts and that this amount was what Musick still owed to Bradley under the stipulation. Also undisputed is that the lienholder agreed to accept $290 as satisfaction on the lien so that Musick would have a free and clear title. The circuit court concluded that, under these circumstances, the $290 should be paid to the lienholder so that Musick could receive the free and clear title as the parties intended.

¶14 Bradley argues that the court erred in directing the clerk of courts to pay the $290 to the lienholder instead of to her. As far as I can tell, Bradley bases this argument on the assumption that the stipulation did not require Bradley to provide Musick with a free and clear title. For the reasons already explained, that assumption is wrong.

¶15 Bradley makes no other developed argument explaining why she should be entitled to the $290 even if the stipulation required her to transfer a free and clear title. Similarly, Bradley makes no developed argument showing that the circuit court otherwise imposed an improper remedy. I therefore do not address whether there is some other reason why the remedy should not stand. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining requirements for developed appellate arguments and that court of appeals generally does not consider undeveloped arguments); *see also* ***State ex rel. Harris v. Smith***, 220 Wis. 2d 158, 164-65, 582 N.W.2d 131 (Ct. App. 1998) (explaining that the court's obligations to a pro se litigant do not include "creating an issue and making an argument" for the litigant).

¶16 Bradley asserts that she had to take out the loan on the vehicle to pay for repairs or other damages caused by Musick's negligence. However, this assertion appears to be an attempt to relitigate issues that were, or should have been, settled by the stipulation. As already indicated, there is no dispute that the loan and resulting lien pre-date the stipulation. Regardless, Bradley raises this assertion for the first time in her reply brief, and she fails to support it with record or legal citations. I therefore consider it no further. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998) (court of appeals generally does not consider arguments raised for first time in reply brief); ***Pettit***, 171 Wis. 2d at 646-47 (court of appeals generally does not consider undeveloped arguments).

Conclusion

¶17 In sum, for the reasons stated above, I affirm the circuit court's order.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.