

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 1, 2016**

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. 2015AP1071**

**Cir. Ct. No. 2014CV353**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**CENTRAL WISCONSIN ELECTRIC COOPERATIVE,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOHN F. HOFFMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Marathon County:  
JILL N. FALSTAD, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. John Hoffman, pro se, appeals a money judgment of \$18,823.48 entered against him in favor of Central Wisconsin Electric Cooperative (CWEC). Hoffman argues the contract he signed with CWEC that formed the basis for the judgment is unenforceable because it is unconscionable

and was the result of CWEC's fraudulent conduct. In addition, he argues the circuit court erred in concluding he was negligent, he unlawfully interfered with CWEC's prescriptive easement, and in dismissing his breach of contract counterclaim. We reject Hoffman's arguments and affirm the judgment.

## **BACKGROUND**

¶2 CWEC commenced this action against Hoffman alleging: (1) breach of contract; (2) negligence; (3) unlawful interference with an easement; and (4) unlawful interference with a prescriptive easement. Hoffman counterclaimed alleging breach of contract and trespass against CWEC.

¶3 The evidence produced at a bench trial demonstrated that in 2005 Hoffman entered into a written agreement with CWEC, under which CWEC agreed to provide electrical services to Hoffman's property, and in consideration Hoffman agreed to abide by certain rules and regulations. Specifically, under Section 2.2.1 of the Rules and Regulations, Hoffman agreed to be responsible for all costs related to fixing "building modifications" he undertook if those modifications "hinder[ed] access to metering facilities, create[d] a hazardous condition, or cause[d] a violation of any applicable code or cooperative rules."

¶4 In 2010, a CWEC employee, James Netzler, became aware that Hoffman was erecting grain bins on Hoffman's property. The agreement between CWEC and Hoffman required Hoffman to comply with all applicable safety codes. Netzler visited Hoffman's property and determined that the grain bins were not code compliant because they were located too close to CWEC's electrical lines. Bruce Beth, an expert in electrical engineering compliance and safety, testified that Hoffman's grain bins violated the National Electrical Safety Code because a fifteen-foot horizontal clearance did not exist between Hoffman's bins and

CWEC's electrical lines. Pursuant to the terms of the parties' written agreement, CWEC then moved some of the lines underground to bring them into compliance. After Hoffman refused to pay CWEC for moving the electrical lines, CWEC disconnected his electrical service.

¶5 At the conclusion of trial, the circuit court determined that Hoffman: (1) breached his contract with CWEC; (2) unlawfully interfered with CWEC's prescriptive easement; and (3) was negligent in the location of the grain bins on his property. Specifically, the court found Hoffman breached the contract's Rules and Regulations because he failed to comply with the requirement of the National Electrical Safety Code to allow fifteen feet of clearance between his new grain bins and the electric lines, and the placement of his new grain bins created a hazardous condition and violated an implied term of no hindrance. In addition, the court found CWEC had a prescriptive easement in the location of its electrical lines on Hoffman's property, and that Hoffman unlawfully interfered with CWEC's easement by erecting his grain bins within fifteen feet of CWEC's electrical lines. Furthermore, the court found Hoffman negligent because his placement of the grain bins so close to CWEC's electrical lines was unsafe and in violation of applicable safety codes. The court also dismissed Hoffman's breach of contract and trespass counterclaims.<sup>1</sup> As a result, the court entered judgment against Hoffman for the \$18,222.47 in expenses CWEC incurred to move the lines, a late fee of \$505.01 for failing to pay the bill in a timely manner, plus statutory costs and fees. Hoffman now appeals.

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<sup>1</sup> While Hoffman appeals dismissal of his breach of contract counterclaim, he does not appeal dismissal of the trespass counterclaim.

## DISCUSSION

¶6 On an appeal from a bench trial, we will not disturb the circuit court’s factual findings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2) (2013-14).<sup>2</sup> However, we review the circuit court’s conclusions of law de novo. *See City of Muskego v. Godec*, 167 Wis. 2d 536, 545, 482 N.W.2d 79 (1992).

¶7 Hoffman first argues the contract he signed with CWEC is unconscionable and therefore unenforceable. “For a contract or a contract provision to be declared invalid as unconscionable, the contract or contract provision must be determined to be both procedurally and substantively unconscionable.” *Wisconsin Auto Title Loans, Inc. v. Jones*, 2006 WI 53, ¶29, 290 Wis. 2d 514, 714 N.W.2d 155 (footnote omitted).

¶8 Hoffman argues the contract was procedurally unconscionable because the separately written Rules and Regulations were incorporated by reference, rather than being included in the text of the contract. However, that argument is legally incorrect. *See Martinson v. Brooks Equip. Leasing, Inc.*, 36 Wis. 2d 209, 217, 152 N.W.2d 849 (1967) (noting that terms “may nevertheless be made a part of a contract by reference”). Furthermore, parties to a contract are presumed to know the contents of the contract they sign. *See Carney-Rutter Agency v. Central Office Bldgs.*, 263 Wis. 244, 253, 57 N.W.2d 348 (1953) (“It is well settled that, where a party accepts a written instrument in consummation of an agreement entered into, it is his [or her] duty to know its contents ....”). While

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Hoffman claims he never obtained or read the Rules and Regulations referenced in the contract, Hoffman never asked CWEC to provide them to him, and the record shows CWEC never denied Hoffman access to the Rules and Regulations. He only needed to go to CWEC's office to obtain them. Hoffman therefore failed to demonstrate the contract was procedurally unconscionable. *See Jones*, 290 Wis. 2d 514, ¶29.

¶9 Hoffman also argues the contract is unenforceable because it was the result of CWEC's fraudulent conduct. Specifically, he argues CWEC engaged in fraud by incorporating the separately written Rules and Regulations into the contract by reference, rather than being included in the text the contract itself. However, he did not raise this argument before the circuit court.<sup>3</sup> *See Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶11-12, 261 Wis. 2d 769, 661 N.W.2d 476 (declining to address argument not first raised before the circuit court). Moreover, even if we were to reach the merits of his argument, we would reject it, because contractual terms may be incorporated into a contract by reference. *See Martinson*, 36 Wis. 2d at 217.

¶10 Next, Hoffman argues the circuit court erred in finding him negligent because he “did not intentionally violate the [National Electrical Safety Code]” when he constructed the grain bins on his property. However, whether Hoffman *intended* to violate the code is immaterial—as intent is not an element of negligence. *See Hoida, Inc. v. M&I Midstate Bank*, 2006 WI 69, ¶23, 291

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<sup>3</sup> Hoffman also raises some vague arguments concerning CWEC's hiring of counsel and CWEC's failure to adhere to “industry standards.” However, those arguments were also not raised before the circuit court. Therefore, we will not address them. *See Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶11-12, 261 Wis. 2d 769, 661 N.W.2d 476.

Wis. 2d 283, 717 N.W.2d 17. Hoffman also argues that CWEC failed to communicate to him what safety codes were applicable to the electrical lines, but does not clearly explain the legal significance of this purported failure. In any event, the circuit court explicitly found that Hoffman “[was] aware of electrical issues” and “kn[ew] there are government electric and other code requirements to consider before building bins or other structures.” Therefore, the circuit court’s finding of negligence is not clearly erroneous.

¶11 Hoffman next argues the circuit court erred in finding that he unlawfully interfered with CWEC’s prescriptive easement in the placement of his grain bins. Although CWEC’s recorded easements apparently did not span the entire frontage of Hoffman’s property, CWEC established it had a prescriptive easement over that part of Hoffman’s property apparently not covered by its recorded easements. Hoffman concedes CWEC’s electrical lines have existed on his property “for a long time,” but argues CWEC had not proven the existence of a prescriptive easement because “CWEC did not use [Hoffman’s] land to install [an] underground line” and thus did not “need to use [Hoffman’s land] for maintaining their [preexisting electrical] line.” However, CWEC established its open and notorious use of Hoffman’s property to provide electrical service for decades. Therefore, CWEC established a prescriptive easement. *See* WIS. STAT. § 893.28(2). CWEC’s purported lack of use of Hoffman’s property to install a *new* underground line is immaterial.

¶12 Hoffman argues the circuit court erroneously dismissed his breach of contract counterclaim. Specifically, Hoffman claimed damage to his crops allegedly caused by CWEC when it cut off his electricity. While Hoffman did not explicitly frame this claim as breach of contract, we determine it could not be anything else. “The interpretation of a contract is a question of law ... which we

review de novo.” *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). If the contractual terms are clear and unambiguous, as they are here, we interpret the contract without considering extrinsic sources. *See id.* Section 4.5(b) of the Rules and Regulations provides: “If a bill remains unpaid three (3) days after the due date ... [CWEC] shall then have the right to discontinue service to the consumer after eight (8) days written notice.” The circuit court found that Hoffman’s electrical bill remained unpaid “for approximately seven to eight months” and that CWEC gave the required discontinuation of service notice under the parties’ agreement. These findings are not clearly erroneous. *See* WIS. STAT. § 805.17(2). Therefore, we determine the circuit court properly concluded CWEC did not breach the parties’ agreement by cutting off Hoffman’s electricity.

¶13 Hoffman next argues CWEC breached the parties’ contract by incorporating the separately written Rules and Regulations into the contract by reference, rather than being included in the text of the contract itself. Hoffman claims that by failing to give him the Rules and Regulations when he signed the agreement he was misled by CWEC. In support of his argument, he cites a provision of the Rules and Regulation stating CWEC and its employees would refrain from engaging in “[a] practice that would reasonably cause or aid in causing members to misunderstand the true nature of the transaction or their rights and duties.” However, this argument is inadequately developed, as Hoffman fails to show how the failure to incorporate the Rules and Regulations caused him to misunderstand the true nature of his transaction with CWEC or his rights and duties. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (declining to address inadequately developed arguments). In addition, as we previously concluded, contractual terms may be incorporated into a contract by reference. *See supra* ¶¶8-9.

¶14 Finally, Hoffman argues CWEC breached the parties' contract by constructing the new electrical lines underground, rather than above ground. In support of his argument, he cites Section 7 of the Rules and Regulations. However, Section 7 of the Rules and Regulations is inapplicable here. That section applies in situations where CWEC "construct[s] and extend[s] its facilities to serve new loads and replace, relocate or otherwise modify its facilities to the benefit of the specific consumers." Here, CWEC did not construct the new lines to extend its facilities or to otherwise benefit specific consumers. Instead, CWEC constructed the new lines to fix the hazardous condition Hoffman had created. Thus, the construction of the new lines was governed not by Section 7 but by Section 2.2.1 of the Rules and Regulations, in which Hoffman agreed to be responsible for all costs related to fixing "building modifications" he undertook if those modifications "hinder[ed] access to metering facilities, create[d] a *hazardous condition*, or cause[d] a violation of any applicable code or cooperative rules." (Emphasis added.)

*By the Court.*—Judgment affirmed.

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



