

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 5, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0466-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

VIVIAN JENSEN,

Plaintiff-Respondent,

v.

**JOHN A. JROLF,
d/b/a J INVESTMENTS,**

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. John A. Jrolf, d/b/a J Investments (hereafter "Jrolf"), appeals from a trial court judgment barring him from claiming any right, title, or interest in certain real estate owned by Vivian Jensen. Jrolf contends that he had complied with the terms of a stipulation he entered with Jensen and that the trial court should have dismissed Jensen's quiet-title action. By order dated March 15, 1996, this case was submitted to the court on the

expedited appeals calendar. Based upon our review of the briefs and record, we conclude that the trial court did not err in granting judgment to Jensen. We therefore affirm.

The relevant facts are largely undisputed. In June 1985, Marion Lybek deeded certain Milwaukee county real estate to Jrolf. Jrolf did not record the deed with the county register of deeds, however.

In March 1990, Lybek transferred to Jensen a portion of the real estate she had transferred to Jrolf. Jensen properly recorded the quit-claim deed with the register of deeds.

In April 1995, Jensen commenced the action underlying this appeal. She asked the circuit court to bar Jrolf from claiming any interest in or title to the real estate she received from Lybek, and cited as the basis for her claim her recorded deed to the real estate. When Jrolf failed to file an answer to Jensen's complaint, Jensen moved the trial court for default judgment.

Prior to a hearing on the motion, Jrolf and Jensen reached an agreement that established terms for Jrolf to avoid a default judgment. The stipulation required Jrolf to, among other things, "immediately undertake such action as is necessary to accomplish the approval of the certified survey map relating to the subject property" The parties agreed to adjournment of the default judgment hearing "to accommodate [Jrolf's] efforts ... with respect to approval of the CSM ... and to accomplish whatever else is necessary to complete the [] purchase." Jensen and Jrolf agreed that if Jrolf did not satisfy the conditions of the stipulation by December 15, 1995, and "resolve the matter," Jensen could proceed with her action. Jensen and Jrolf signed the stipulation on September 29, 1995.

On October 2, 1995, the parties informed the circuit court that they had reached a stipulation. The trial court docket entries indicate that terms of the stipulation were discussed in court and placed on the record.¹ The trial

¹ It is clear from the record that there was a hearing before the trial court at which the terms of the stipulation were placed on the record. A transcript of that hearing is not included in the record,

court entered an order, noting that the parties had entered "an oral stipulation in open court." The order provided that if, on December 18, 1995, Jensen provided the circuit court with an affidavit stating that Jrolf had failed to comply with the conditions of the September 29, 1995 stipulation, Jensen would "be granted judgment according to the demand of the complaint." On the other hand, if Jrolf complied with the terms of the written stipulation or if Jensen failed to timely file an affidavit alleging Jrolf's noncompliance with the stipulation, Jensen's action would be dismissed.

At a hearing on December 18, 1995, Jensen filed an affidavit with the circuit court in which she stated that Jrolf had failed to complete the terms of the stipulation. Specifically, she noted that Jrolf had not obtained final approval of the certified survey map, and she requested judgment in her favor.

In opposition to Jensen's request, Jrolf argued that he had substantially complied with the terms of the stipulation. Specifically, he contended that the certified survey map had received approval from the appropriate authorities. He acknowledged, however, that the map had not yet received an official number. Jrolf argued that assignment of a number to the map was a mere technical default that he was willing to overlook to close the transaction. Counsel for Jrolf noted that, in early December, a county official had "asked that the legal description be redone by the surveyor." Jrolf's counsel suggested that from "December 5 or 6, until the 14th, the surveyor had that legal description, the certified survey map." Counsel stated that Jrolf then "picked up the map" and returned it to the appropriate authority, but that he was informed that the authorities would not be able to take immediate action because "their engineer was in the field."

Jensen contended that she would not convey real estate with an incomplete legal description to Jrolf and that she was under no obligation to do so. In entering judgment for Jensen, the trial court noted that its prior order was clear: If Jrolf completed all terms of the stipulation, Jensen's action would be dismissed; if Jrolf failed to comply with all terms of the stipulation, Jensen would be granted judgment. The trial court granted judgment to Jensen,

(.continued)
however.

reasoning that Jrolf had failed to complete the approval process for the certified survey map. Jrolf appeals.

The arguments on appeal center on one question: whether Jrolf had failed to obtain approval of the certified survey map by the December 15, 1995 deadline as Jensen alleged in her affidavit, and therefore whether Jrolf had failed to fulfil the terms of the stipulation.² As noted, Jrolf maintains that the survey map had been approved, even though it had not been assigned an official number, and that he had therefore substantially complied with the terms of the stipulation.

Although Jrolf contends on appeal that the map had, in fact, been approved, the record indicates that the map had not received final approval by all appropriate authorities. It is clear that official actions relating to the map remained to be completed, but that they could not be accomplished because the "engineer was in the field" as of December 14, 1996. Although Jrolf contends that he was, at the December 15, 1995 closing, willing to waive final approval of the map that would be evidenced by the assignment to the map of an official number, there was nothing in the stipulation that required Jensen to waive final approval of the map to complete the transaction.

The trial court's October 17, 1995 order was clear. If Jensen filed an affidavit on December 18, 1995 claiming that Jrolf had failed to "comply with the conditions" of the September 29, 1995 letter, judgment would be entered in Jensen's favor. Jensen did so. The stipulation further provided that if the transaction between Jensen and Jrolf was not "satisfactorily resolved by December 15, 1995," Jensen could proceed with her action. The record shows that the survey map had not received final approval by December 15, 1995, and that the transaction had not closed on that date. The trial court's decision to grant Jensen judgment was not erroneous because it was consistent with its October 17, 1995 order.

By the Court. — Judgment affirmed.

² Jensen and Jrolf both assume in their arguments to this court that their agreement required approval of the certified survey map no later than December 15, 1995.

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