

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 8, 1997

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(1), 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. 96-2932-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JERRY K. SAEGER,

Plaintiff-Counter-Defendant-Respondent,

v.

**DAVID E. LUNDGREN and
KATHLEEN A. LUNDGREN, his wife,**

Defendants-Counter-Plaintiffs-Appellants.

APPEAL from a judgment of the circuit court for Oconto County:
LARRY L. JESKE, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

MYSE, J. David and Kathleen Lundgren appeal a declaratory judgment awarding Jerry Saeger a triangular piece of real estate with a base of 45.3 feet and a length of 1310.43 feet, comprising approximately .7 of an acre of land.¹ The Lundgrens contend that the trial court erred by failing to determine the grantor's intent. Because we conclude that the deeds are unambiguous, the

¹ This is an expedited appeal under RULE 809.17, STATS.

trial court could not consider extrinsic evidence of the grantor's intent to determine the ownership of the disputed triangle of land. We therefore affirm the judgment.

The grantor to both Saeger and Harold and Sandy Linssens was Thomas and Marilyn Gryboski. The Gryboskis owned a forty-acre tract in the northeast quarter of the northeast quarter of section 31, township 32 north, range 16 east, in the Town of Riverview, Oconto County, Wisconsin. In July 1985, the Gryboskis issued a warranty deed to Harold and Sandy Linssen using a description prepared by a surveyor, Paul N. Smith, who had surveyed the area prior to the Gryboskis' acquisition of this forty-acre corner section. In October 1985, the Gryboskis sold a contiguous ten-acre parcel east of the Lundgrens' parcel to Saeger. The legal description in the deed of the property sold to the Linssens was:

Part of the East Half of the Northeast Quarter ($E\frac{1}{2}$ of $NE\frac{1}{4}$) in Section 31, Township 32 North, Range 16 East, Town of Riverview, Oconto County, Wisconsin described as follows:

The point of beginning being the Northwest corner of the Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}$ of $NE\frac{1}{4}$) of Section 31, T. 32N, R. 16E; thence North $89^{\circ} 42' 45''$ East 330 feet on the North section line to a point. Thence South $1^{\circ} 46' 55''$ East approximately 1310.43 feet to a point on the South line of the $NE\frac{1}{4}$ of $NE\frac{1}{4}$ of Section 31, T. 32N, R. 16E; thence South $89^{\circ} 45' 47''$ West approximately 305 feet to a survey marker; thence South $43^{\circ} 50'$ West 34.77 feet; thence North $2^{\circ} 06' 43''$ West 25 feet; thence North $1^{\circ} 46' 55''$ West 1310.43 feet back to the point of beginning.

EXCEPTING that part of Star Lake Road and Elbe Road as now used for Town Highway.

The legal description of the property sold to Saeger is:

Part of the East Half of the Northeast Quarter ($E\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 31, Township 32 North, Range 16 East, Town

of Riverview, Oconto County, Wisconsin, more particularly described as follows:

Beginning at the Northwest corner of the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 31, Township 32 North, Range 16 East;
thence North 89°42'45" East, 330 feet, on the North Section line to the point of beginning of parcel to be described:
Thence continuing on the Easterly line, a distance of 330 feet to a point; thence South 01°46'55", approximately 1310.43 feet, to a point on the South line of the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 31, Township 32 North, Range 16 East; thence South 89°45'47" West, 330 feet, to a point;
thence North 01°46'55" West, 1310.43 feet back to the point of beginning; (being a part of the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 31, Township 32 North, Range 16 East, ONLY);
EXCEPTING that part of Star Lake Road now used for Town Highway.

The Linssens subsequently deeded their property to the Lundgrens utilizing the same language from their deed. After a subsequent land survey showed a boundary error of forty-five feet, Saeger filed suit to attain title to the disputed property.

Deeds are construed the same as other instruments, with the court's purpose being to ascertain the intent of the parties. *Rikkers v. Ryan*, 76 Wis.2d 185, 188, 251 N.W.2d 25, 27 (1977). The first step in construing a deed is to examine what is contained in the four corners of the deed, as the deed itself is the primary source of the intent of the parties. *Id.* If the language of a deed is unambiguous, its construction is a matter of law. *Id.* When there is an ambiguity in the deed, the meaning of the ambiguous words presents a question of fact. *Id.*

Further, "where a deed is susceptible to only one interpretation, extrinsic evidence may not be referred to in order to show the intent of the parties." *Id.* (citing *Grosshans v. Rueping*, 36 Wis.2d 519, 528, 153 N.W.2d 619, 623 (1967)). "[P]arol evidence is not admissible to vary or explain the terms of a deed, and the acts of the parties are not admissible to show a practical construction where the language of the deed is neither ambiguous nor

indefinite." *Kleih v. Van Schoyck*, 250 Wis. 413, 419, 27 N.W.2d 490, 493 (1947). "[W]here the language of the deed is plain, certain, and unambiguous, the surrounding facts and circumstances will not be considered." 26 C.J.S. *Deeds* § 92 at 850 (1956). These principles of law require that any ambiguity in the document be determined from an examination limited to the four corners of the document.

In this case, the deeds in question are not ambiguous. The calls of the deeds establish a definite, certain and ascertainable area of land. Therefore, after examining the four corners of the deed, we conclude that there is no ambiguity in the deed. The fact that the descriptions in these deeds may be in error by 45.3 feet does not alter the clarity of the descriptions. The trial court, after hearing evidence, decided to simply apply the calls of the deeds. This is in accord with the fact that the deeds do not contain an ambiguity and without such an ambiguity extrinsic evidence is inadmissible. See *Rikkers*, 76 Wis.2d at 188, 251 N.W.2d at 27. Because we conclude the deeds are not ambiguous, we apply the calls of the deeds and affirm the judgment.

By the Court. – Judgment affirmed.

Not recommended for publication in the official reports.