

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 6, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-2415

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

DWIGHT W. LIGHTNER, A/K/A DWIGHT LIGHTNER,

PLAINTIFF-APPELLANT,

V.

PETER W. COLLINS AND SALLY C. COLLINS,

DEFENDANTS-RESPONDENTS,

GLENN W. BAILKEY AND ONA BAILKEY,

**DEFENDANTS-THIRD-
PARTY PLAINTIFFS-RESPONDENTS,**

V.

CHETEK STATE BANK,

**THIRD-PARTY DEFENDANT-
RESPONDENT.**

APPEAL from a judgment of the circuit court for Barron County:
EDWARD R. BRUNNER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Dwight Lightner appeals a summary judgment that dismissed his quiet title lawsuit against Glen and Ona Bailkey and their successors in interest. In 1972, Lightner received a quitclaim deed from his mother conveying a real estate parcel. The quitclaim deed's legal description omitted the portion of the parcel on which the residence was located. Lightner subsequently gave two mortgages to the Chetek State Bank. Those mortgages likewise omitted the residence. In 1976, Lightner defaulted on the loans, and the bank foreclosed the mortgages. The 1976 foreclosure judgment omitted the residence, and in 1977 the Bailkeys bought the property at a sheriff's sale. The sheriff's deed similarly omitted the residence. The Bailkeys took possession of the property, including the residence. In 1997, they sold the property by warranty deed to Peter and Sally Collins, who were aware of the discrepancy through a 1997 survey and title search.

¶2 In 1997, the Bailkeys learned of the title defect when they were attempting to sell their property. They approached Lightner's mother and demanded a conveyance of the residence. She refused and instead conveyed the residence to Lightner by quitclaim deed. That same year, Lightner filed his lawsuit to quiet title to the residence and to divest the Collines of any interest in the property. His lawsuit claimed the following: (1) he never mortgaged the residence to the bank; (2) the bank thereby never foreclosed any interest in the residence; (3) the Bailkeys thereby acquired no interest in the residence through the sheriff's sale and deed; and (4) the Collines acquired no interest in the

residence from the Bailkeys. The trial court ruled that laches and estoppel barred the lawsuit, and determined that no disputes of material fact precluded summary judgment. Lightner argues that the trial court wrongly applied these equitable doctrines and should have safeguarded his real estate interest. We reject these arguments and affirm the summary judgment.

¶3 The trial court correctly granted summary judgment if there was no dispute of material fact and the Bailkeys were entitled to judgment as a matter of law. See *Powalka v. State Life Mut. Assur. Co.*, 53 Wis. 2d 513, 518, 192 N.W.2d 852 (1972). Both laches and estoppel are equitable doctrines that bar stale, long unenforced claims. See *Ryder v. State Farm Mut. Auto. Ins. Co.*, 51 Wis. 2d 318, 323-24, 187 N.W.2d 176 (1971). Laches requires (1) unreasonable delay by one party, (2) knowledge of and acquiescence in a course of events, and (3) prejudice to another. See *Ozaukee County v. Flessas*, 140 Wis. 2d 122, 127, 409 N.W.2d 408 (Ct. App. 1997). Estoppel requires (1) inaction by one party, (2) reliance by another, and (3) prejudice to the other. See *Mercado v. Mitchell*, 83 Wis. 2d 17, 26-27, 264 N.W.2d 532 (1978). Both doctrines seek to remedy an unreasonable delay by one party and detrimental change of position by another. See *City of Madison v. Lange*, 140 Wis. 2d 1, 7, 468 N.W.2d 763 (Ct. App. 1987) (estoppel); *Batchelor v. Batchelor*, 213 Wis. 2d 251, 258-59, 570 N.W.2d 568 (Ct. App. 1997) (laches).

¶4 Here, Lightner and his mother surrendered possession of the residence in 1977. They waited almost twenty years to investigate and assert their ownership interest despite the residence's occupancy by others. This change of possession resulted from an open and public sheriff's sale. If Lightner and his mother wanted to preserve their interests in the residence, their forcible removal

by the government gave them ample cause to investigate and assert their claims. Instead, they let their claims lie dormant for many years.

¶5 On the other hand, the Bailkeys experienced a substantial change in position as a result of this delay. They lived in the residence for many years as their home. They also made no investment in another home. If Lightner were allowed to pursue his claim, the Bailkeys would lose years of investment and investment gains from a home, having foregone investment in another for the same period. Equity will not permit that state of affairs. In short, the trial court correctly barred Lightner's lawsuit on the bases of laches and estoppel.

By the Court.—Judgment affirmed.

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

