COURT OF APPEALS
DECISION
DATED AND FILED

August 2, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP191 **Cir. Ct. No. 2005SC398**

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

RICHARD L. AEBY,

PLAINTIFF-RESPONDENT,

V.

PEGGY A. LASKA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Calumet County: ROBERT J. WIRTZ, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

¶1 BROWN, J.[1] Peggy A. Laska appeals a circuit court judgment awarding Richard L. Aeby $1044.50 for the cost of road maintenance. Laska challenges on several grounds the portion of the award aimed at snow removal. The circuit court properly held that the parties' October 11, 1985 agreement set forth their respective rights and obligations. That document gave Laska an easement for ingress and egress and charged Aeby with maintenance and repair of that easement, with costs to be split equally. The court found that Aeby had cleared the entire length of the driveway on his property, thus meeting his contractual responsibilities, and that he was entitled to fifty percent of his expenses for doing so. We affirm the court's determination that Aeby was entitled to fifty percent of the costs he incurred. However, Aeby conceded that the fork at the western end of the roadway, which accesses Laska's property, lies partly on his property and that he never cleared that final ten to fifteen feet. Because it was uncontested that Laska had to clear that part herself, the court clearly erred in its determination that Aeby completely performed. Laska is entitled to recover half of her costs regarding the last ten to fifteen feet, and we remand to the trial court for a determination of how much is due to her.

¶2 On October 11, 1985, four members of the Laska family and Richard Aeby signed a document entitled "Driveway Easement and Well Rights Agreement." This document states in relevant part:

> Aeby conveys to Laskas a perpetual driveway easement and right-of-way covering the driveway located on the Aeby real estate. Laskas … shall have full right of ingress and egress, by vehicle or otherwise, on the driveway easement …. This easement shall provide an adequate

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

> right-of-way to allow Laska reasonable access on the existing driveway across the Aeby real estate to the Laska real estate.
>
> Aeby shall maintain and repair the roadway over which the easement has been granted, with the parties sharing in the cost of such maintenance and repair on a 50/50 basis.
>
> ….
>
> The parties agree that the right-of-way shall remain unobstructed at all times so that it may be used as a driveway by both parties.

Aeby took up residence on his parcel in September 1998. For the next seven years, Aeby removed snow for two-tenths of a mile along the east-west portion of the roadway at least three times each year at a cost of $40 per removal. The roadway in question forks at the west end. One part continues east-west. The other curves to the south. This "Y" shape is part of the original road. The southern branch of the "Y" accesses the Laska property. A portion of that southern fork lies on Aeby's side of the lot line. He did not remove snow from that portion, and Laska made her own arrangements to clear that southern part. At no point did either party pay the other for the cost of snow removal.

¶3 On September 12, 2005, Aeby brought a claim against Laska for past due road-maintenance fees, including amounts for snow removal.[2] He sought fifty percent of the snow-removal costs he had incurred over seven years. Laska's defense appeared to oscillate between two different theories. First, she contested whether the parties' October 11 "Driveway Easement and Well Rights Agreement" was even controlling, opining that another agreement simply required each party to do a fifty-percent share, such that Aeby paid for his half of the snow

[2] He also asked for amounts relating to grading, but that dispute is not before us.

removal and she paid for hers. She claimed that this is the arrangement under which the parties had been operating.

¶4 Laska also raised what seemed to be an alternative argument. She claimed that on some occasions, Aeby did not clear the snow and as a result she incurred costs for one hundred percent of the snow removal. She figured her costs at approximately $192. Whether she sought this amount as a counterclaim or as an offset against Aeby's claimed damages was not entirely clear.

¶5 Laska also claimed that Aeby never at any time cleared the southern fork in the road, even though roughly twenty-five feet of it lay on his side of the lot line. Aeby admitted that he never removed snow from this portion but stated that only ten to fifteen feet of it lay on his property.

¶6 Laska attempted to raise a third defense that she had included in her answer to Aeby's complaint, namely that for fifteen years she had removed all of the snow and had not at any point billed Aeby for the cost. She claimed that this fifteen years of snow removal should be figured into her share of the responsibility for snow removal. The circuit court, however, responded that because the statute of limitations went back only six years, the court could not consider anything that happened longer ago than that.

¶7 The court held in favor of Aeby. It determined that the October 11, 1985 contract was the governing document between the parties and that it put the onus for repairs and maintenance on Aeby. Laska was not responsible for doing any maintenance and simply had to pay for half of the costs that Aeby incurred. The court found that Aeby had cleared the roadway for its entire length and that Laska had not proven that Aeby's work was inadequate to give her ingress and egress. The court considered Aeby's costs and ruled that they were a reasonable

amount.[3] It also held that because Laska had not proven that any additional work was necessary, Aeby did not owe her anything for snow removal she might have undertaken at her own election.

¶8 Separate and apart from the snow removal issue, Laska attempted to bring up a well dispute. The court, however, foreclosed discussion on that matter because it was not germane to Aeby's complaint regarding road maintenance. The issue was not further pursued.

¶9 Laska moved the court to reconsider its rulings, and a subsequent hearing took place. Laska raised three issues that the court deemed untimely, namely: (1) that she had prepaid her share of snow-removal expenses by taking care of the road for fifteen years; (2) the existence of a subsequent agreement between the parties regarding snow removal; and (3) her contention that either Aeby owed her $192 for the times she cleared the entire roadway herself or she should get an offset against Aeby's award.

¶10 Laska also reiterated that Aeby had failed to remove snow from the part of the "Y" that accessed her property. The court stated that the "Driveway Easement and Well Rights Agreement" obligated Aeby to plow the roadway up to Laska's lot line but informed the parties that it did not wish to consider at that time where the lot line lay because the issue had not previously been brought to the court's attention. Aeby then sought clarification as to whether he had to plow the southern fork of the "Y," which he referred to as "the apron area." The court responded,

[3] The court awarded only six years of costs, as opposed to the seven that Aeby sought, because of the statute of limitations.

> That's still, technically, roadway on your property which needs to be plowed until you get to the property that I'm indicating here…. [T]hat would be where the roadway proceeds south toward the Laska property, that's still your roadway, still your property until it meets the Laska property. That's where I'm saying … this easement requires you to plow.

The court affirmed its prior ruling and denied Laska's motion. Laska appeals.

¶11 Laska repeats several contentions on appeal. First, she again attempts to resurrect a dispute relating to a well. We agree with the circuit court that this issue was simply not relevant to the issue Aeby raised in his complaint regarding road maintenance. *See* WIS. STAT. § 904.02 (inadmissibility of irrelevant evidence). We need not dwell on it further.

¶12 Laska next appears to challenge the circuit court's ruling that the October 11, 1985 "Driveway Easement and Well Rights Agreement" controls the parties' rights and obligations vis-à-vis the driveway easement. She makes a vague reference to a "verbal agreement" concerning snow removal. We understand her to contend that this agreement takes precedence over the written agreement. However, she cites no facts or law in support of her position. Because she does not adequately develop the issue, we need not consider it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed.").

¶13 We note that Laska does not contest the circuit court's interpretation of the "Driveway Easement and Well Rights Agreement." The language of the agreement plainly supports that interpretation, which we reiterate. The document conveys to the Laskas an easement over Aeby's property, along an existing driveway, for the purpose of ingress and egress to her own parcel. Aeby has the

responsibility to maintain and repair that right-of-way. To the extent he incurs costs in the course of doing so, Laska must pay fifty percent of those costs.

¶14 Our remaining task, essentially, involves applying the facts of this case to the terms of the contract. This exercise presents a question of law, which we review independently of the circuit court. *See* ***Kierstyn v. Racine Unified Sch. Dist.***, 228 Wis. 2d 81, 88, 596 N.W.2d 417 (1999) (application of set of facts to a legal standard a question of law). Before we can do so, however, we must address Laska's assertion that the circuit court erred in finding that Aeby plowed the entire driveway on his property in accordance with the parties' agreement. We give great deference to the factual findings of a trial court and will reverse only when its findings are clearly erroneous. WIS. STAT. § 805.17(2); ***Kukor v. Grover***, 148 Wis. 2d 469, 482, 436 N.W.2d 568 (1989). Our review also gives due regard to the trial court's opportunity to judge the credibility of the witnesses. Sec. 805.17(2).

¶15 The court found that Aeby cleared the entire driveway on his property and that Laska had not demonstrated that his work was unsatisfactory to afford her ingress to and egress from her property. Thus, it determined that she had not proven the necessity of any snow removal she may have done in addition to Aeby's work. Laska takes issue with the court's findings, pointing to her testimony that she sometimes had to pay for one hundred percent of the snow removal. She also relies on her testimony that she always cleared the "Y" because Aeby did not do so and on Aeby's admission that the "Y" constituted part of the original road.

¶16 We begin by examining what part of the "Y"-shaped road constitutes part of the easement. The parties' trial testimony is enlightening in this regard.

Neither party disputed that the whole east-west portion from Meggers Road to Aeby's barn is located on Aeby's property. Laska claimed that at the "Y" end where the road curves south, twenty-five feet of that southern fork also lie on Aeby's property. Aeby disputed the twenty-five-foot figure. Significantly, however, he conceded that ten to fifteen feet lie on his side of the lot line. He further admitted that the "Y" was part of the original road. Thus, the undisputed testimony reveals that to get from the east-west portion of the roadway to her lot line, Laska must cross at least ten feet of Aeby's property via the southern fork. Because the agreement unambiguously requires an easement for ingress and egress along the existing driveway, the easement necessarily includes not only the east-west portion beginning at Meggers Road but also at least ten feet of the southern fork in the road.

¶17 In order for the trial court to properly find that Aeby cleared the entire driveway on his property, pursuant to the parties' agreement, the evidence must support the conclusion that Aeby did both parts. It does not. Aeby did state that he plowed the whole driveway and at one point admitted that the "Y" was part of the original roadway. However, his testimony viewed in context unambiguously reveals that he did not consider the southern fork of the "Y" to be part of the current driveway. Right after his statement that he plowed the whole road and in response to the court's inquiry as to *where* he plowed, he stated, "From Meggers all the way … I go straight up and down the road." He referred to the southern fork of the "Y" as an area "between the road and Laska's lot line"[4] and conceded that he did not plow this area:

[4] At the subsequent hearing on Laska's motion to reconsider, Aeby also referred to it as an "approach" and an "apron area."

> [Aeby]: …. The part I do not do is she says 25, I'd say 10, 15 feet from the lot line to the road….
>
> ….
>
> If you look at how the road comes in, there's 10 to 15 feet, probably 15 feet … between … the north lot line … to where the *actual road* is. I plow the road or blow it *straight up*. *I do not include that 10 or 15 feet between the road and her lot line*. (Emphasis added.)

A court could reasonably conclude that Aeby plowed the entire east-west portion of the driveway. We will not upset that part of the court's finding. However, by Aeby's own admission, he did not plow the portion of the southern fork of the "Y" on his property. Thus, the circuit court's finding that Aeby fully performed his obligation to remove snow from the driveway was clearly erroneous.

¶18 Because the record supports that Aeby cleared the entire east-west, straight part of the driveway, we conclude that the court properly rejected contrary testimony by Laska that she sometimes had to pay for one hundred percent of the snow removal. She based her expenses of $192 on the removal of snow from the entire road. The court therefore did not err in refusing to award her the $192 as either a separate award or a setoff.

¶19 The court also properly awarded Aeby half of his costs for snow removal. The agreement states that the parties are to split the costs of maintenance equally. Aeby incurred costs for the portion of the driveway he cleared. Laska is not entitled to free driveway maintenance of that part just because he failed to properly maintain another part. Laska does not contest Aeby's representation that he never billed her for snow removal from the "Y." Thus, we can safely conclude that the amounts awarded to Aeby represent only the costs of removing snow from the east-west portion of the road that Aeby did plow. We affirm the award to Aeby.

¶20 We must reverse and remand, however, for the court to determine the extent of Laska's damages. She had to clear the southern fork of the "Y" herself because Aeby did not meet his obligation to maintain that part. She bore the entire cost of removing snow from at least ten feet of the drive. Had Aeby performed as required, she would have borne only half of those expenses, in accordance with the parties' agreement. Her damages are fifty percent of whatever costs she incurred regarding that ten to fifteen feet. We remand to the circuit court to ascertain a dollar amount. It may then award Laska a separate judgment or offset that amount from the damages she owes Aeby.[5]

¶21 In sum, we affirm the court's award to Aeby. Laska does not contest the amount of his costs or the reasonableness of that amount. She cannot hold hostage her share of Aeby's maintenance expenses just because he did not properly maintain the whole driveway. Her damages are only half of any amount she incurred to have snow removed from the southern branch of the road at the points located between the fork and her lot line. We reverse and remand to the circuit court for a determination of the amount to which she is entitled.

No costs awarded to either party.

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[5] As to Laska's argument that she "prepaid" her share of the removal expenses by maintaining the road for the fifteen years prior to 1998—the year Aeby moved onto his property—we reject that argument. First, the two years from 1983 to 1985 precede the parties' "Driveway Easement and Well Rights Agreement" and therefore do not count. As for the other thirteen, we do not know whether (1) Laska voluntarily assumed responsibility for snow removal, (2) she did so because Aeby breached his duty to maintain the road, or (3) the parties agreed to consider her maintenance a prepayment of future driveway-maintenance expenses. If the first scenario is true, she cannot collect anything. Nothing in the parties' written agreement allows Laska to recover amounts for maintenance she undertakes at her election. If, on the other hand, Aeby breached his maintenance duties, Laska still cannot recoup as damages any amounts she spent because the statute of limitations has run. As to the third scenario, the record does not reveal that the parties agreed to a "prepayment" arrangement.

By the Court.—Judgment affirmed in part, reversed in part and cause remanded with directions.

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