

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 6, 2007

A. John Voelker
Acting 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. 2006AP2056-FT

Cir. Ct. No. 2006CV66

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MARY SUCHLA,

PLAINTIFF-RESPONDENT,

V.

RONALD J. SUCHLA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Trempealeau County: JOHN A. DAMON, Judge. *Reversed and cause remanded.*

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

¶1 PER CURIAM.¹ Ronald Suchla appeals a judgment on the pleadings granted to his mother, Mary Suchla. Ronald argues judgment on the

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin statutes are to the 2003-04 version unless otherwise noted.

pleadings was inappropriate because a letter he sent to the court was sufficient to create a material factual dispute. We agree, reverse the judgment, and remand for further proceedings.

BACKGROUND

¶2 On March 17, 2006, Mary filed a summons and complaint naming Ronald as defendant. The complaint requested a declaratory judgment that Ronald had no interest in a certain parcel of land. It alleged Mary was the rightful owner of the parcel, either under a 1984 deed or because she had adversely possessed the land from 1984 to the present.

¶3 Robert's only response to the summons and complaint was a letter dated May 8 addressed to the judge assigned to the case. The body of the letter, in its entirety, stated:

I deny the allegations contained in the Complaint filed against me. I did not sign my share of the land over to my mother.

I have been unable to find a lawyer to represent me, but I intend to prove my wishes at that time were to keep this land.

¶4 Mary moved for judgment on the pleadings, and her motion was heard on May 22. Robert appeared at the hearing without an attorney. At the hearing, the court asked Robert a number of questions in an attempt to clarify why he felt he was entitled to the land. Robert told the court he wanted to keep his interest in the land and did not remember signing any deed. Robert explained that “[t]hey had me sign papers back in '84, but when I went to the lawyer's office I made it clear to them that I was going to sign papers but that I was keeping my share because I wanted to have a chance at owning that property.” The court

concluded Robert had not rebutted the presumption that the 1984 deed transferred his interest to Mary and granted Mary judgment on the pleadings.

DISCUSSION

¶5 We review a judgment on the pleadings without deference to the circuit court. *Freedom from Religion Found., Inc. v. Thompson*, 164 Wis. 2d 736, 741, 476 N.W.2d 318 (Ct. App. 1991). To determine whether judgment on the pleadings is appropriate, we employ the first two steps of summary judgment methodology. *Id.* That is, we first determine whether the complaint states a claim. If it does, we determine whether the answer shows that a material factual dispute exists. *Id.*

¶6 Here, the parties agree Mary's complaint states a claim for quiet title. They disagree over whether Robert's answer created a dispute as to any material fact. Mary argues no material factual dispute exists because Robert's letter is an implicit allegation that his signature on the deed was forged, and Robert did not state the circumstances of any alleged forgery with particularity.² Mary relies on WIS. STAT. § 802.03(2), which requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

¶7 Mary reads too much into Robert's answer. Robert simply denied he signed the deed; in other words, he denied one of the allegations on which Mary based her claim. This denial is not the same as asserting a claim or defense based

² On appeal, both parties confine their arguments to Mary's claim based on the 1984 deed, and we therefore confine our analysis to that claim as well.

on fraud. Mary cites no case law where a court treated denial of an allegation in a complaint as an implied fraud defense, and we see no reason the two should be considered equivalent.

¶8 In addition, we disagree with Mary’s argument that forgery is equivalent to fraud for purposes of WIS. STAT. § 802.03(2). In the case of fraud, § 802.03(2) is satisfied when the victim specifies “the particular individuals involved, where and when misrepresentations occurred, and to whom misrepresentations were made.” *Putnam v. Time Warner Cable*, 2002 WI 108, ¶26, 255 Wis.2d 447, 649 N.W.2d 626. At least in cases of fraud by misrepresentation, a fraud victim will necessarily have firsthand knowledge of this information, and can reasonably be expected to include that knowledge in his or her pleadings. A forgery victim, on the other hand, is unlikely to be privy to any specific information on how a forged signature came about. Typically, a forgery victim will know only what Robert alleged—that he or she never signed the document in question. We therefore are not convinced § 802.03(2) applies to allegations of forgery.

¶9 It may be true, as the circuit court concluded, that Robert’s statements at the May 22 hearing show there are no disputed material facts and Mary is entitled to judgment as a matter of law. However, Robert’s statements at the hearing are not part of his written pleadings, and therefore cannot be a basis for judgment on the pleadings. See *Poeske v. Estreen*, 55 Wis. 2d 238, 242, 198 N.W.2d 625 (1972). Because Robert’s written answer denying that he signed the deed created a dispute as to material facts, we reverse the judgment on the pleadings.

By the Court.—Judgment reversed and cause remanded.

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

