

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 5, 2009

David R. Schanker
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. 2008AP677

Cir. Ct. No. 1983PR897

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN THE MATTER OF THE TRUST UNDER THE
WILL OF RENE VON SCHLEINITZ FOR THE BENEFIT
OF FRIEDA VON SCHLEINITZ:**

TRUST OF RENE VON SCHLEINITZ,

APPELLANT-CROSS-RESPONDENT,

v.

EDITH MACLAY AND GEOFFREY MACLAY, SR.,

RESPONDENTS-CROSS-APPELLANTS.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Milwaukee County: JOHN DI MOTTO, Judge. *Reversed.*

Before Dykman, Lundsten and Bridge, JJ.

¶1 DYKMAN, J. The Trust of Rene von Schleinitz appeals from a judgment declaring that Geoffrey and Edith Maclay own a parcel of land claimed by both the Maclays and the Trust. The Trust contends that the trial court’s declaration of property rights in this case is contrary to a previous probate judgment concerning the same property, and that its factual findings are clearly erroneous. The Maclays respond that the probate judgment and the trial court’s factual findings establish that they own the land in fee simple. The Maclays also cross-appeal from the portion of the court’s judgment determining that the Maclays’ alternative grounds for relief on the basis that one of the trustees is disqualified in this matter is inapplicable. We conclude that the probate judgment establishes that the Trust, not the Maclays, owns the land at issue. We further conclude that we have no basis to order the trial court to withdraw language from its findings and conclusions. We therefore reverse.

Background

¶2 The following facts are undisputed. Rene von Schleinitz died in 1972. His will provided for a trust to hold real property, including “[a]ll real estate situated in the Town of West Bend, Washington County, Wisconsin, known as Sunset Ridge ... together with improvements thereon, which presently consists of the Main cottage, Tree-top cottage, Hillside cottage, which presently consists of a new structure erected by my daughter, Edith Maclay, [and] North cottage.” The will also provides that upon von Schleinitz’s death, “Edith Maclay[] may occupy premises known as ‘Hillside Cottage,’ which presently consists of a new structure ... for such length of time as she shall so desire.”

¶3 In 1975, the Milwaukee County Probate Court entered a final judgment closing Rene von Schleinitz’s estate. The 1975 judgment placed the

West Bend property in the Trust, “[i]nclud[ing] improvements thereon consisting of the Main cottage, Tree-top cottage and the North cottage and sundry buildings appurtenant thereto but not including improvement known as Hillside cottage owned by Edith Maclay and Geoffrey Maclay.”

¶4 In 2004, the Maclays’ daughter and successor co-trustee of the Trust, Christine Lindemann, filed a petition to amend the Trust’s inventory. In her petition, Lindemann asserted that the 1975 judgment improperly excluded the Hillside cottage from the Trust, contrary to the language of von Schleinitz’s will. The court dismissed the petition as untimely.

¶5 In 2006, the Maclays brought this action for a declaratory judgment to determine the property rights in the land underlying and adjoining the Hillside cottage. Following a trial, the court declared that the Maclays own the land underlying and adjoining the Hillside cottage. The Trust appeals, and the Maclays cross-appeal.

Standard of Review

¶6 Whether a trial court grants or denies declaratory relief is discretionary. *J.G. v. Wangard*, 2008 WI 99, ¶18, _Wis. 2d_, 753 N.W.2d 475. “However, when the appropriateness of granting or denying declaratory relief depends on a question of law, our review is de novo.” *Id.* Here, the declaratory relief sought requires interpreting the probate judgment, an unambiguous written document, which is a question of law. *See Jacobs v. Jacobs*, 138 Wis. 2d 19, 23, 405 N.W.2d 668 (Ct. App. 1987).

Discussion

¶7 The Trust argues that the trial court erred in declaring the Maclays the owners of the land underlying and adjoining the Hillside cottage because there is no evidence to support that ruling.¹ The Trust contends that the 1975 probate judgment, analyzed in light of Rene von Schleinitz's will, establishes that the Trust owns the disputed land.² The Maclays respond that the issue of the ownership of the land is resolved by applying the 1975 probate judgment, rather than reverting back to the will it interpreted. They argue that the trial court made appropriate factual findings, which support its declaration that the Maclays, not the Trust, own the underlying land.

¶8 We begin with the language of the 1975 probate judgment. That judgment places in the Trust:

The following described real estate located on Cedar Lake, Town of West Bend, Washington County, Wisconsin, and more fully described as follows:

¹ The Trust also challenges a circuit court ruling that establishes an easement of necessity for the Maclays because the appropriate legal test was not met. *See McCormick v. Schubring*, 2003 WI 149, ¶11, 267 Wis. 2d 141, 672 N.W.2d 63 (setting forth elements for easement of necessity). However, the trial court's findings of facts and conclusions of law states that the Trust stipulated to the Maclays having an easement to and from their cottage. The Trust does not contest this point. Thus, we do not address the Trust's easement argument further.

² The Trust asserts that, according to the plain language of the will, Edith Maclay was granted only a life estate in the Hillside cottage, and Geoffrey Maclay was not granted any interest at all. Thus, the Trust argues, both the Hillside cottage and the adjoining land really belong in the Trust. However, the Trust acknowledges that the 1975 probate judgment recognized Geoffrey and Edith Maclay as the owners of the Hillside cottage, and requests only reversal of the court's declaration as to the Maclays' owning the underlying and adjoining land. While the Trust argues that our focus should be the intent of Rene von Schleinitz as evidenced by his will, it does not argue that we should apply the terms of the will instead of the 1975 probate judgment. Regardless, as we discuss below, we conclude that the language of the 1975 probate judgment is unambiguous, and we therefore apply its terms without resort to other sources.

That part of lot number four (4) in Section twenty-nine (29), in Township number eleven (11) North, of Range number nineteen (19) East, described as follows: [legal description of the boundaries of the Cedar Lake parcel, including the property under the Hillside cottage].

Includes improvements thereon consisting of the Main cottage, Tree-Top cottage and the North cottage and sundry buildings appurtenant thereto but not including improvement known as Hillside cottage owned by Edith Maclay and Geoffrey Maclay.

Thus, the 1975 judgment clearly establishes that the entire Cedar Lake property belongs to the Trust, except the *improvement* known as the Hillside cottage. The judgment does not define the term “improvement,” but Black’s Law Dictionary defines “improvement” as “[a]n addition to real property, whether permanent or not.”³ Black’s Law Dictionary 761 (7th ed. 1999). We discern no reason to deviate from that definition here.⁴ Indeed, the language of the judgment is consistent with this definition. The judgment describes boundaries of the “real estate” and then identifies “improvements thereon” consisting of three cottages, “but not including improvement known as Hillside cottage.” This is an unambiguous reference to improvements on the real estate. Accordingly, by its

³ The trial court recognized this definition of “improvement,” but then went on to conclude that “[i]t was the intent of the 1975 Final Judgment in probating Rene von Schleinitz’s estate that the improvement known as Hillside Cottage referred to more than just the structure,” that “[t]he improvement known as Hillside Cottage includes the home’s Curtilage,” and that “Edith and Geoffrey Maclay are the fee interest owners of the real estate of their home’s Curtilage.” The trial court did not explain why it concluded that the term “improvement” included the land adjoining the cottage and the land under the cottage.

⁴ Neither the parties nor the trial court identify any authority supporting deviating from this definition, and we have no reason to conclude that the *improvement* known as Hillside cottage (the structure itself) must be owned by the same party that owns the underlying and surrounding land.

plain terms, the 1975 probate judgment placed all of the Cedar Lake land in the Trust, including the land under the home constructed by the Maclays.⁵

¶9 Because the language of the 1975 probate judgment is clear and unambiguous, we need not go beyond the document to determine its meaning. Thus, we do not address the parties' dispute over the trial court's factual findings surrounding the Cedar Lake property and the Hillside cottage.⁶

¶10 The Maclays argue, however, that an alternative reason to affirm the trial court's ruling is that only one of the co-trustees, Christine Lindemann, pursued this action, and that Lindemann should have been disqualified from this action based on her clear personal bias against her parents. *See Auric v. Continental Cas. Co.*, 111 Wis. 2d 507, 516, 331 N.W.2d 325 (1983) (we may affirm a trial court on other grounds). This argument is also the basis for the Maclays' cross-appeal; there, the Maclays seek either an affirm as to the trial court's declaration of the Maclays' property rights on the grounds of Lindemann's disqualification to litigate this issue, or an order for the trial court to withdraw the paragraph of its conclusions of law addressing their argument.

¶11 We reject the Maclays' argument on two grounds. First, the Maclays have not established that there was a disagreement between Lindemann and the other co-trustee, Rip Maclay, as to whether or not to defend against the

⁵ The Maclays argue that this ruling is absurd because it deprives them of their right to continue their permanent home in its current location. However, this case does not present a challenge to the Maclays' right to maintain their home's current location.

⁶ For example, the parties dispute whether the trial court properly found that Geoffrey Maclay's statement to his children that the Maclays do not own the land under the Hillside cottage did not reflect his true belief as to the Maclays' ownership.

Maclays' declaratory action. The testimony they point to by Rip Maclay reveals that Rip personally believes that his parents are the owners of the land they are claiming, and that he believes the amount of money the Trust has spent to defend against them is "insane" and "outrageous." However, he also testified that he signed a letter retaining the Trust's attorneys to represent it, and that he understands that he has the right to terminate them.⁷ Thus, the record reveals that Rip Maclay, as well as Christine Lindemann, obtained legal representation on behalf of the Trust. We have no reason to conclude that Rip Maclay sought a different course of action than Christine Lindemann.

¶12 Finally, we decline to order the trial court to withdraw paragraph fifteen of its conclusions of law. That paragraph states:

For the reasons stated on the record the Court also finds and concludes that the *offer of proof* by Edith and Geoffrey Maclay Sr., as an alternative and second ground for relief based on the disqualification of one of the

⁷ The trial court asked Rip Maclay whether his opinion "unfairly diminishes the trust assets, which would be to the detriment of the beneficiaries." Rip responded:

Just the opposite.

....

Because it will clarify the ownership issue, which is very mobile right now, and to the extent there is an undivided quarterly interest in the remainder of the property, which would happen upon trust termination. How do you define the property? Who is going to define the property, knowing that it's uncertain? And I think—or you can make a strong argument that—you can make a very strong argument that financially you're better off knowing what's there and what's not there.

However, despite Rip's opinion that it would benefit the Trust to concede the Maclays' ownership of the land (which is not fully explained by his testimony), the record does not reveal any official attempt by him, as co-trustee, to do so.

Trustees from acting because of bias and partiality, is also inapplicable.

We do not agree with the Maclays that this paragraph poses a risk of limiting any future attempt by a party seeking to remove Lindemann as trustee. The trial court made no factual findings regarding the Maclays' claims, instead determining that the question of Lindemann's qualifications was inapplicable to this action. As such, this paragraph has no bearing on any future attempt to remove Lindemann as trustee.

By the Court.—Judgment reversed.

Not recommended for publication in the official reports.

