COURT OF APPEALS
DECISION
DATED AND FILED

February 26, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1992 **Cir. Ct. No. 00-CV-27**

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

KEVIN RADMAN AND HEIDI RADMAN,

PLAINTIFFS-RESPONDENTS,

V.

DARLENE GUSTAFSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Burnett County: JAMES H.TAYLOR, Judge. *Affirmed.*

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

¶1 PER CURIAM. Darlene Gustafson appeals a judgment dismissing her counterclaim and an order denying her motion for reconsideration. Gustafson sought rescission of her conveyance of Hap's Landing Campground to her daughter and son-in-law, Heidi and Kevin Radman. Gustafson argues that the trial court's finding that the parties had no meeting of the minds as to an element of the

contract entitled her to the remedy of rescission. Because the record supports the trial court's discretionary determination that Gustafson was entitled only to an additional $6,000 payment, we affirm the judgment.

¶2 In 1995, Gustafson sold a forty-acre parcel of land containing the Hap's Landing Campground, a family business, to the Radmans. The parcel contains a tavern and also includes cabins, small trailers and spaces for large trailers that were rented out as part of the campground operation. The price was $95,000. There is no dispute that the Radmans paid the full purchase price and Gustafson conveyed the property by warranty deed.

¶3 After five years, during which the Radmans operated the campground, a dispute arose concerning rental payments from the larger trailers. The individual renters, who owned the larger trailers, paid rent for the space that the trailers occupied. The Radmans contended that as part of the sale agreement, Gustafson was to receive rental payments for just five years. Gustafson contended, however, that the Radmans agreed to allow her to receive the rental payments for the duration of her life.

¶4 The Radmans brought this action for a declaration of rights that they were entitled to the future rental payments from the larger trailer owners. Gustafson counterclaimed, alleging that the entire real estate transaction should be rescinded.

¶5 At the time of trial, Gustafson, age sixty-two, testified that for the previous five years, the tenants had paid her directly for renting the large trailer spaces. The rents amounted to $6,000 per season. Gustafson stated that she never reduced to writing her rent proceeds agreement with the Radmans. She recalled

no discussion of a five-year time limit. She offered the testimony of a number of witnesses who overheard discussions about the lifetime rental.

¶6 Heidi testified that although there were discussions about a lifetime right to rents, they finally decided on a five-year limit. Kevin further testified that the parties agreed to a five-year term just before closing on the property.

¶7 The court determined that rescission would not be justified. It pointed out: "Assuming that one party has paid the taxes, done the upkeep and improved the property, it's appreciated in value and we rescind the contract, that's going to be kind of unfair to the party you take the property away from, isn't it?"

¶8 The court questioned on what grounds it could rescind the contract "when everything is incorporated except the length of time for the rental payment?" It observed, "We shouldn't be setting aside the entire agreement just because this one little part was never – their minds didn't meet on that one little part."

¶9 In a written decision, the trial court determined that there was no meeting of the minds concerning the length of the term of the rental payments. It found, "[T]here was never an agreement between the parties as to the rental payments as there was not a meeting of the minds on that issue." Because no dispute arose until five years after the parties operated under the misconception that they had an agreement, the court ruled, in effect, that it would leave the parties as it found them. It did not require the Radmans to make any further payments to Gustafson with the exception of $6,000 for improvements Gustafson made to the

property after the 1995 sale.[1] The court denied Gustafson's subsequent motion for reconsideration and Gustafson's appeal followed.

¶10 Gustafson does not challenge the finding that there was no meeting of the minds concerning the duration of the rental payments. She argues, however, that having made the factual finding that there was no meeting of the minds between the parties concerning the duration of the rental payments, it was error to not rescind the entire land sale and restore her to her former status. We are unpersuaded.

¶11 "[A]n application for the recission of a contract is addressed to the sound discretion of a court of equity." ***Mueller v. Michels***, 184 Wis. 324, 340-41, 197 N.W. 201 (1924); *see also* ***Stadler v. Rohm***, 40 Wis. 2d 328, 335-36, 161 N.W.2d 906 (1968). "When equitable relief is sought, courts claim the power to deny that relief as a matter of discretion." 1 DAN B. DOBBS, LAW OF REMEDIES § 2.4(1), at 90 (2nd ed. 1999). "Discretion of equity courts is long established. It makes possible decisions that are flexible, intuitive, and tailored to the particular case." ***Id.*** at 92.

¶12 We affirm equitable decisions unless the trial court erroneously exercised its discretion. *See* ***Lueck's Home Improvement, Inc. v. Seal Tite Nat'l, Inc.,*** 142 Wis. 2d 843, 847, 419 N.W.2d 340 (Ct. App. 1987). "It is recognized that a trial court in an exercise of its discretion may reasonably reach a conclusion which another judge or another court may not reach, but it must be a decision which a reasonable judge or court could arrive at by the consideration of the

[1] The court's order that the Radmans are obliged to make this $6,000 payment is not in dispute.

relevant law, the facts, and a process of logical reasoning." ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶13 We are satisfied that the record provides a rational basis for the court's discretionary decision. "Parties should have some regard and respect for the terms of their own contracts and ought to make the terms thereof conform to their real understanding and not rely wholly or even largely upon a court of equity for protection from their own acts." ***Henry Uihlein Realty v. Downtown Dev. Corp.***, 9 Wis. 2d 620, 627, 101 N.W.2d 775 (1960) (citation omitted). Here, the record shows that the parties did not make the effort to reduce the whole of their agreement to writing. The court's determination that the parties reached no agreement about the duration of the payments is unchallenged. Also unchallenged is the court's finding that the rental payment agreement is a minor consideration in relation to the complexity of the entire transaction. The court further considered the inequities of rescission given the Radmans' efforts in operating the campground, and improving and maintaining the property for five years.

¶14 The court could reasonably determine that it would be an unreasonable venture after five years to attempt to restore the parties to their former status. "Equity is designed to do justice as far as practicable between the parties …." ***Mueller***, 184 Wis. at 341-42. The record supports the court's ruling that the parties reached no enforceable agreement regarding rental payments and that rescission would be inequitable.

¶15 Gustafson cites just two cases in her appellate brief, neither of which directly supports her position. The first case cited is ***Management Computer Servs. v. Hawkins, Ash, Baptie & Co.***, 206 Wis. 2d 158, 557 N.W.2d 67 (1996), for the proposition that whether there was a meeting of the minds is a question of

contract formation. This proposition is true as far as it goes, but the problem is that it does not go far enough. ***Management Computer*** explains:

> The premise—that a "meeting of the minds" is required for a binding contract—obviously is strained. … Most contract disputes arise because the parties did not foresee and provide for some contingency that has not materialized—so there was no meeting of minds on the matter at issue—yet such disputes are treated as disputes over contractual meaning .... So a literal meeting of the minds is not required for an enforceable contract, which is fortunate, since courts are not renowned as mind readers.

Id. at 179 (quoting ***Colfax Envelope Corp. v. Local No. 458-3M***, 20 F.3d 750, 752 (7th Cir. 1994)). ***Management Computer*** does not support the proposition that the trial court erred by not ordering rescission because the parties lacked a "meeting of the minds" as to a component of their land sale.

¶16 The second case Gustafson cites is ***Schnuth v. Harrison***, 44 Wis. 2d 326, 339, 171 N.W.2d 370 (1969). ***Schnuth*** held that misrepresentation has historically been a basis for rescission of a contract and "the parties are placed in the status quo as if no contract had ever been made." ***Id.*** There is no claim of misrepresentation in this case. We therefore conclude that Gustafson's argument that the trial court erred finds no support in ***Schnuth***.[2]

¶17 What limited authority Gustafson supplies does not require reversal. In addition, it does not address the appropriate standard of review. We conclude that we must defer to the trial court's determination in this case because Gustafson identifies no error in the court's exercise of discretion.

[2] Gustafson also cites WIS JI—CIVIL 3022. This jury instruction does not address the remedy of rescission.

By the Court.—Judgment and order affirmed.

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