

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 2, 2003

Cornelia G. Clark
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. 02-0989
STATE OF WISCONSIN**

Cir. Ct. No. 99-PR-37

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE ESTATE OF RAMONE CIKANEK:

MICHELLE GROOM,

PETITIONER-APPELLANT,

V.

GREGORY CIKANEK,

OBJECTOR-RESPONDENT.

APPEAL from an order of the circuit court for Fond du Lac County:
HENRY B. BUSLEE, Judge. *Affirmed.*

Before Nettlesheim, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Michelle Groom appeals from a circuit court order sustaining the objection of her brother, Gregory Cikanek, to her petition for administration of the June 1999 will of Ramone Cikanek, their mother. Because

the record supports the circuit court's decision to invalidate Ramone's June 1999 will, we affirm.¹

¶2 Ramone died on July 5, 1999. Michelle petitioned for administration of a will Ramone executed on June 8, 1999. The will left Ramone's estate to Michelle. Gregory objected to this will and argued that Ramone's testamentary intent was evidenced by an April 17, 1995 will which left her estate to him.

¶3 After a court trial on Gregory's objection to the June 1999 will, the court found as follows. Gregory was living and working in Chicago when in late 1994, Ramone, who had been diagnosed with cancer, asked Gregory to move to Wisconsin and live with her. Ramone agreed to provide \$86,700 toward the purchase of the house in which she and Gregory would live if Gregory agreed to live with her until her death. The house was to be titled in Gregory's name.

¶4 Attorney Daryl Laatsch assisted Gregory and Ramone in the purchase of the house and the preparation of wills leaving their respective estates to each other. Gregory executed a promissory note in the amount of \$86,700. According to Attorney Laatsch, Ramone intended that if Gregory moved in with her, Gregory would inherit the house and be released from the promissory note. Gregory also believed that this note would be voided if he moved to Wisconsin to live with Ramone until her death. Attorney Laatsch understood that Ramone and Gregory intended for their wills to be irrevocable.

¹ To avoid confusion, we will refer to the parties by their first names.

¶5 The court found additional evidence of Ramone’s intent in a letter to Gregory in which she stated that he had been a good son and he could own the house. Gregory moved to Wisconsin, found employment and lived with Ramone in the house until she died. Ramone never asked Gregory to repay the \$86,700.

¶6 Based on these facts, the court concluded that Gregory and Ramone had agreed not to revoke their April 1995 wills. *See* WIS. STAT. § 853.13(1)(d) (1999-2000)² (a contract not to revoke a will may be established by clear and convincing extrinsic evidence). Therefore, the court invalidated Ramone’s June 1999 will as an improper and ineffective attempt to revoke her April 1995 will. The court deemed the April 1995 will Ramone’s valid will. The court also declined to enforce the promissory note against Gregory because he had relocated to Wisconsin in reliance upon Ramone’s promise that he would inherit the house and be released from the note. The court awarded Gregory costs pursuant to WIS. STAT. § 879.33. Michelle appeals.

¶7 This matter was decided by a trial to the circuit court. We will uphold the circuit court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). As the finder of fact, it was the circuit court’s role to assess the credibility of the witnesses and weigh the evidence. *Micro-Managers, Inc. v. Gregory*, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988). We must accept the inferences drawn by the circuit court from the conflicting evidence. *Wallen v. Wallen*, 139 Wis. 2d 217, 224, 407 N.W.2d 293 (Ct. App. 1987).

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶8 The circuit court's findings of fact are supported by the testimony of Gregory and Attorney Laatsch. Michelle argues that she impeached Attorney Laatsch on the question of whether Ramone and Gregory intended to have irrevocable wills whose provisions mirrored each other. It was for the circuit court to assess the credibility of Attorney Laatsch's testimony, and the court clearly found Attorney Laatsch's testimony credible on the question of the irrevocable nature of the wills. Based on these findings, the court properly concluded that Gregory established by clear and convincing extrinsic evidence pursuant to WIS. STAT. § 853.13(1)(d) that he and Ramone had a contract not to revoke their wills.

¶9 Michelle argues that Attorney Laatsch's role in drafting Ramone's June 1999 will adds greater weight to the theory that Ramone intended to revoke her April 1995 will. The existence of the June 1999 will does not negate the circuit court's finding that Ramone had agreed not to revoke her April 1995 will. In executing the June 1999 will, Ramone breached her contract with Gregory not to revoke the April 1995 will. However, that breach did not eliminate Ramone's obligations under the April 1995 will.

¶10 Michelle sketchily argues that Gregory's testimony about whether he and Ramone agreed not to revoke their April 1995 wills contravened the Dead Man's statute, WIS. STAT. § 885.16. "Although the wording of the [Dead Man's] statute is cumbersome, the core meaning is that it disqualifies a witness to a transaction or communication with a decedent from testifying about that transaction or communication in his or her favor, or in the favor of any party to the case claiming under the will." *Bell v. Neugart*, 2002 WI App 180, ¶17, 256 Wis. 2d 969, 650 N.W.2d 52.

¶11 The admission of evidence is within the circuit court's discretion and its rulings in that regard will not be overturned on appeal unless the court misused its discretion. *Gonzalez v. City of Franklin*, 137 Wis. 2d 109, 139, 403 N.W.2d 747 (1987).

¶12 Our review of the record indicates that Michelle never asserted a Dead Man's statute objection to most of Gregory's testimony about his understanding of his agreement with Ramone.³ Michelle asserted a Dead Man's statute objection on one occasion; she objected to Gregory's identification of a letter he received from Ramone. The objection was overruled, and Gregory testified that the letter stated that he would own the house. Thereafter, Gregory testified that he had agreed to live with Ramone until she died, and that he and Ramone consulted Attorney Laatsch about executing their wills. When counsel asked Gregory if he understood that he would leave everything to Ramone and she would leave everything to him, Michelle objected on the grounds that the question was leading, not that it violated the Dead Man's statute. The court overruled the objection. Gregory testified that he understood that if he relocated to Wisconsin, the house would be his and that neither he nor Ramone could revoke their wills.

¶13 Because Michelle did not assert a Dead Man's statute objection to the crucial aspects of Gregory's testimony regarding his arrangement with Ramone, this issue is waived on appeal. See *Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983) (this court does not consider issues raised for the first time on appeal).

³ We do not decide whether Gregory's testimony was subject to WIS. STAT. § 885.16.

¶14 Michelle complains that the circuit court’s findings of fact and conclusions of law include a determination regarding promissory estoppel which the court did not set forth in its memorandum decision. This appeal is taken from the findings of fact and conclusions of law, not from the memorandum decision.⁴ Michelle does not cite any authority for the proposition that the findings of fact and conclusions of law may not elaborate on a previously issued memorandum decision.

¶15 Michelle argues that the evidence was insufficient to support the circuit court’s determination not to enforce the promissory note. The court found that Gregory executed the note in the belief that the debt would be eliminated if he relocated to Wisconsin and lived with Ramone, and that Ramone intended to release the note if Gregory lived with her and inherited the house.

¶16 Promissory estoppel applies when there is a “promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character ... and which does induce such action ... if injustice can be avoided only by enforcement of the promise.” *Hoffman v. Red Owl Stores, Inc.*, 26 Wis. 2d 683, 694, 133 N.W.2d 267 (1965) (citation omitted). Gregory relocated to Wisconsin and lived with Ramone in reliance upon Ramone’s promise to leave him the house and release him from the note. Gregory performed as requested, and injustice is avoided by relieving Gregory of the note. The record

⁴ The memorandum decision was not an appealable document because it contemplated the entry of a further document. One aspect of finality for purposes of appeal is whether the document is the last document in the litigation. *Radoff v. Red Owl Stores, Inc.*, 109 Wis. 2d 490, 494, 326 N.W.2d 240 (1982).

supports the circuit court's decision to invoke promissory estoppel to relieve Gregory of the note.

¶17 Michelle alleges that the circuit court erred when it validated Ramone's April 1995 will in the absence of a formal petition for administration of that will. We do not see reversible error in the invalidation of the June 1999 will and the necessary acceptance of the April 1995 will. Gregory objected to the June 1999 will, and the circuit court held proceedings to determine whether the June 1999 will or the April 1995 will controlled. The question of which will controlled was clearly before the court and thoroughly tried.

¶18 Finally, Michelle argues that the court erred in requiring her to pay costs to Gregory under WIS. STAT. § 879.33. She contends that the award of costs should have been made pursuant to WIS. STAT. § 879.35. However, she does not discuss the language of the statutes or the consequences if one or the other statute is applied. We will neither consider "amorphous and insufficiently developed" arguments, *Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995), nor develop a litigant's argument for her.

By the Court.—Order affirmed.

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

