

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 5, 2002

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. 02-1565-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-1548

**IN COURT OF APPEALS
DISTRICT IV**

**MIDWEST LUMBER SALES D/B/A MEISTER LOG & LUMBER
Co., INC.,**

PLAINTIFF-RESPONDENT,

v.

RODNEY MCGUIRE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Rodney McGuire appeals a judgment requiring him to pay Meister Log and Lumber \$28,580.12 for breaching a timber contract. McGuire argues that the trial court improperly excluded certain video and

photographic evidence that was important to his defense. We conclude that the trial court's evidentiary decisions were within its allowable discretion and affirm.

BACKGROUND

¶2 Pursuant to a timber contract signed by the parties, Meister paid McGuire nearly \$30,000 in advance for the right to harvest trees on McGuire's property. The contract provided that the logging would be completed before April 15, 2000, subject to extension at McGuire's sole discretion, and also included a clause that operations would cease "when ground conditions are such that rutting of roads and fields will occur." Soil conditions were soft when Meister began logging in mid-March. Two days after logging began, McGuire ordered the loggers off of his property due to concerns about rutting, among other things. He thereafter refused to allow the loggers back onto his property or to refund any money to Meister. Meister sued for recovery of the amount paid under the contract, minus the value of the timber it had already removed.

¶3 At trial, McGuire attempted to introduce a videotape which he claimed showed the rutting damage done to his property by the logging. In the alternative, McGuire asked to be allowed to present two photographs, each taken from the videotape. The trial court reviewed the videotape and photographs outside the presence of the jury and excluded them.

STANDARD OF REVIEW

¶4 We review evidentiary decisions under the erroneous exercise of discretion standard. *State v. Sullivan*, 216 Wis. 2d 768, 780, 576 N.W.2d 30, 36 (1998). A court properly exercises discretion when it considers the facts of record

under the applicable law and reasons its way to a rational conclusion. *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991).

DISCUSSION

¶5 To be admissible, evidence must first be relevant under WIS. STAT. §§ 904.01 and 904.02, in that it relates to a fact or proposition of consequence to the determination of the action. In addition, its probative value must substantially outweigh the danger of unfair prejudice or confusion of issues under WIS. STAT. § 904.03. *Sullivan*, 216 Wis. 2d at 785-89.

¶6 The record shows that the trial court employed the proper legal standard to test the admissibility of the proffered evidence. First, the court determined that the videotape was irrelevant to the extent that it showed a neighbor's land, and prejudicial to the extent that it showed some timber damage that was not at issue in the case. After the court made this ruling, McGuire did not proffer an edited version that would eliminate the irrelevant and prejudicial portions. The trial court also noted that the photographs were "so fuzzy, that it is hard to tell what they are," and later stated that they "just didn't give us a picture ... that we need." Given that Meister conceded at trial that some rutting had occurred, we are satisfied the trial court could reasonably conclude that the problems with the tape and photographs, on balance, outweighed any relevance they might have had.

By the Court.—Judgment affirmed.

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

