

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 24, 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. 02-1680-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-258

**IN COURT OF APPEALS
DISTRICT IV**

BETTY JANE MAHER,

PLAINTIFF-RESPONDENT,

v.

**PEGGY JEANNE MAHER AND PATRICIA MARIE MAJEWSKI
N/K/A PATRICIA MARIE MAHER, IN THEIR CAPACITY
AS CO-TRUSTEES OF THE THOMAS W. MAHER LIVING
TRUST DATED MARCH 9, 2000,**

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Waushara County:
LEWIS R. MURACH, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Peggy and Patricia Maher appeal an order compelling them, as trustees of their father's living trust, to convey title to two

parcels of land to their stepmother, Betty Jane Maher.¹ The children claim that the trust was only intended to convey one of the parcels to their stepmother. We disagree and affirm the trial court's decision.

¶2 On March 9, 2000, Thomas Maher executed a living trust document which provided, in relevant part, that:

[M]y Trustee shall distribute, free of trust, upon my death any interest that I, or my Living Trust, may have in the real property where I reside and located at W 5759 Czech Drive ... to my wife BETTY JANE MAHER.

At the time the trust document was executed, Thomas and Betty were living in a house situated on about six acres of land located at W5759 Czech Drive.

¶3 Accepting as true the facts most favorable to the children for the purpose of the summary judgment motion, Thomas was already planning at the time the trust was executed to subdivide the parcel, to build a smaller new home on a portion of it for his and Betty's use, and to sell the larger home and remaining land with the proceeds to go into the trust for Thomas's children and grandchildren. Shortly after the living trust was executed, Thomas did in fact have the land subdivided into two parcels and began construction on a second home, which was given the address W5713 Czech Drive. However, Thomas died unexpectedly on September 5, 2002, before construction on the new home had been completed.

¹ Pursuant to our order of July 18, 2002, this case was placed on the expedited appeals calendar. *See* WIS. STAT. RULE 809.17 (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 We are satisfied that the language of the living trust document unambiguously referred to the entire parcel of land upon which the original house was located, and directed that it was to be conveyed to Betty after Thomas's death. Regardless of whether it was in fact Thomas's intent to eventually move to the new house on the subdivided parcel and sell the old house, the new house was not completed before Thomas's death and he never made any formal change to his living trust document after the land had been subdivided. To the contrary, on June 16, 2000, Thomas recorded a quit-claim deed transferring title to both the new parcel and what remained of the original parcel to the living trust. Accordingly, we agree with the trial court that the living trust required the children to convey to Betty title to each of the lots which comprised the original parcel.

By the Court.—Order affirmed.

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

