

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 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. 02-1706
STATE OF WISCONSIN**

Cir. Ct. No. 01 CV 5568

**IN COURT OF APPEALS
DISTRICT I**

MONICA A. TANNER,

PLAINTIFF-APPELLANT,

v.

**JULIE A. WILLIAMS, PERSONALLY AND AS
PERSONAL REPRESENTATIVE,**

DEFENDANT-RESPONDENT,

**ESTATE OF RONALD L. BURETTA, EMILY BURETTA AND
PRUDENTIAL PREFERRED PROPERTIES,**

DEFENDANTS,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

INTERVENOR.

APPEAL from an order of the circuit court for Milwaukee County:

ELSA C. LAMELAS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Monica A. Tanner appeals from an order granting summary judgment in favor of Julie A. Williams in an action Tanner filed against Williams for alleged misrepresentation as to the condition of a basement in a real estate transaction. Tanner claims the trial court erred when it granted summary judgment because Williams had a duty to disclose the water problems in the home she sold to Tanner. Because the trial court did not err when it granted summary judgment, we affirm.

I. BACKGROUND

¶2 Tanner made an offer to purchase a home from an estate with Williams acting as personal representative for the estate. Tanner hired a home inspector before closing on the deal. Tanner had no contact with Williams until the closing, where they both were present to sign paperwork. Subsequent to the sale, Tanner discovered that the basement of the home had an ongoing water seepage problem.

¶3 In June 2001, Tanner filed a summons and complaint against Williams, the estate, and the realtor alleging claims of intentional misrepresentation, misrepresentation in violation of WIS. STAT. §§ 895.80, 943.20 and 100.18 (1999-2000),¹ and negligence. In sum, Tanner argued that Williams knew about the leaky basement, she had a duty to disclose this defect to Tanner, and she remained silent. Williams filed a motion for summary judgment asserting

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

that she made no representations about the home's condition and that as personal representative, she had no duty to make any representations or disclose any defects. The trial court granted the motion and dismissed the case. Tanner now appeals.

II. DISCUSSION

¶4 This case arises following a grant of summary judgment. We review summary judgments independently, employing the same methodology as the trial court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). We do value any analysis that the trial court has placed in the record. We shall affirm the trial court's decision granting summary judgment if the record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Moreover, this case involves the interpretation of a statute, WIS. STAT. ch. 709, which presents a question of law reviewed *de novo*. *State ex rel. Parker v. Sullivan*, 184 Wis. 2d 668, 679, 517 N.W.2d 449 (1994).

¶5 We conclude that the trial court did not err when it granted summary judgment in this case. In general, with respect to real estate actions, silence may constitute a misrepresentation if the seller had a duty to disclose. *Ollerman v. O'Rourke Co.*, 94 Wis. 2d 17, 26, 288 N.W.2d 95 (1980). Tanner contends that Williams's silence constituted a misrepresentation. She argues that Williams knew about the leaky basement and should have disclosed the condition. We do not agree.

¶6 Pursuant to ch. 709 of the Wisconsin statutes, a personal representative transferring real estate is not required to make disclosures relating to the condition of the property. Chapter 709 sets forth the nature and extent of

defects or conditions that must be disclosed by a seller of residential real estate. WISCONSIN STAT. § 709.03 establishes the manner in which the conditions or defects are to be disclosed—i.e., via a property condition report. It is undisputed in this case that no property condition report was prepared or requested.

¶7 No property condition report was prepared in this case because the transaction fell into a category that the legislature decided did not require the disclosure document. WISCONSIN STAT. § 709.01(2)(a) specifically exempts personal representatives who have never occupied the property from the disclosure requirements. The language of the statute is clear and unambiguous, and must be enforced as written. *Hillman v. Columbia County*, 164 Wis. 2d 376, 388, 474 N.W.2d 913 (Ct. App. 1991).

¶8 Williams, as personal representative who had not occupied the home, is the type of seller the legislature exempted from disclosure duties. She had no statutory duty to prepare a property condition report or disclose the condition of the property. Thus, her silence at the closing cannot, as a matter of law, constitute a misrepresentation. Under the circumstances, it appears that the legislature places the burden of determining the condition of the property on the potential buyer.

¶9 Further, Tanner suggests that the distinction in WIS. STAT. § 709.01(2)(a), which exempts personal representatives who have never occupied the property from having a disclosure duty, but includes personal representatives who have occupied the property in the disclosure requirements, is flawed, and supports her contention that all personal representatives have disclosure duties. We disagree.

¶10 It is reasonable for the legislature to impose the disclosure duties on a personal representative who has occupied the premises and presumably is familiar with the condition of the property, but to exempt from disclosure a personal representative who has never lived on the property.

¶11 Moreover, although this court can certainly sympathize with Tanner's position that personal representatives need to be honest in conducting the affairs of the estate, we are bound by the statutory rules governing these transactions. Under the circumstances here, Williams did not make any affirmative representations explaining the condition of the property, and she was not obligated to do so. The responsibility to determine the condition of this property rested with the purchaser.

By the Court.—Order affirmed.

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

