

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 6, 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. 03-1018-FT  
STATE OF WISCONSIN**

**Cir. Ct. No. 02PR000310**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE ESTATE OF BARBARA L. SANGER,  
DECEASED:**

**FREDERICK J. SANGER,**

**APPELLANT,**

**V.**

**ESTATE OF BARBARA L. SANGER, JAMES R. SANGER AS  
PERSONAL REPRESENTATIVE,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Rock County:  
JAMES WELKER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Frederick Sanger appeals the circuit court's order construing the terms of the will of his mother, Barbara Sanger. The issue is

whether Barbara's will creates a precatory trust. This case has been placed on the expedited appeals calendar pursuant to WIS. STAT. RULE 809.17 (2001-02). We affirm.

¶2 Barbara's will provides:

In the event I own a home as of the date of my death, it is my wish that if any child of mine wishes to reside in such home he or she shall be allowed to by my other children, PROVIDED HOWEVER such child or children that choose to live in the home shall pay any mortgage payment, real estate taxes, insurance premiums, ordinary and necessary upkeep expenses and utilities. Major repairs or improvements shall be shared equally by my children. "Major repairs or improvements" is defined to mean any repairs or improvements reasonably necessary to preserve the property and costing in excess of \$500.00 per repair or improvement. My child or children may possess the home as provided above for a period not to exceed ten years from the date of my death.

¶3 Frederick, who lived with his mother before her death, continued to live in the home after she died under the terms of the will. After several years, the personal representative of his mother's estate, Frederick's brother, served him with a notice terminating his tenancy. Frederick vacated the home and commenced this action, arguing that he had a right to stay in the home pursuant to the will. The circuit court disagreed.

¶4 Frederick's argument that he has a right to remain in the home focuses on this sentence in the will: "In the event I own a home as of the date of my death, it is my wish that if any child of mine wishes to reside in such home he or she shall be allowed to by my other children ...." Frederick contends that this language creates a precatory trust. A precatory trust is "[a] trust that the law will recognize to carry out the wishes of the testator or grantor even though the

statement in question is in the nature of an entreaty or recommendation rather than a positive command.” BLACK’S LAW DICTIONARY 1517 (7th ed. 1999).

¶5 Where, as here, we are called upon to interpret a will based on undisputed facts, we review the circuit court’s decision de novo. *Holy Family Convent v. DOR*, 157 Wis. 2d 192, 195, 458 N.W.2d 579 (Ct. App. 1990). Our primary goal is to discern and give effect to the testator’s intent. *Id.* “Intent is gleaned from the will’s language, the entire testamentary disposition, and the circumstances surrounding [the will’s] execution.” *Id.* at 196. The general rule is that “precatory” words<sup>1</sup> in a will, such as “it is my wish,” are construed as recommendations to the devisee, but are not binding commands, as they would be if made to the personal representative. *Baker v. McBride*, 14 Wis. 2d 577, 581, 111 N.W.2d 407 (1961) (“Precatory words directed to an executor indicate a trust while the same words to a devisee do not.”). We therefore reject Frederick’s argument that the language obligated the siblings to allow him to live in the home.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

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<sup>1</sup> BLACK’S LAW DICTIONARY 1195 (7th ed. 1999), defines precatory as: “(Of words) requesting, recommending, or expressing a desire for action but usu[ally] in a nonbinding way.”

