

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2012

A. John Voelker
Acting 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. 2011AP1474

Cir. Ct. No. 2011SC179

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JULEE LAWLER,

PLAINTIFF-APPELLANT,

V.

**ROGER J. KUEFFER AND REBECCA J. SCHOESSOW,
N/K/A REBECCA J. MARKING,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ This appeal arises out of a dispute over the ownership of a cat. For the reasons that follow, we affirm the circuit court.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) and (3) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶2 The majority of the facts are undisputed. In February 2011 Julee Lawler sued Roger Kueffer² for the return of Dexter, a cat Lawler took custody of in May 2002. Lawler and Kueffer had lived together on and off for eight years. Their relationship ended in August 2008.

¶3 In March 2006 Kueffer took Dexter from Lawler's home out of concerns that Dexter was being mistreated by other animals living at Lawler's residence. The circuit court found that Kueffer's taking Dexter at this time was not with Lawler's consent. In April 2006, about one month after Kueffer took Dexter from Lawler's home, Dexter needed veterinary care, which Kueffer's mother paid for. The parties agree that Kueffer stated that he would return Dexter to Lawler if Lawler reimbursed Kueffer's mother for the veterinary bill, but Lawler was unable to pay the amount. Nevertheless, on various occasions between May 2006 and August 2008, Lawler asked Kueffer to return Dexter to her.

¶4 The relationship between Lawler and Kueffer ended in August 2008. Lawler took her possessions from Kueffer's residence and requested that she be allowed to take Dexter with her, too. Kueffer did not allow Dexter to leave.

¶5 Kueffer testified that in August 2008, Lawler told Kueffer that he could keep Dexter as a birthday gift. Lawler denies making this statement. Nevertheless, the court found that Lawler did tell Kueffer that he could keep Dexter.

² Rebecca Schoessow was also named as a defendant. At the time of trial, Schoessow was dating Kueffer, and Dexter lived with Schoessow. Because Schoessow's involvement in the case has been limited, we will refer only to Kueffer in this opinion.

¶6 In January 2009 Kueffer told Lawler that Dexter was dead, but that was not true. Lawler did not learn that Dexter was alive until June 2010. About seven months later, Lawler asked Kueffer to return Dexter to her, but Kueffer refused.

¶7 Lawler filed the present suit in small claims court for the return of Dexter. Kueffer filed a counterclaim seeking money damages for “five years of taking care of Dexter and a vet bill.” The circuit court concluded that Kueffer was the legal owner of Dexter but denied the counterclaim seeking money damages. Lawler appeals.

¶8 On appeal Lawler contends the circuit court erred in determining that Lawler was not entitled to possession of Dexter and that Kueffer did not unlawfully take or detain Dexter. *See* WIS. STAT. § 810.13(1)(a)-(b). Here, specifically, Lawyer asserts that she did not give Dexter as a gift to Kueffer.

¶9 We uphold the circuit court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). On appeal we do not reweigh evidence or reassess witness credibility; instead, we will “search the record for evidence that supports findings the trial court made, not for findings it could have made but did not.” *Dickman v. Vollmer*, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202. However, the application of the facts to a legal standard is a question of law that we review de novo. *See State v. Wills*, 193 Wis. 2d 273, 277, 533 N.W.2d 165 (1995).

¶10 Our case law establishes the following four elements that must exist to establish a valid gift:

1. Intention to give on the part of the donor.

2. Delivery, actual or constructive, to the donee.
3. Termination of the donor's dominion over the subject of the gift.
4. Dominion in the donee.

Geise v. Reist, 91 Wis. 2d 209, 218, 281 N.W.2d 86 (1979) (citations omitted).

¶11 As for the first element, the circuit court found that Lawler told Kueffer that Kueffer could keep Dexter as a birthday gift, which would evince an intent to give on the part of the donor. To the extent that Lawler argues that this finding was clearly erroneous, we reject that argument. Kueffer testified that Lawler told Kueffer that she would never be able to repay Kueffer's mother for the veterinary bill, and therefore Kueffer should keep Dexter as a birthday gift. Although Lawler testified that she never made this statement to Kueffer, it was up to the circuit court to weigh the credibility of witnesses and make such a factual determination. Even if the circuit court does not make an express finding about the credibility of a witness, "we assume it made implicit findings on a witness' credibility when analyzing the evidence." *Jacobson v. American Tool Companies, Inc.*, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (citation omitted). The circuit court's decision to accept Kueffer's testimony on this issue and reject Lawler's was not clearly erroneous.

¶12 The second element, delivery of Dexter to Kueffer, was satisfied in this case. Although the circuit court found that Kueffer initially took Dexter without Lawler's consent, there is testimony in the record that Kueffer and Lawler continued to date, and Lawler was able to visit Dexter at Kueffer's home. The circuit court implicitly found that, at some point after Kueffer took custody of Dexter, Lawler consented to this arrangement. This implicit finding is illustrated by the circuit court's oral ruling that "if [Lawler] felt the cat was stolen [while

Kueffer had the cat, and Lawler and Kueffer were dating], she certainly could have called the police and that might have put an end to this quick without waiting all these years.” Dexter was in Kueffer’s custody when Lawler told Kueffer that Kueffer could keep Dexter, which is sufficient here to constitute valid delivery.

¶13 The last two elements of a valid gift—termination of donor’s dominion over the subject of the gift and dominion in the donee—are also met in this case. The parties do not dispute that Dexter has resided with Kueffer (or Kueffer’s mother or girlfriend, at Kueffer’s request) since May 2006, and Lawler has not had custody of Dexter since then.

¶14 Because we conclude that the circuit court’s factual findings were not clearly erroneous, and the facts demonstrate that Lawler gave Dexter to Kueffer as a gift and therefore Kueffer is the rightful owner of Dexter, we need not address any additional grounds the circuit court identified for its decision to deny Lawler’s action for replevin of Dexter.

¶15 The order of the circuit court is affirmed.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

