

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 10, 2012

Diane M. Fremgen
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. 2011AP466

Cir. Ct. No. 2008CV452

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

VERONIKA MCCARTHY,

PLAINTIFF-APPELLANT,

v.

**MARLENE J. MCCARTHY, DONNA L. MCCARTHY
AND PHYLLIS C. MCCARTHY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Adams County:
CHARLES A. POLLEX, Judge. *Affirmed.*

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

¶1 PER CURIAM. Veronika McCarthy appeals a summary judgment order that dismissed her claims to recover half the value of property her deceased husband had transferred to his sisters during the marriage, in addition to an amount

Veronika claimed her family had contributed toward the purchase of that property. Veronika further challenges the trial court's decision to rescind an order for an interpreter during the pendency of the lawsuit. For the reasons discussed below, we affirm both the denial of an interpreter and the dismissal of Veronika's claims.

BACKGROUND

¶2 Siblings Timothy, Marlene, Donna, and Phyllis McCarthy jointly bought a lake house in the 1980s. On April 3, 1998, Timothy married Veronika. The parties dispute whether Veronika or her mother paid one of the McCarthy sisters \$16,704.54 to "buy into" the lake house at the time of the marriage. It is undisputed that any such agreement was never reduced to writing and Veronika's name was never added to the deed.

¶3 On March 27, 2001, Timothy quitclaimed his interest in the lake house to his sisters because he was no longer able to pay his share of the taxes, insurance, and upkeep. Veronika did not discover the transfer until after Timothy died on December 20, 2007, when she was handling his estate. After the sisters barred Veronika from using the lake house, she filed this lawsuit, seeking to recover: (1) a marital property interest of 50 percent of the value of Timothy's prior share of the lake house pursuant to WIS. STAT. § 766.70(6)(b) (2009-10);¹ and (2) the \$16,704.54 she claimed her family had paid to buy into the lake house.

¶4 Veronika submitted an accommodation request for a Slovak interpreter, which the circuit court initially granted. However, after the McCarthy

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

sisters filed a letter of objection, the trial court held a hearing on the matter. The court then made a factual finding that Veronika was in fact proficient in English, and it vacated its prior order for an interpreter.

¶5 The circuit court subsequently dismissed both of Veronika's claims on summary judgment. With respect to the first claim, the court concluded that the alleged facts did not state a claim for relief under WIS. STAT. § 766.70(6)(b). The court found that the second claim was barred both by the statute of frauds and the statute of limitations. Veronika appeals both the denial of an interpreter and the court's summary judgment decision.

STANDARD OF REVIEW

¶6 A determination as to a party's English proficiency is a factual one, which we will not set aside unless clearly erroneous. *See Strook v. Kedinger*, 2009 WI App 31, ¶24, 316 Wis. 2d 548, 766 N.W.2d 219 (citation omitted).

¶7 This court reviews summary judgment decisions de novo, applying the same methodology and legal standard employed by the circuit court. *Frost v. Whitbeck*, 2001 WI App 289, ¶6, 249 Wis. 2d 206, 638 N.W.2d 325 (citations omitted). We first examine the pleadings to determine whether the complaint states a claim and the answer joins an issue of fact or law. *Id.* If issue has been joined, we examine the parties' affidavits and other submissions to determine whether the movant has made a prima facie case for judgment and, if so, whether there are any material facts in dispute that would entitle the opposing party to trial. *Id.*; *see also* WIS. STAT. § 802.08(2).

DISCUSSION

Interpreter

¶8 A court shall advise a party of the right to an interpreter at public expense “[i]f the court determines that the person has limited English proficiency and that an interpreter is necessary.” WIS. STAT. § 885.38(3)(a). Limited English proficiency is defined to include “[t]he inability, because of the use of a language other than English, to adequately understand or communicate effectively in English in a court proceeding.” § 885.38(1)(b)1. This is a statutory right with regard to civil cases, and does not implicate either the confrontation clause or the right to counsel. Limited English proficiency that is based upon a person having a different primary language does not fall within the definition of a disability for purposes of the Americans with Disabilities Act. *See* 29 U.S.C. § 705(9) (2010); 28 C.F.R. § 35.104 (2010).

¶9 We are satisfied that the circuit court’s determination that Veronika was proficient in English was supported by the record before it and not clearly erroneous. Veronika’s résumé emphasized her language skills, noting that she spoke Slovak, Czech, Russian, Polish, and Hungarian. In a deposition for another case, Veronika indicated that she was “very comfortable” communicating in English. And most importantly, the court’s own observations of Veronika in the four civil cases she had pending demonstrated that she had an impressive understanding of the English language that allowed her to correct counsel at times and go beyond the scope of questions. In this regard, the circuit court properly differentiated between the ability to understand English, and the need to have certain questions rephrased, which the court described as “standard practice” in legal proceedings.

Marital Property Claim

¶10 Veronika claimed that she had a marital interest in the gifted portion of the lake house pursuant to WIS. STAT. § 766.70(6)(b)1., which provides:

If a transfer of marital property to a 3rd person during marriage by a spouse acting alone becomes a completed gift upon the death of the spouse or if an arrangement during marriage involving marital property by a spouse acting alone is intended to be and becomes a gift to a 3rd person upon the death of the spouse, the surviving spouse may bring an action against the gift recipient to recover one-half of the gift of marital property.

We agree with the circuit court that the facts of this case do not state a claim for relief under this statute.

¶11 First, under WIS. STAT. § 766.31(6), property owned by one spouse at the time of the marriage generally is classified as individual property, not marital property. Veronika was not listed on the deed prior to the marriage.

¶12 Moreover, even if Veronika were able to prove that she became a part-owner of the lake house by buying an interest prior to the marriage, the quitclaim deed was executed in 2001, six years before Timothy died. Any gift became effective then, not “upon the death of the spouse.”

Breach of Contract Claim

¶13 Finally, we also agree with the circuit court that Veronika’s claim that she (or her mother, acting on her behalf) orally contracted to buy into the lake house is barred by the statute of frauds. Under WIS. STAT. § 706.02, a contract or other transaction purporting to convey an interest in property is not valid unless it is evidenced by a written conveyance that identifies the parties, land, and interest conveyed; is signed by or on behalf of each of the grantors; and is delivered.

Veronika presented no such written instrument in the summary judgment materials.

¶14 In light of our decision that this claim was barred by the statute of frauds, we do not need to address whether it may also have been barred by the statute of limitations.

By the Court.—Order affirmed.

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

