



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 16, 2022

To:

Hon. Lloyd Carter
Circuit Court Judge
Electronic Notice

Rudolph J. Kuss
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County
Electronic Notice

Jerry Wilcox
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2021AP379

Tyler Chaney and Michelle Trombetti v. Jerry Wilcox a/k/a Gerald Wilcox (L.C. #2020CV957)

Before Neubauer, Grogan and Kornblum, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Tyler Chaney and Michelle Trombetti (hereinafter “the owners”) appeal from an order of the circuit court granting Jerry Wilcox’s motion to dismiss their complaint on the basis that their claim is barred by the two-year statute of limitations. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Wilcox is a licensed home inspector in the State of Wisconsin, working as an independent contractor. The owners hired Wilcox to conduct an inspection on the property that they subsequently purchased at 1916 Sunkist Avenue, Waukesha, Wisconsin. Both the owners and Wilcox agree that Wilcox inspected the home on November 16, 2017. Wilcox forwarded his inspection report to the owners the same evening.

The complaint suggests that at some point after purchasing the home, the owners discovered structural issues with the property. The complaint does not specify when they became aware of these issues. The complaint does make clear that the owners believe that Wilcox should have reported these issues in his inspection report.

The owners commenced a civil action against Wilcox on July 6, 2020, which was more than two and one-half years after the inspection. They alleged two causes of action: one based on negligence for “failing to observe and accurately describe the condition of the property’s flooring system, columns, and retaining wall,” and the second based on negligent misrepresentation for telling the owners “in writing that the property’s flooring system, columns, and retaining wall were in satisfactory condition” and “verbally that the property’s floors were slanted due to natural settling of an old home rather than a defect in the property’s structure.”

Wilcox filed a motion to dismiss the complaint, arguing that the two-year statute of limitations for home inspectors, WIS. STAT. § 440.977(1), barred this action. The owners argued that § 440.977(1) does not apply. They argue that the specific statute of limitations for home inspectors has no impact on the six-year and three-year statutes of limitations set forth in WIS. STAT. § 893.52 (property damage) and WIS. STAT. § 893.93(1m)(b) (misrepresentation), respectively.

After a hearing, the circuit court granted Wilcox's motion to dismiss the complaint, agreeing that the two-year statute of limitations under WIS. STAT. § 440.977(1) controls. The owners appeal.

Our review of a motion to dismiss presents a question of law for our independent review. See *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. In this case, the owners present only a question of law because both parties agree that the owners filed this case outside of the two-year statute of limitations.

Resolution of this appeal turns on the interpretation and application of WIS. STAT. § 440.977 to uncontested facts. “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.” *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. “[S]tatutory interpretation ‘begins with the language of the statute.’” *Id.*, ¶45 (citation omitted). “If the words chosen for the statute exhibit a ‘plain, clear statutory meaning,’ without ambiguity, the statute is applied according to the plain meaning of the statutory terms.” *State v. Grunke*, 2008 WI 82, ¶22, 311 Wis. 2d 439, 752 N.W.2d 769 (quoting *Kalal*, 271 Wis. 2d 633, ¶46). “The interpretation and application of a statute to an undisputed set of facts are questions of law that we review independently.” *Estate of Genrich v. OHIC Ins. Co.*, 2009 WI 67, ¶10, 318 Wis. 2d 553, 769 N.W.2d 481 (citation omitted).

In this case, the language of the statute is clear and unambiguous. WISCONSIN STAT. § 440.977(1) provides:

(1) Notwithstanding [WIS. STAT. §] 893.54, an action to recover damages for any act or omission of a home inspector relating to a home inspection that he or she conducts shall be commenced

within 2 years after the date that a home inspection is completed or be barred. The period of limitation under this subsection may not be reduced by agreement.

The statute pertains to actions “to recover damages for *any act or omission* of a home inspector relating to a home inspection that he or she conducts.” Sec. 440.977(1) (emphasis added). Where such a claim exists, the action *shall* (must) be filed within two years after the date of the inspection. *Id.*

The owners argue that the plain language of the statute should be ignored. They suggest that because WIS. STAT. § 440.977 does not list WIS. STAT. § 893.52 (property damage) or WIS. STAT. § 893.93(1m)(b) (misrepresentation), the legislature meant to exclude those causes of action from § 440.977. The clear words of the statute control. However, the context of the statute reinforces the interpretation that the legislature created a specific statute of limitations for home inspections and did not intend for the more general statutes to apply. The long-standing rule of statutory interpretation is “that where two conflicting statutes apply to the same subject, the more specific controls.” *State ex rel. Hensley v. Endicott*, 2001 WI 105, ¶19, 245 Wis.2d 607, 629 N.W.2d 686 (citation omitted). Section 440.977 is part of WIS. STAT. ch. 440, which covers all home inspectors. The other statutes, §§ 893.52 and 893.93(1m)(b), are general statutes of limitations. In this case involving claims arising out of a home inspection, § 440.977(1) controls.²

We conclude that the circuit court properly granted Wilcox’s motion to dismiss, as the two-year statute of limitations under WIS. STAT. § 440.977(1) is applicable in this case. Wilcox

² As this case presents only property damage and misrepresentation claims, we make no comment on the application of the statute to personal injury claims. This decision is confined to the facts.

is a home inspector who conducted a home inspection for the owners. The date of the inspection was November 16, 2017, and this case was commenced on July 6, 2020—almost two years and eight months later. The owners’ claims are time-barred under the statute.

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals