

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 6, 2015

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. 2014AP2495

Cir. Ct. No. 2013SC3532

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

KAY & KAY LAW FIRM,

PLAINTIFF-RESPONDENT,

V.

ROBERT C. STANGLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
LEE S. DREYFUS JR., Judge. *Affirmed.*

¶1 BROWN, C.J.¹ Robert Stangler appeals the circuit court's decision awarding unpaid legal fees owed by him to Kay & Kay Law Firm. First, Stangler

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

argues that the circuit court did not make adequate findings of fact to support its decision. Second, he claims that the Wisconsin Consumer Act governs the transaction between the two parties, and Kay & Kay did not comply with the law's regulations. Third, Stangler argues that he did not breach the contract he signed with Kay & Kay. Fourth, he argues that the circuit court wrongly denied his motion to dismiss. We disagree with all four of Stangler's arguments. The record clearly supports the circuit court's decision. We hold that Kay & Kay did not breach any duties under the law, while Stangler failed to live up to his obligations under the contract. Affirmed.

Background

¶2 Kay & Kay represented Stangler in two separate cases and billed legal fees to him for each matter. The contracts Stangler signed with the firm were identical. When Stangler failed to pay for the legal services he received, Kay & Kay sued. The circuit court ruled in favor of Kay & Kay, ordering Stangler to pay \$9509.41 in legal fees plus statutory costs. Stangler appeals.

Analysis

¶3 Stangler first argues that the circuit court “erroneously exercise[d] its discretion when it failed to make findings of fact and conclusions of law.” We see no merit in this argument. It is not necessarily reversible error if the circuit court fails to make specific findings of fact. *Jacobson v. American Tool Cos.*, 222 Wis. 2d 384, 394, 588 N.W. 2d 67 (Ct. App. 1998). If the circuit court fails to make a finding of fact, the appellate court may affirm the judgment if clearly supported by the evidence. *Id.*

¶4 The circuit court heard testimony from the firm owner and the billing manager about Kay & Kay’s accounting and invoicing procedures with regard to the services it provided to Stangler. The parties also presented the circuit court with a slew of exhibits and billing statements. So, there was abundant evidence to support the trial court. There was an accurate conclusion of law too. After the parties presented all their evidence, the circuit court held that it was “satisfied ... there’s additional money owed.” This is an ultimate fact. Whether a factual finding fulfills a particular legal standard is a question of law. *See Nottelson v. DILHR*, 94 Wis. 2d 106, 115-116, 287 N.W. 2d 763 (1980). Ultimate facts, therefore, serve as conclusions of law. When the court made an ultimate finding of fact, it made its conclusion of law.

¶5 Stangler next argues that Kay & Kay failed to follow the requirements of the Wisconsin Consumer Act, which governs consumer credit transactions. *See LeBakken Rent-To-Own v. Warnell*, 223 Wis. 2d 582, 588, 589 N.W.2d 425 (Ct. App. 1998). Specifically, Stangler alleges that Kay & Kay did not make the necessary disclosures found in WIS. STAT. §§ 422.301 and 422.303, that the agreement was unconscionable under WIS. STAT. § 425.107, and that the firm violated the obligation to deal in good faith pursuant to WIS. STAT. § 421.108.

¶6 At the outset, we note that Stangler mostly argues a moot point here, as he seemingly misunderstands the remedies available under the Wisconsin Consumer Act. When the circuit court issued its oral ruling, it specifically ordered payment only of past due legal fees and not any interest-related penalties on top of that amount. As a result, most of the damages Stangler could claim under the Wisconsin Consumer Act were nullified. The remedy when a creditor fails to make the proper disclosures, which are found in WIS. STAT. § 425.304, is twice

the amount of the finance charge plus any actual damages the borrower sustained. However, Stangler did not incur any finance charge nor does he claim any other damages. Similarly, the damages for an unconscionable lending contract, found in WIS. STAT. §§ 425.107(1) and 425.303, give the court an option to void the agreement, plus award \$100 and any other damages the borrower incurred. But, the circuit court did not find the agreement to be unconscionable. Regarding good faith, there are no specific statutory damages for a violation of this duty, and Stangler does not make any argument as to what the damages should be for such a breach. Stangler does argue that the Wisconsin Consumer Act requires us to void the entire agreement between him and Kay & Kay for such a violation. But no part of the Wisconsin Consumer Act requires the circuit court to void a contract under these circumstances, and there is no law so holding.

¶7 Nonetheless, we will address this issue rather than decide it on mootness grounds. Simply stated, the Wisconsin Consumer Act does not govern this transaction. The Act deals with consumer credit sales. *See* WIS. STAT. § 421.301(9) and (10). A consumer credit sale is defined as:

a sale of goods, services or an interest in land to a customer on credit where the debt is payable in installments or a finance charge is imposed and includes any agreement in the form of a bailment of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods or real property involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods or real property upon full compliance with the terms of the agreement.

Sec. 421.301(9). Stangler does not cite any authority to support his argument that a bill issued by an attorney constitutes a consumer credit sale. Also, we have been

unable to find any case where an attorney's bill came under the Wisconsin Consumer Act.

¶8 Moreover, Stangler points out that he unilaterally decided to make installment payments in the amount of \$500 per month, and Kay & Kay imposed a 1.5% monthly interest penalty for late payments. Thus, Stangler essentially argues that by not making his payments on time and then deciding he wanted to make up the money he owed via installments, Kay & Kay created a consumer credit sale when it applied an interest rate of 1.5% in response to his unilateral decision to implement this plan. These facts do not fulfill the elements of a consumer credit sale.

¶9 There is a two-prong test for determining whether a transaction amounts to a consumer credit sale. See *LeBakken Rent-To-Own*, 223 Wis. 2d at 591-92. First, Stangler and Kay & Kay must have agreed to provide services on credit and that the services would be payable in installments. See *id.* at 591. Second, “the agreement must provide that [Stangler] ‘will become, or for no other or a nominal consideration has the option to become, the owner of the [services] ... upon full compliance with the terms of the agreement.’” See *id.* at 592 (citation omitted; alteration in original). As to the first prong, the parties never agreed that the services would be provided on credit. The contract did not stipulate that payments would be made in installments in exchange for services provided and an interest rate would apply to unpaid sums. As to the second prong of this test, nothing in the record shows that there was a meeting of the minds whereby Stangler would become the owner of the services upon full compliance of the terms of the agreement. Kay & Kay did not bill Stangler until after it actually provided him with services. It used up the retainer fee first and then billed the additional amount owed. Therefore, we hold that this transaction was not a

consumer credit sale and none of the protections in the Wisconsin Consumer Act apply.²

¶10 Stangler’s third argument is that he did not breach the contract he signed with Kay & Kay because he intended to pay off the money owed through an installment plan. This argument is completely devoid of merit. Whether a party breached a contract is a legal issue we review de novo. *Steele v. Pacesetter Motor Cars, Inc.*, 2003 WI App 242, ¶10, 267 Wis. 2d 873, 672 N.W.2d 141. In evaluating a contract claim, we review the document to discover and give effect to the parties’ intentions. *Tufail v. Midwest Hospitality, LLC*, 2013 WI 62, ¶25, 348 Wis. 2d 631, 833 N.W.2d 586. When a contract is clear and unambiguous, we construe it according to the literal terms and assume the parties’ intentions are evidenced by the words they chose to use. *Id.*, ¶26.

¶11 Stangler contends that he did not breach the contract because “[n]owhere in the fee agreements is there any statement, notice, or direction as to when or how Stangler was to make payments to Kay [& Kay] for services rendered.” Thus, he goes on to claim, bills need not be paid immediately, meaning the installment plan Stangler tried to create was not a breach of contract. To the contrary, the contract explicitly states:

[Kay & Kay] typically bill[s] on a monthly basis. The client agrees that attorneys fees and costs shall be satisfied from the retainer fee. If the retainer fee is depleted, clients are to satisfy attorneys fees and costs upon receipt of invoice.

² We also note that Kay & Kay elected not to cross-appeal. So, although we hold that the Wisconsin Consumer Act does not apply in this case, Kay & Kay forfeited its opportunity to seek damages stemming from the 1.5% monthly interest penalty. The interest rate is simply not part of this appeal at all.

The contract obviously contemplates when and how Stangler was required to make payments. Stangler was bound by the contract to make payments in full as soon as he received a bill. Therefore, an installment plan was not contemplated under the clear, unambiguous terms of the contract.

¶12 Finally, Stangler argues that the circuit court improperly denied his motion to dismiss at the conclusion of Kay & Kay's case pursuant to WIS. STAT. § 805.17(1). This statute calls for dismissal when the plaintiff presents his case without showing any right to relief. *See* § 805.17(1). To succeed, the defendant must show that the plaintiff has failed to make a prima facie case. *See Household Utils., Inc. v. Andrews Co.*, 71 Wis. 2d 17, 24, 236 N.W.2d 663 (1976). Stangler argues that Kay & Kay did not offer adequate evidence to establish damages. However, to establish damages the plaintiff is only required to provide "sufficient data from which the trial court or jury could properly estimate the amount." *Plywood Oshkosh, Inc. v. Van's Realty & Constr. of Appleton, Inc.*, 80 Wis. 2d 26, 31, 257 N.W.2d 847 (1977). As we already discussed, Kay & Kay provided a slew of testimony and affidavits with regard to damages. Though several different numbers were offered, there was adequate evidence for the circuit court to estimate damages.

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

