

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 28, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 98-1865**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**NEW HORIZONS SUPPLY COOPERATIVE,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GEORGE HAACK, D/B/A KICKAPOO VALLEY FREIGHT,**

**DEFENDANT,**

**ALLISON HAACK, D/B/A KICKAPOO VALLEY FREIGHT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Grant County: GEORGE S. CURRY, Judge. *Affirmed.*

DEININGER, J.<sup>1</sup> Allison Haack appeals a small claims judgment in the amount of \$1,009.99 plus costs entered against her in favor of New Horizons

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(a), STATS.

Supply Cooperative. Haack contends the trial court erred in denying her defense that because the debt was incurred by Kickapoo Valley Freight LLC, a limited liability company under ch. 183, STATS., she was not personally liable for the cooperative's claim. We conclude, however, that Haack did not establish at trial that the amount of New Horizons' claim exceeded the value of any liquidation distribution she may have received from the dissolved company. *See* § 183.0909(2), STATS. (quoted below in text). Accordingly, we affirm the appealed judgment.

### **BACKGROUND**

On May 30, 1995, Haack signed a "CARDTROL AGREEMENT" whereby the "Patron" agreed "to be responsible for payment of all fuel purchased with" the "Cardtrol Card" issued under the agreement by a predecessor to New Horizons. "Kickapoo Valley Freight, LLC" is shown as the "Patron" in the first paragraph of the form agreement, and it is signed by "Allison Haack," with no designation indicating whether her signature was given individually or in a representative capacity on behalf of Kickapoo Valley.

An employee of New Horizons testified at trial that in September 1997, when the Kickapoo Valley account was in arrears, she contacted Robert Koch about the bill. Koch referred her to his sister, Haack, who apparently took care of paying the bills for the company. When contacted, Haack told the New Horizons employee that she would start paying \$100 per month on the account. When no payment was received in October, Haack was contacted again, and she then informed New Horizons that Kickapoo Valley had dissolved, "that she was ... a partner, that Robert had moved out of state, and that she planned to assume responsibility and would again start to make a hundred dollars per month

beginning in October.” The employee also testified that during the October telephone conversation, Haack told her she had the assets of the business: a truck, which was secured by the bank; and some accounts receivable “that they were trying to collect.” When contacted in November, Haack again promised a payment, but in December, Haack told the New Horizons employee “not to call her at work anymore.”

When attempts to contact Haack at her home phone number proved unsuccessful, New Horizons commenced this action to collect the account balance, \$1,009.99, from Haack “DBA KICKAPOO VALLEY FREIGHT.”<sup>2</sup> Haack testified that Kickapoo Valley had been organized as a limited liability company, but she did not introduce articles of organization or an operating agreement into evidence.<sup>3</sup> Haack did offer as exhibits a Wisconsin Department of Revenue registration certificate, as well as some correspondence from the department, showing the enterprise identified as “Kickapoo Valley Freight LLC.” Haack stated her defense to New Horizons’ claim was that the account was in the business name, that she was not personally liable for debts of the limited liability company, and that she had not personally guaranteed the obligation.<sup>4</sup>

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<sup>2</sup> New Horizons also named Haack’s husband as a defendant on a marital property theory, but the court dismissed him as a defendant at the close of the plaintiff’s case because “there’s no evidence he has anything to do with this account.”

<sup>3</sup> Haack testified that a Mount Horeb attorney had drafted and filed the necessary papers to establish Kickapoo Valley as a limited liability company, but that she did not receive copies of those documents. She also testified that she had drafted the operating agreement herself, but that she did not bring a copy of the operating agreement to court with her.

<sup>4</sup> New Horizons’ witness conceded on cross-examination that “I don’t have a personal guarantee other than the signature on your agreement for purchases.”

According to Haack, her brother, Robert Koch, had suffered a nervous breakdown and left the state; the truck was sold, with all proceeds going to the bank who held the lien on it; and there were “no additional assets,” but that she was “left with quite a lot of debt that I had signed for.” She acknowledged that she told New Horizons that she “would try to take care” of the account “several times” after the business ceased operations. Finally, Haack testified that she had not filed articles of dissolution or notified creditors of the termination of the business when it ceased operations in the fall of 1997.

In response to questions from the court regarding her investment in the company, and the limits of her liability and that of Mr. Koch, Haack answered that both of them had “lost” their investments in the company. She also testified that the company was taxed as a partnership, and that she had with her copies of a sale agreement whereby “the assets” of the company were sold and the proceeds were given to the bank in order to release the lien on the truck. None of those documents were introduced as exhibits, however, and they are not a part of the record. Haack later testified that the assets that were sold consisted of a “truck, a pallet jack and the customer list.” She did not testify as to the disposition of any cash or accounts receivable remaining at the time the business was dissolved.

The trial court began its oral decision by noting that “the problem the court has, nobody’s filed with this court any documents to show what the limited liability agreement stated. I don’t know ... who bore what responsibilities.” The court went on to conclude that “the rules of dissolution apparently were not followed” because articles of dissolution had not been filed nor creditors notified. It awarded judgment to New Horizons in the amount claimed, on the following basis:

Haack signed ... an agreement for Kickapoo Valley Freight LLC, but it would appear to me that the corporation was just a shell around which there were no real intentions to operate like a corporation because there was no intent even to dissolve the corporation, and the court's going to find that the corporate veil is pierced by the fact that the people were acting like a partnership, being taxed like a partnership, and haven't even dissolved the—

....

...I'm treating this as a partnership and assessing liability to the remaining partner.... That's the evidence that's before me, and unless I would have some other evidence that was not presented, I have to treat this matter as a partnership and assume that the limited liability agreement did not alter the normal partnership liability situation.

Haack appeals the judgment entered against her for \$1,009.99 plus costs.

## ANALYSIS

Although Haack argues on appeal that New Horizons provided “incorrect testimony to the court” regarding Wisconsin’s limited liability company law, and that the cooperative did not meet its burden of proof in establishing her personal liability for the debt, the gravamen of Haack’s appeal is that the court erred in applying the law to the largely undisputed facts of record. Thus, we are called upon to decide a legal question: Were Haack’s testimony and exhibits sufficient to establish a defense under § 183.0304, STATS., which provides that “a member or manager of a limited liability company is not personally liable for any debt, obligation or liability of the limited liability company”? The application of a statute to a particular set of facts is a question of law which this court reviews de novo, owing no deference to the trial court’s reasoning. See *Minuteman, Inc. v. Alexander*, 147 Wis.2d 842, 853, 434 N.W.2d 773, 778 (1989). However, we will not overturn a judgment where the record reveals that the trial court’s decision was

right, although for the wrong reason. *See State v. Alles*, 106 Wis.2d 368, 391, 316 N.W.2d 378, 388 (1982).

New Horizons seeks to defend the trial court's judgment, and its rationale of "piercing the corporate veil," by noting that ch. 183, STATS., expressly permits the importation of concepts such as "piercing the veil" from business corporation law:

Notwithstanding sub. (1) [which sets forth the limitation on member liability], nothing in this chapter shall preclude a court from ignoring the limited liability company entity under principles of common law of this state that are similar to those applicable to business corporations and shareholders in this state and under circumstances that are not inconsistent with the purposes of this chapter.

Section 183.0304(2), STATS. The cooperative argues that the court properly applied the concept of "piercing the veil" to the facts adduced at the trial of this matter. We disagree, and conclude, as Haack contends, that the court's comments imply that it erroneously deemed Kickapoo Valley's treatment as a partnership for tax purposes to be conclusive. There is little in the record, moreover, to support a conclusion that Haack "organized, controlled and conducted" company affairs to the extent that it had "no separate existence of its own and [was Haack's] mere instrumentality," which she "used to evade an obligation, to gain an unjust advantage or to commit an injustice." *See Wiebke v. Richardson & Sons, Inc.*, 83 Wis.2d 359, 363, 265 N.W.2d 571, 573 (1978).

Rather, we conclude that entry of judgment against Haack on the New Horizons' claim was proper because she failed to establish that she took appropriate steps to shield herself from liability for the company's debts following its dissolution and the distribution of its assets.

Section 183.0201, STATS. provides that “[o]ne or more persons may organize a limited liability company by signing and delivering articles of organization to the [Department of Financial Institutions] for filing.” The filing of articles by the department constitutes “conclusive proof that the limited liability company is organized and formed under this chapter.” Section 183.0204, STATS. As we have noted, Haack testified that an attorney had drafted and filed the necessary paperwork to establish Kickapoo Valley Freight LLC, but no direct evidence of the filing of articles with the department was presented to the court. Be that as it may, a fact-finder could have inferred from Haack’s testimony and from her exhibits showing that the Department of Revenue apparently recognized Kickapoo Valley as a “LLC,” that Haack and her brother had properly formed a limited liability company.

The record is devoid, however, of any evidence showing that appropriate steps were taken upon the dissolution of the company to shield its members from liability for the entity’s obligations. Although it appears that filing articles of dissolution is optional, *see* § 183.0906, STATS., the order for distributing the company’s assets following dissolution is fixed by statute, and the company’s creditors enjoy first priority, *see* § 183.0905, STATS. A dissolved limited liability company may “dispose of known claims against it” by filing articles of dissolution, and then providing written notice to its known creditors containing information regarding the filing of claims. *See* § 183.0907, STATS. The testimony at trial indicates that Haack knew of New Horizons’ claim at the time Kickapoo Valley was dissolved. It is also clear from the record that articles of dissolution for Kickapoo Valley Freight LLC were not filed, nor was the cooperative formally notified of a claim filing procedure or deadline.

Section 183.0909, STATS., provides in relevant part as follows:

A claim not barred under s. 183.0907 or 183.0908 may be enforced under this section against any of the following:

....

(2) If the dissolved limited liability company's assets have been distributed in liquidation, a member of the limited liability company to the extent of the member's proportionate share of the claim or to the extent of the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total value of assets distributed to the member in liquidation.

It appears from the record that certain of Kickapoo Valley's assets were sold, and that the proceeds from that sale were remitted to the bank which held a lien on the company's truck. There is nothing in the record, however, showing the disposition of other company assets, such as cash and accounts receivable. New Horizons' witness testified that, in October 1997, Haack had claimed to be attempting to collect the accounts of the dissolved company and hoped to pay the instant debt from those proceeds. We do not know the value of the accounts receivable in question, however, or the amounts of any other company debts to which the proceeds of the accounts may have been applied, because Haack presented no testimony on the issue.

In this regard, we agree with the trial court's comments regarding the lack of evidence in the record to show that Kickapoo Valley's affairs were properly wound up following its dissolution occasioned by Robert Koch's dissociation from the enterprise. Although Kickapoo Valley Freight LLC may have been properly formed and operated as an entity separate and distinct from its owners, Haack did not establish that she distributed the entity's assets in accordance with § 183.0905, STATS., following Kickapoo's dissolution. Her failure to employ the procedures outlined in §§ 183.0906 and .0907, STATS., left



her vulnerable to New Horizons' claim under § 183.0909(2), STATS., absent proof that the value of any assets of the dissolved company she received were exceeded by the cooperative's claim.

Thus, although Haack correctly contends that the judgment cannot be sustained on the ground relied upon by the trial court, we “nevertheless ... look to facts in the record ‘in favor of respondent which [seem] to be insurmountable.’” *See State v. Alles*, 106 Wis.2d 368, 391-92, 316 N.W.2d 378, 388-89 (1982) (citation omitted).

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

