

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 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. 98-1897

STATE OF WISCONSIN

**COURT OF APPEALS
DISTRICT IV**

**RONALD A. ARTHUR, AND HALCO FINANCIAL
AND REALTY CORP.,**

PLAINTIFFS-APPELLANTS,

v.

**RANDY KEEFE, WILLIAM J. KEEFE AND STATEWIDE
LOG & LUMBER CO., INC., BARBARA DOYLE,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Juneau County:
JOHN W. BRADY, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Ronald Arthur and his company, Halco Financial and Realty Corporation, appeal an order dismissing their complaint against William and Randy Keefe and their company, Statewide Log & Lumber Company, Inc., and Barbara Doyle. Arthur raises several issues regarding the

proceedings in Dodge County, and later in Juneau County on a transfer of venue. We affirm.

¶2 Arthur engaged the Keefes to cut timber on his property in Juneau County. During the cutting, damage was done to and trees were removed from Doyle's adjacent property.

¶3 Arthur commenced this action in Dodge County, alleging numerous contract and tort claims against the Keefes and seeking a declaratory judgment that neither Arthur nor Halco had liability for the trespass to Doyle's property. Eleven days later Doyle sued Arthur in trespass, filing the action in Juneau County where she lived on the property in question.

¶4 On December 6, 1995, the Dodge County circuit court held a hearing on the defendants' motions to dismiss Arthur's action. Venue was also challenged, and Arthur was unable to show any connection between the defendants and Dodge County. On December 12, Arthur filed an amended complaint alleging that Doyle and the Keefes engaged in a conspiracy to defame and otherwise damage him. Doyle moved to strike that complaint. A few weeks later the Dodge County court issued its decision transferring venue of Arthur's claims against the Keefes to Marquette County, and dismissing the declaratory judgment claim against Doyle.

¶5 Arthur then filed a "severed complaint" and Doyle moved to dismiss that as well. In response, the trial court reaffirmed its decision to dismiss the declaratory judgment action against Doyle, and ordered the new conspiracy claims transferred to Juneau County, along with Doyle's motion to dismiss them.

¶6 After Arthur's action was transferred to Juneau County, little or nothing occurred until after Doyle prevailed in her trespass action against Arthur, whereby she recovered a substantial award of actual and punitive damages. When the Juneau County court took up this case, it dismissed the "severed complaint" as untimely. The court also deemed Arthur's amended complaint incomprehensible and dismissed it without prejudice or costs. The court expressly added that Arthur could refile it. Instead, Arthur commenced this appeal. He contends that the trial court erred by trying Doyle's claim before resolving this action, by refusing to consolidate the two actions, and by dismissing his amended and severed complaints. Arthur also contends that the Dodge County trial court erred by dismissing his claim for declaratory judgment.

¶7 Arthur's claim that the trial court "disregarded" this action while it proceeded with Doyle's case is without support in the record. There is no record of Arthur petitioning the court to advance this case, nor of the court refusing that request.

¶8 The same may be said of Arthur's claim that the trial court refused to consolidate the two pending actions. The record contains Arthur's motion to consolidate, but no record of its disposition. We are left to speculate as to the reasons why the motion was apparently never heard nor decided.

¶9 The trial court properly dismissed the "severed" complaint. It was not filed as of right, and required the trial court's permission. *See* § 802.09(1), STATS. Moreover, the trial court reasonably concluded that allowing the claim, in view of the previously concluded litigation on Doyle's claim, served no purpose. In effect, Arthur agrees with that conclusion. He contends that the trial court's dismissal without prejudice is meaningless because the result in Doyle's case

precludes him from litigating the issue. The same is true of the trial court's decision to dismiss the timely filed amended complaint. Arthur cannot acknowledge that he is barred from proceeding on a complaint, and at the same time contend that he was harmed by its dismissal without prejudice.

¶10 The Dodge County trial court properly dismissed the claim for declaratory relief against Doyle. The claim was unnecessary. Doyle's complaint against Arthur raised the identical issues in the proper venue. That suit also promised to resolve additional issues between the parties that the declaratory judgment claim would have left open. That fact alone provides sufficient reason for the trial court to dismiss the action. *See American Med. Servs., Inc. v. Mutual Fed. Sav. & Loan Ass'n*, 52 Wis.2d 198, 203, 188 N.W.2d 529, 532 (1971).

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

