

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 22, 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. 98-2336

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

SUSAN BAUER,

PETITIONER-APPELLANT,

v.

DAWN WILLISON,

RESPONDENT-RESPONDENT.

APPEAL from order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Roggensack, JJ.

PER CURIAM. Susan Bauer filed a petition for a writ of mandamus to compel the clerk of the DeForest municipal court to “forward the record for appeal” to the circuit court. The circuit court ordered that the municipal court clerk respond to Bauer’s petition. After reviewing the affidavit of the municipal court clerk and several attached documents, the circuit court quashed

the writ. Bauer appeals. Because Bauer did not establish that the municipal court clerk violated a clear legal duty, we affirm.

The following procedural background can be gleaned from the record. Bauer was cited for storing an inoperable vehicle in her backyard, in violation of VILLAGE OF DEFOREST MUNICIPAL CODE § 11.10(1)(a). A trial, in DeForest municipal court, was held on January 8, 1997, and Bauer was found guilty. The municipal court imposed a \$25 daily forfeiture, commencing on January 9, 1997. Bauer appealed that judgment to the circuit court. The appeal was dismissed on March 12, 1997 after she failed to appear for a scheduled motion hearing.

On January 8, 1998, Bauer again appeared in municipal court, and the court determined that the forfeiture for the previous year had accumulated to \$9,303. The municipal court clerk then sent two letters to Bauer, dated January 21, 1998 and January 27, 1998, setting forth the amount owed by Bauer.¹ On February 6, 1998, Bauer filed a notice of appeal from “the court orders in their entirety issued on January 21, 1998 and January 29, 1998.” On April 27, 1998, Bauer filed an “amended notice of appeal” and “motion to waive bond requirements.” In a May 8, 1998 letter, the municipal court clerk advised Bauer that the

action taken on [January 21, 1998 and January 27, 1998] were not orders of which the defendant has a right to appeal, but merely letters from the court advising of fees that had accrued since the original judgment date of January 8, 1997 and setting a date for an indigency hearing. Since this appeal is dated April 27, 1998 it is untimely and

¹ The second letter modified the amount of the forfeiture to \$9,403 to correct a mathematical error.

must be denied under section 800.14(1) as not being within 20 days after judgment.

On May 11, 1998, Bauer filed her petition for a writ of mandamus in the circuit court.

In her brief, Bauer posits the first issue as whether “a clerk of [municipal] court[] [can] refuse to prepare a transcript because of failure to pay transcript fees where a motion to waive reporter charges has been filed and an affidavit of indigency under sec. 814.29(1)(d)(2) has been filed.” That issue, however, is not properly before this court. At the outset of the hearing, the trial court asked Bauer whether she was “seeking to compel the clerk for the municipal court of the Village of DeForest to produce a transcript.” Bauer responded, “No, it is to forward the record for appeal.” This court will not consider arguments raised for the first time on appeal. See *Evjen v. Evjen*, 171 Wis.2d 677, 688, 492 N.W.2d 361, 365 (Ct. App. 1992). Bauer expressly rejected the trial court’s suggestion that she wanted to compel the production of the municipal court transcript. On appeal, she cannot reconstitute her lawsuit to raise that issue.

Bauer’s second issue is likewise not properly raised. Bauer questions whether the municipal court has jurisdiction to waive the bond requirements for an appeal. Bauer suggests that “the court into which the case is going on appeal,” that is, the circuit court, “would be the correct court to waive the fees.” However, as was recognized by the circuit court, Bauer had commenced a mandamus action against the municipal court clerk to “forward the record,” and any question about the waiver of bond on appeal was outside the parameters of the mandamus action.

Before a writ of mandamus may issue, the claimant must demonstrate: (1) a clear legal right; (2) a positive and plain legal duty; (3) substantial damages due to the nonperformance of the duty; and (4) no other adequate legal remedy. *Law Enforcement Standards Bd. v. Lyndon Station*, 101 Wis.2d 472, 493, 305 N.W.2d 89, 99 (1981). The denial of a petition for mandamus will be affirmed unless the trial court erroneously exercised its discretion. See *Miller v. Smith*, 100 Wis.2d 609, 621, 302 N.W.2d 468, 474 (1981). Because Bauer did not show that the municipal court clerk violated any plain legal duty, the circuit court properly dismissed the petition for mandamus.

By the Court.—Order affirmed.

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

