

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 11, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-0395

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

RANDALL DOHERTY CPA, INC.,

PLAINTIFF-APPELLANT,

v.

**AMERITECH CORPORATION AND
WISCONSIN BELL, INC.,**

DEFENDANTS-RESPONDENTS,

**STAND-IN OFFICE SERVICES, INC. AND
SHELBY INSURANCE COMPANY,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: STANLEY A. MILLER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Randall Doherty CPA, Inc. appeals from a grant of summary judgment in favor of Ameritech Corporation and Wisconsin Bell, Inc. (Ameritech). Doherty claims that the trial court erred when it granted Ameritech's motion seeking summary judgment because, regardless of a tariff stating that telephone numbers are owned solely by Ameritech, Ameritech still owes a duty of reasonable care in assigning and re-assigning telephone numbers to individual customers. Because Doherty has failed to present any issue of material fact regarding the existence of a duty to support a claim against Ameritech, we affirm.

I. BACKGROUND

¶2 In May 1994, Doherty called Ameritech to select a telephone number for his newly relocated business. The number selected was 354-1850. Doherty's business was in an office building on Brown Deer Road in Milwaukee, where he leased space from Stand-In Office Services, Inc. As an option to its lessees, Stand-In offered reception services, including handling incoming telephone calls. In order to receive those services, Doherty needed to select one of the following three options: (1) use the call-forwarding service so that anytime a customer called his selected number, it would be forwarded to the Stand-In receptionist; (2) lease one of Stand-In's existing telephone numbers; or (3) ask Ameritech to re-assign the selected number to Stand-In. Doherty selected the third option, and the number was assigned to Stand-In.

¶3 In November 1995, Doherty moved his office to Sheboygan and called Ameritech, requesting that Ameritech re-assign the 354-1850 number to his new office. Ameritech responded that it could not do that without Stand-In's consent because the number was assigned to Stand-In. Stand-In was paying the phone bills related to that line and was the party responsible for that line. Doherty

then contacted Stand-In and asked it to consent to releasing the number to Doherty. Stand-In refused to consent on the grounds that Doherty still owed it money under the lease.

¶4 This lawsuit resulted. Doherty sued Ameritech and Stand-In, alleging that both were negligent, and that he sustained damages due to lost business profits as a result of the failure to release or re-assign the telephone number. Ameritech filed a motion seeking summary judgment, alleging that Doherty had no legal claim against Ameritech. The trial court granted the motion and entered judgment dismissing Ameritech from the lawsuit. Doherty now appeals.

II. DISCUSSION

¶5 Doherty argues that Ameritech has a duty to exercise reasonable care not to harm its customers, and that it was reasonably foreseeable that when he relocated his small business, he would suffer damages if he could not retain the current telephone number. Doherty asserts that Ameritech should have re-assigned the selected number to the Sheboygan location, or convinced Stand-In to release the number. Ameritech responds that the tariff filed with the Public Service Commission clearly states that customers have no property rights in a selected phone number and that it is Ameritech's policy not to become involved in disputes between customers over phone numbers. The trial court determined that the tariff clearly demonstrates that Ameritech is not obligated to re-assign a particular telephone number at a customer's request, and that Doherty failed to otherwise demonstrate the existence of a duty. Therefore, the trial court granted summary judgment, ruling that Doherty's negligence claim against Ameritech fails as a matter of law.

¶6 This case comes to us after a grant of summary judgment. The standards governing our review are well known and need not be repeated here. We will review the trial court's grant of summary judgment independently, under the standards set forth in WIS. STAT. § 802.08(2) (1997-98).¹ See *Scheunemann v. City of West Bend*, 179 Wis. 2d 469, 475, 507 N.W.2d 163 (Ct. App. 1993). We conclude that the trial court was correct when it granted summary judgment to Ameritech.

¶7 As a public utility, Ameritech is obligated by statute to file a schedule of rates, tolls, charges, rules and regulations with the Public Service Commission. See WIS. STAT. CH. 196. The filed documents are referred to as tariffs. See *GTE North, Inc. v. Public Serv. Comm'n*, 176 Wis. 2d 559, 562 n.1, 500 N.W.2d 284 (1993). The tariffs are required to be filed to be available for public inspection in order to insure that all of the customers served by the utility are treated equally. See *General Telephone Co. v. Auto-Owners Ins. Co.*, 140 Wis. 2d 10, 20, 409 N.W.2d 133 (Ct. App. 1987).

¶8 The tariff relevant to the issue in the instant case was filed with the Public Service Commission and addresses assignment and changing of telephone numbers. It provides:

The Customer has no property right in the telephone number which is assigned by the Company nor any right to continuance of service through any particular Central Office, and the Company reserves the right to change the telephone number or the Central Office designation, or both, of the Customer whenever it deems it necessary to do so in the conduct of its business.

¹ All references to the Wisconsin Statutes will be to the 1997-98 version unless otherwise noted.

The tariff clearly indicates that an Ameritech customer has no right to the telephone number the customer selects and that Ameritech can change the number whenever necessary. Doherty concedes that the tariff so states. He argues, nonetheless, that the tariff cannot be interpreted to eliminate Ameritech's general "duty and obligation to exercise ordinary care with regard to the business dealings of its customers." He contends that the tariff has no application in this case. We do not agree.

¶9 "Unless challenged or changed through the administrative procedures prescribed by ch. 196, the filed tariff governs the conduct of the utility and its customers; it cannot be changed by contract." *General Telephone Co.*, 140 Wis. 2d at 20. The tariff clearly states that a number assigned to a customer does not grant the customer any property interests in that number and that Ameritech may change the number whenever necessary. Thus, Ameritech was not under any duty to reassign a telephone number at a customer's request. Further, the record assignee of the number in dispute was not Doherty. It was Stand-In. When Doherty asked Stand-In to release the number so that it could be re-assigned to the Sheboygan office, Stand-In refused. At that point, Ameritech declined to become involved in the dispute over the number. As pointed out by the trial court, this position is consistent with WIS. STAT. §§ 196.22 and 196.60, which require that the utility apply tariffs evenhandedly and not discriminate between customers.

¶10 We agree with the trial court that Doherty failed to establish any duty of Ameritech to re-assign the selected telephone number to Doherty's Sheboygan office. The tariff does not create such an obligation and Doherty has not presented any common law duty requiring Ameritech to do so. The selected number was not even assigned to Doherty. It was assigned to Stand-In. Doherty elected to assign the selected number to Stand-In when he leased office space from

Stand-In for the business. In essence, Doherty was asking Ameritech to choose his side over Stand-In's. Doherty was asking Ameritech to take a number away from the recorded assignee and give it to him. Ameritech was willing to do that if the recorded assignee consented to giving up the number. Stand-In would not consent. We know of no rule of law that requires a utility to step in to attempt to arbitrate a dispute between customers.

By the Court.—Judgment affirmed.

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

