COURT OF APPEALS
DECISION
DATED AND FILED

February 15, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-0561

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

MARGARET HOVEY,

PLAINTIFF-APPELLANT,

V.

ALLSTATE INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed.*

¶1 CURLEY, J.[1] Margaret Hovey appeals the order dismissing her small claims action. She contends that the trial court erred in determining that the statute of limitations had expired when she filed her action with the court. She submits that her action was commenced on the date she served Allstate Insurance

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

Company (Allstate) with a copy of the summons and complaint, not the date the summons and complaint were filed with the court. Thus, she argues that the statute of limitations was tolled when she served Allstate. Because an action is not commenced until the summons and complaint are filed with the court, this court affirms.

I. BACKGROUND.

¶2 Hovey was involved in an automobile accident with Martha Chicanick on October 2, 1995. At the time of the accident, Chicanick was insured by Allstate. Hovey brought a small claims suit seeking reimbursement for her medical care, alleging that she was injured in the accident as a result of Chicanick's negligence. Her attorney served a small claims summons and complaint on Allstate on October 1, 1998. Her attorney then filed the summons and complaint with the Milwaukee Circuit Court clerk on October 8, 1998, and was given October 26, 1998, as the return date for the action. On October 26, 1998, Hovey's attorney did not arrive in the courtroom until after the case had been called and dismissed. Her attorney then brought a motion to reopen and obtained a hearing date. At the hearing, Allstate opposed the motion to reopen, arguing that the statute of limitations had run prior to Hovey's filing the action, and thus, her suit was barred. The trial court agreed and this appeal follows.

II. ANALYSIS.

¶3 Hovey concedes that the three-year statute of limitations found in WIS. STAT. § 893.54 governs this small claims action and, as a result, the statute of limitations expired on October 2, 1998. Further, Hovey acknowledges that the summons and complaint were served on Allstate the day before the statute expired, but the documents were not filed with the court until October 8, 1998.

Hovey contends that the trial court's ruling that Hovey was obligated to file the summons and complaint with the court before the statute of limitation expiration date was in error. Hovey submits that the trial court's interpretation of the relevant statutory authority and case law results in a "shortened statute of limitations for small claims actions," and that this result was not intended by the legislature.

¶4 Here, the disputed issue centers on an interpretation of the relevant statutes. The meaning of a statute is a question of law and this court is not bound by the trial court's conclusion. *See* ***City of Mequon v. Hess***, 158 Wis. 2d 500, 505, 463 N.W.2d 687 (Ct. App. 1990). Further, it is the duty of this court, when statutes relate to the same subject matter, to construe them together and to harmonize them, if possible. *See* ***Aiello v. Village of Pleasant Prairie***, 206 Wis. 2d 68, 73, 556 N.W.2d 697 (1996).

¶5 The general rule concerning when an action is commenced can be found in WIS. STAT. § 893.02. It states that an action is commenced "when the summons naming the defendant and the complaint are filed with the court." WISCONSIN STAT. § 801.02 governs the commencement of suits in civil cases. Section 801.02(1) states that "[a] civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing."

¶6 Hovey's position, that she commenced her suit when she served Allstate with a copy of the summons and complaint, is predicated on her interpretation of the procedure in effect in small claims court at the time of her

suit. The procedure then in effect permitted Hovey to serve the defendant with the summons and complaint before the action was filed with the court. Hovey extrapolates from this fact that, as a result, her suit was commenced at the time the service was effectuated, and not, as the trial court found, at the later date when the summons and complaint were filed with the court. This court remains unpersuaded by Hovey's argument.

¶7 First, it should be noted that the procedure in the Milwaukee small claims court has been changed since Hovey brought her action. The rule in effect at the time of her suit, WISCONSIN CIRCUIT COURT RULE 390 (1997),[2] read: "SERVICE OF SUMMONS. Service of summons in small claims actions shall be made pursuant to Sec. 799.12, Wis. Stats., except that service of the summons by mail is not authorized. Service of summons and complaint prior to filing and authentication is authorized and required pursuant to sec. 799.12(7)." This rule required Hovey to serve Allstate with a copy of the summons and complaint before the matter was filed with the court. Hovey asserts that under the old rule her action was timely and the statute of limitation was tolled because her action was commenced when she served Allstate with a copy of the summons and complaint. Hovey argues that the legislature could not have intended that a small claims action was commenced when the summons and complaint were filed in the court because this would "establish a shortened statute of limitations for small claims actions." Hovey cites no cases or statutory authority in support of her position.

[2] As of March 1999, a party may no longer serve the summons and complaint before the summons and complaint are filed with the court.

¶8 As noted, when interpreting several statutes dealing with the same subject matter, this court is obligated to construe them together and harmonize them. Here, there is no need to harmonize the two statutes because WIS. STAT. §§ 893.02 and 801.02 are in total agreement. Both statutes state that an action is commenced when the summons and complaint are filed with the court. Moreover, case law supports this conclusion. ***Hester v. Williams***, 117 Wis. 2d 634, 345 N.W.2d 426 (1984), is a case dealing with a large claim personal injury suit. The plaintiff improperly obtained service over the defendant before filing the matter in court, and then finally filed the summons and complaint after the statute of limitations had expired. The supreme court opined that "[u]nder the laws of this state, in order to commence an action for personal injuries, a summons and complaint must be filed with the court within three years of the accrual of the cause of action and authenticated copies must be served upon the defendant within 60 days of the filing." ***Id.*** at 640.

¶9 Hovey argues that her case is distinguishable, because even though her suit is for personal injuries, she submits that the differences between large and small claim procedures produces a different commencement time.

¶10 A review of Chapter 799, Procedure in Small Claims Actions, of the Wisconsin Statutes does not support Hovey's position. Nowhere in the chapter does it state that an action is commenced when the moving party obtains service on the defendant. To the contrary, WIS. STAT. § 799.04 commands that: "Except as otherwise provided in this chapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under this chapter." Thus, the rules set forth in Chapter 801 apply unless a provision in Chapter 799 states otherwise. No provision in Chapter 799 contradicts the rule

found in WIS. STAT. § 801.02, stating that an action is commenced when a summons and a complaint naming the person as defendant are filed with the court.

¶11 With respect to Hovey's argument that the legislature could not have intended to shorten the statute of limitation, this court notes that requiring a party to file the small claims action with the court within three years does not shorten the statute of limitations. The former procedure merely required service before filing, while the current procedure allows service after filing. Under either procedure, three years was the time frame allowed for filing an action with the court. Moreover, this court cannot delve into the legislature's intent unless a statute is found to be ambiguous. *See* ***McEvoy v. Group Health Coop.***, 213 Wis. 2d 507, 528, 570 N.W.2d 397 (1997). Neither WIS. STAT. § 801.02 nor WIS. STAT. § 893.02 is ambiguous. Thus, this court must accept the statutory directives and concludes that the statute of limitations expired when Hovey filed her action with the court on October 8, 1998. For the reasons stated, the trial court is affirmed.

By the Court.—Order affirmed.

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