COURT OF APPEALS
DECISION
DATED AND FILED

MARCH 1, 2000

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

No. 99-2899-FT

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

WENDY ENRIGHT,

PLAINTIFF-APPELLANT,

V.

PLEASANT VIEW LTD. PARTNERSHIPS,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Racine County: ALLAN B. TORHORST, Judge. *Affirmed.*

¶1 ANDERSON, J.[1] In a previous case before this court, we decided that Wendy Enright was entitled to recover reasonable attorney's fees and double

---

[1] This appeal is decided by a single judge pursuant to WIS. STAT. § 752.31(2)(a) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

damages from Pleasant View Ltd. Partnerships (Pleasant View).[2] We remanded the matter to the trial court to determine the appropriate award amounts. The trial court entered judgment against Pleasant View, awarding $128 for damages, $600 for attorney's fees and $869 for disbursements. Enright appeals, arguing that the trial court erroneously exercised its discretion when determining the reasonable amount for attorney's fees.

¶2 In support of her claim for the attorney's fees on remand, Enright's attorney submitted an affidavit to the court detailing the services she rendered during the small claims action. Enright's attorney advanced that she had spent 95.88 hours on the case at the hourly rate of $125. The total bill for attorney's fees was $9212.30 plus $869 for disbursements.

¶3 After reviewing Enright's request for attorney's fees, the trial court determined that the requested time was excessive for a small claims matter. The court found that ten hours was more appropriate. The court also disputed the appropriate hourly rate for an attorney rendering these services and found that $60 was reasonable. The court entered judgment in favor of Enright for $600 in attorney's fees. We adopt the trial court's decision in its entirety by reference.[3] *See* WIS. CT. APP. IOP VI(5)(a) (June 22, 1998).

---

[2] *See* ***Enright v. Pleasant View Ltd. Partnerships***, No. 98-3686-FT, unpublished slip op. (Wis. Ct. App. May 5, 1999).

[3] We also note that in her complaint, Enright demanded judgment for $2350. We agree with the trial court that the requested attorney's fees, almost four times the amount of the claimed loss, are excessive. In ***Herro, McAndrews & Porter, S.C. v. Gerhardt***, 62 Wis. 2d 179, 184, 214 N.W.2d 401 (1974), the supreme court instructed trial courts to consider the "amount of money or value of the property affected." Enright's request for $9212.30 for attorney's fees and $869 for disbursements is grossly out of proportion to the final result holding that Pleasant View was not authorized to withhold $64 for potential payment of Enright's utility bill.

¶4 The court was also concerned with a matter we find particularly important. Before the remand judgment was entered, Pleasant View moved the court to reopen the case. It had become aware of misstatements made to the court about the $64 utility bill.[4] Pleasant View discovered that contrary to Enright's and her attorney's assertions to the court, the utility bill was not timely paid within a couple of weeks after Enright vacated her apartment but instead was paid two months later. The court discussed the matter as follows:

> During the trial, the attorney for the Defendant and the Court made specific inquiry as to the utility bill of $64.00. The transcript reflects that in response to an inquiry by the Court, Attorney Rizzo, for the Plaintiff, affirmatively stated that the utility bill was paid before she got the security refund check. This representation to the Court was that the utility was paid on or before 16 May 1998 when in fact it was not paid until 3 July 1998; a fact that Plaintiff and Attorney Rizzo knew or should have known at the time the lawsuit was filed, and surely at the time of trial.
>
> Also, the transcript reflects that the Plaintiff testified that she had paid the utility bill two weeks after moving to her new residence which would have been two weeks after 1 May; again, it is clear that the utility wasn't paid until 3 July.
>
> On these facts, the Court has studied the decision of the Court of Appeals in this matter. The testimony at the trial on payment was clearly wrong when the Plaintiff testified the utilities were paid, and when Attorney Rizzo represented to the Court that they were paid; and paid before the Plaintiff received the balance of the security deposit which was returned to the Plaintiff. The Court of Appeals found that it was undisputed that Plaintiff had paid the utility bill within two weeks of moving out; this finding was based upon false and incorrect testimony given by the Plaintiff.

[4] In ***Enright***, Pleasant View had withheld $64 from Enright's security deposit for potential payment of the utility bill. Pleasant View stated that the $64 would have been returned to Enright upon proof of the bill's payment. We determined that this was an unauthorized security deposit withholding pursuant to WIS. ADMIN. CODE § ATCP 134.06(3)(a); therefore, Enright was entitled to recover double the amount of the unauthorized withholding as damages and reasonable attorney's fees. *See* ***Enright***, unpublished slip op. at 6, 7.

> Notwithstanding the false information given by the Plaintiff and Attorney Rizzo to the court, the facts still establish that the failure of the tenant to pay the final utility bill would not result in the landlord being liable for payment. Wisconsin [Admin.] Code § ATCP 134.06(3)(a)3 only permits deductions from the security deposit if the landlord would become liable for the tenant's nonpayment of the utility bill; this is not the case herein. Accordingly, it appears that even if the trial court had been truthfully and correctly advised as to the facts in this case, the utilities in question could not have been the subject of a deduction from the security deposit.

Again, we adopt that court's reasoning as our own and affirm on that basis. *See* WIS. CT. APP. IOP VI(5)(a).[5]

¶5 Although Enright's and her attorney's false statements to the court do not change the outcome in this matter, they were serious misstatements of a material fact. Enright certainly knew her statements to be false when she made them, and her attorney made the same statements, implying to the court that she had direct knowledge of the truth of the matter. It is imperative for attorneys not to conduct themselves in this manner. As the Supreme Court Rules dictate, "A lawyer shall not knowingly make a false statement of fact or law to a tribunal." SCR 20:3.3(a)(1) (1999). Such an action by an attorney may constitute professional misconduct, requiring the attorney to be disciplined. *See* SCR 20:8.4 (1999).

By the Court.—Judgment affirmed.

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

[5] The trial courts and appellate courts of this state have statutory and inherent authority to reduce requested attorney fees and costs as a sanction for conduct which harms not only the parties but the effectiveness of the judicial system. *See* ***Aspen Servs., Inc. v. IT Corp.***, 220 Wis. 2d 491, 497-99, 583 N.W.2d 849 (Ct. App. 1998).