

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 12, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2005AP2108

Cir. Ct. No. 2004CV252

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JANINA SEHMANN AND UW CREDIT UNION,

PLAINTIFFS,

ALEKSANDRA CICHOWSKI,

PLAINTIFF-APPELLANT,

V.

**GENERAL CASUALTY INSURANCE COMPANIES,
JASON VAN RITE AND COPART AUTO ACTION,**

DEFENDANTS-RESPONDENTS,

**DANE COUNTY SHERIFF'S DEPARTMENT,
SCHWARZ INSURANCE SG, JULIE GEHRKE AND
RBG DAMAGE APPRAISERS**

DEFENDANTS.

APPEAL from orders of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Aleksandra Cichowski appeals from orders dismissing her suit against General Casualty Insurance Companies, Jason Van Rite, and Copart Auto Action. We affirm.

¶2 Cichowski first argues that the circuit court improperly dismissed the claims of Janina Sehmman. In our orders of November 16 and December 14, 2005, we determined that Sehmman is not an appellant in this appeal because she did not file a timely notice of appeal. There is no indication that Cichowski is a lawyer authorized to represent Sehmman's interests, or that Cichowski is aggrieved by the dismissal of Sehmman's claims in circuit court. Therefore, the dismissal of Sehmman's claims is not an issue that Cichowski can raise in her own appeal, and we do not address it.

¶3 Cichowski argues that the circuit court improperly dismissed the Dane County Sheriff's Department as a defendant. In the orders noted above, we also determined that Cichowski's appeal was untimely as to the order dismissing this defendant. We do not address this issue further.

¶4 Cichowski's brief is disorganized and difficult to follow. It appears that her next arguments relate to her conversion claims against General Casualty, its employee Van Rite, and Copart. The circuit court dismissed these claims on summary judgment. The issue can be broken into two parts: whether conversion occurred in the original moving of the damaged vehicle to Copart, or in Copart's continued retention of the vehicle.

¶5 We first consider the issue of conversion in the original moving of the vehicle to Copart. The legal elements of conversion by dispossession are: (1) that defendant intentionally controlled or took property belonging to the owner; (2) that defendant controlled or took the property without the consent of the owner or without lawful authority; and (3) that defendant's act with respect to the property seriously interfered with the right of the owner to possess the property. *See* WIS JI—CIVIL 2200. Wrongful or unlawful intent is not an element of conversion, and therefore it is not necessary that defendant knew that the owner was entitled to possession of the property, or that defendant intended to interfere with the owner's possession. *Id.*

¶6 Summary judgment methodology is well established. *See, e.g., Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980). On review, we apply the same standard the circuit court is to apply. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

¶7 We conclude the defendants were entitled to summary judgment on the conversion claim relating to the original movement of the car to Copart. Their affidavits showed that the recently damaged car was towed from a towing service facility in Soldiers Grove to Copart in Madison. Cichowski's affidavits and argument do not lead to any reasonable inference to the contrary. We do not see how this change of location can be understood as seriously interfering with the right of the owner to possess the car. Cichowski does not clearly explain what attribute of ownership was interfered with by moving the car to a different location.

¶8 We turn to the question of whether the continued retention of the car by Copart was a conversion. The elements of conversion by refusal to return upon

demand are: (1) that defendant, who had lawfully come into possession of the property, refused to surrender it to the owner after the owner demanded that the property be returned; (2) that the owner was entitled to the return of the property; and (3) that the withholding of the property by the defendant seriously interfered with the right of the owner to control and use the property. WIS JI—CIVIL 2200.1. A refusal by a person to return the property because of a legitimate reason and for a reasonable length of time after demand is not a conversion, and a person is not required to comply with a demand made at an unreasonable time or place, or in an unreasonable manner, or upon an employee who has no authority to return the property. *Id.* In addition, a person may in good faith detain property for a reasonable time to identify the owner or to determine the owner's right to possession. *Id.*

¶9 Cichowski's deposition testimony, submitted by Copart, was that she herself did not visit Copart to attempt to have the car returned, and that she did not have any documents establishing that she was the owner of the car, or had been authorized by the owners of the car to obtain its release or be in possession of it. While there may be some disputed facts about a visit to Copart by Cichowski's husband, there is no evidence that either of the Cichowskis, or anyone else, ever went to Copart with documents that would establish their right to possess the car. Under these circumstances, the only reasonable inference is that it was reasonable for Copart to refuse their demands for return of the car.

¶10 Cichowski also argues that the court erred in denying a claim against General Casualty for the tort of bad faith. Her argument appears to be that the insurer offered an unreasonably low value for the vehicle, or otherwise acted improperly in its process of evaluating or attempting to settle the claim for the damaged car. The defendant's affidavits show a reasonable process was used to

arrive at its offers. Cichowski did not submit any affidavits as to what a more proper valuation would have been, nor any expert opinions describing what process the defendant should have used instead. Summary judgment was properly granted to General Casualty on this claim.

¶11 To the extent we have not directly addressed any argument made by Cichowski, we reject those arguments as inadequately briefed. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶12 Finally, we address the request by Copart that we find this appeal frivolous under WIS. STAT. RULE 809.25(3) (2003-04).¹ Copart did not file a separate motion requesting that relief, but only a request in its brief, and therefore we are unable to grant the request. *Howell v. Denomie*, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621.

By the Court.—Orders affirmed.

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

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

