COURT OF APPEALS
DECISION
DATED AND FILED

March 7, 2007

A. John Voelker
Acting 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 Nos. 2006AP386
2006AP1405
2006AP1510

Cir. Ct. No. 2005CV274

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

NO. 2006AP386

MARIE L. KASTEN, INDIVIDUALLY, AND ON BEHALF OF D.D. SALE, LLC,

PLAINTIFF-APPELLANT,

V.

MOA INVESTMENTS, LLC, GREGORY J. BORCA, RONALD BRUMMEYER, LISA SWEENEY, WONDERBOX TECHNOLOGIES, LLC, VESTICA HEALTHCARE, LLC, LARRI J. BROOMFIELD, AND REINHART BOERNER VAN DEUREN, S.C.,

DEFENDANTS-RESPONDENTS,

CRAIG KASTEN AND WENDY KASTEN, P/K/A WENDY CARREROS,

DEFENDANTS,

D.D. SALE, LLC,

NOMINAL-DEFENDANT-RESPONDENT,

MILWAUKEE JOURNAL SENTINEL AND MICHELLE GLASSHOF,

INTERVENORS-RESPONDENTS.

NO. 2006AP1405

MARIE L. KASTEN, INDIVIDUALLY, AND ON BEHALF OF D.D. SALE, LLC,

PLAINTIFF-APPELLANT,

V.

MOA INVESTMENTS, LLC, GREGORY J. BORCA, CRAIG KASTEN, RONALD BRUMMEYER, LISA SWEENEY, WENDY KASTEN, P/K/A WENDY CARREROS, WONDERBOX TECHNOLOGIES, LLC AND VESTICA HEALTHCARE, LLC,

DEFENDANTS,

LARRI J. BROOMFIELD AND REINHART BOERNER VAN DEUREN, S.C.,

DEFENDANTS-RESPONDENTS,

D.D. SALE, LLC,

NOMINAL-DEFENDANT,

MILWAUKEE JOURNAL SENTINEL AND MICHELLE GLASSHOF,

INTERVENORS.

NO. 2006AP1510

MARIE L. KASTEN AND D.D. SALE, LLC,

PLAINTIFFS-APPELLANTS,

V.

MOA INVESTMENTS, LLC, GREGORY J. BORCA, RONALD BRUMMEYER, LISA SWEENEY, WONDERBOX TECHNOLOGIES, LLC, VESTICA HEALTHCARE, LLC, LARRI J. BROOMFIELD, AND REINHART BOERNER VAN DEUREN, S.C.,

DEFENDANTS,

CRAIG KASTEN AND WENDY KASTEN, P/K/A WENDY CARREROS,

DEFENDANTS-RESPONDENTS,

D.D. SALE, LLC,

NOMINAL-DEFENDANT,

MILWAUKEE JOURNAL SENTINEL AND MICHELLE GLASSHOF,

INTERVENORS.

APPEALS from a judgment and orders of the circuit court for Ozaukee County: THOMAS R. WOLFGRAM, Judge. *Affirmed*.

Before Snyder, P.J., Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Marie Kasten, individually and on behalf of D.D. Sale, LLC (hereafter DD), appeals from an order dismissing her claims that MOA Investments, LLC, and other defendants, breached fiduciary duties and acted unfairly in transferring assets and business opportunities away from DD. She also appeals from a judgment awarding costs to Larri Broomfield and the law firm of Reinhart, Boerner, Van Deuren, S.C. (hereafter Reinhart). We conclude that because Marie sought dissolution of DD she was not entitled to bring the

derivative claims and any individual claims she alleges are not actionable. The award of costs was proper. We affirm the dismissal order and the judgment for costs.

¶2 As part of a divorce settlement in 2001, Marie received a 23.1% membership interest in Doral Dental USA LLC. The largest membership interest in the limited liability corporation (LLC) is held by MOA Investments LLC, an entity owned by defendants Craig Kasten, who is Marie's ex-husband, Greg Borca, Ronald Brummeyer, and Attorney Larri Broomfield, a partner at Reinhart. Through the development and utilization of computer software, Doral Dental managed dental benefits for health maintenance organizations. Defendant Lisa Sweeney was the chief financial officer of Doral Dental. Wendy Kasten, Craig's wife, was the secretary of Doral Dental. Reinhart performed services and billed Doral Dental for representation regarding reorganization. Defendants Wonderbox Technologies, LLC and Vestica Healthcare, LLC are entities in which Craig, MOA and other defendants hold ownership interests.

¶3 In 2004, the majority of Doral Dental's assets were sold and Doral Dental's name was changed to DD. Marie commenced this action alleging that the officers, managers and members of DD failed to deal fairly with the LLC; that they permitted the transfer of assets without adequate consideration; that MOA and Craig acted in matters in which they had a material conflict of interest; that services rendered by Reinhart did not benefit DD and should not have been billed to or paid by DD; that Reinhart and officers of DD aided and abetted the breach of fiduciary duties and the conversion of assets; that Wonderbox Technologies and Vestica Healthcare were allowed to acquire opportunities and perform functions formerly within DD's operations; and that all defendants had conspired to

unlawfully convert assets belonging to DD. She also alleged that Craig and MOA violated DD's operating agreement and that they and other officers had caused the oppression of a minority owner. She alleged that the actions of the defendant were intentional, willful and wanton and that she is entitled to punitive damages. In a single prayer for relief she requested: damages, restitution, disgorgement of profits, punitive damages, imposition of a constructive trust, "an injunction ordering the defendants to return the wrongfully converted assets of Doral Dental and then liquidate all assets of Doral Dental," costs, disbursements and reasonable attorney fees, and such other relief deemed just and equitable.

¶4 The action was originally filed in Milwaukee County. The defendants moved to transfer venue to Ozaukee County where the Kasten divorce was litigated and DD's principal place of business. The Milwaukee County circuit court stayed further action in the litigation until the motion for a change of venue was decided. The case was transferred to Ozaukee County. The defendants moved for summary judgment. The circuit court dismissed the action concluding that Marie stated no actionable individual claims for relief, that she was not authorized to bring derivative claims on behalf of DD because her complaint sought dissolution, and that a June 1, 2005 amendment to the operating agreement for DD was lawfully made. The court also granted the motion of Michelle Glasshof to intervene in the action for the purpose of moving to disqualify Marie's counsel, Cook & Franke, S.C. A judgment was entered awarding costs of $5,888.78 to Reinhart and Broomfield.[1]

[1] A judgment for costs in favor of other defendants was entered after these appeals were filed. Appeal 2006AP3164 seeks review of that judgment. That appeal is not ready for disposition with these appeals.

¶5 We start with the circuit court's determination that Marie filed an action seeking dissolution of DD. That determination controls several issues in this appeal. In determining the nature of the relief sought, we look at the allegations in the complaint, including the prayer for relief. *See* ***Maxwell v. Stack***, 246 Wis. 487, 494-497, 17 N.W.2d 603 (1945); ***Lenticular Europe, LLC v. Cunnally***, 2005 WI App 33, ¶20, 279 Wis. 2d 385, 693 N.W.2d 302. An examination of the complaint to determine the nature of the cause of action or claim for relief is akin to determining whether a complaint pleads a cause of action upon which relief may be granted and is subject to our de novo review. ***Interlaken Serv. Corp. v. Interlaken Condo., Ass'n.***, 222 Wis. 2d 299, 305, 588 N.W.2d 262 (Ct. App. 1998). Despite our de novo standard of review, we value the circuit court's decision. ***Id.***

¶6 A plain reading of Marie's complaint leads to the conclusion that she sought dissolution of DD. Paragraph 185 of the complaint cites WIS. STAT. § 183.0902 (2003-04),[2] titled "Judicial Dissolution," and authorizing the dissolution of an LLC if it is established that it is not reasonably practicable to carry on the business of the LLC, that the LLC is not acting in conformity with its operating agreement, that managers or controlling members are acting or will act in an illegal, oppressive or fraudulent manner, or that the LLC's assets are being misapplied or wasted. Paragraph 187 of the complaint alleges that the managers of DD transferred assets and business opportunities to the oppression of Marie's minority owner rights. An allegation of minority oppression is not itself a cause of action but is a legal standard to be fulfilled before a circuit court may order

[2] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

dissolution. ***Reget v. Paige***, 2001 WI App 73, ¶23, 242 Wis. 2d 278, 626 N.W.2d 302. The complaint is replete with allegations that DD managers and controlling members were acting fraudulently and unfairly and that the assets of DD were being misapplied or transferred for less than fair value. Marie sought the return of assets wrongfully converted and then liquidation of all DD's assets. Not only did Marie make factual allegations establishing grounds for judicial dissolution, if proven, but she specifically requested liquidation of the business assets. Liquidation comes on the heels of the dissolution of a business. *See* ***ABC for Health, Inc. v. Ins. Comm'r***, 2002 WI App 2, ¶15, 250 Wis. 2d 56, 640 N.W.2d 510; ***Gull v. Van Epps***, 185 Wis. 2d 609, 622, 517 N.W.2d 531 (Ct. App. 1994). It is counterintuitive to suggest that the business entity should and could carry on once its assets are liquidated.[3] The request for liquidation was the same as a request for dissolution.

¶7 We turn to Marie's claim that the circuit court erred in transferring venue of the action from Milwaukee County to Ozaukee County. The granting of a change of venue is within the circuit court's discretion to do so in the interest of justice or for the convenience of the parties or witnesses. ***State ex rel. West v. Bartow***, 2002 WI App 42, ¶4, 250 Wis. 2d 740, 642 N.W.2d 233; WIS. STAT. § 801.52.

¶8 We dispose of Marie's claim summarily. Under WIS. STAT. § 183.0902 an action for the dissolution of an LLC must be brought in the county where the LLC's principal office is located. DD's principal office is in Ozaukee

[3] DD's operating agreement provides that the purpose of the company shall be to manage dental networks throughout the United States and to provide a full range of related services.

County and venue was proper there. Further, the circuit court considered that Ozaukee County had already been home to Kastens' divorce and Marie's lawsuit to compel production of DD business records. The court noted that Marie was seeking relief for an alleged diminution in value of an asset awarded to her in the divorce and records concerning the business valuation were located in Ozaukee County.[4] The court balanced the competing interests attendant to venue being proper in either county and properly exercised its discretion in concluding that the interest of justice was served by a transfer of venue.

¶9 Marie also contends that it was error for the Milwaukee circuit court to deny her request to lift the stay of proceedings so that before a decision on venue was made, she could file an amended complaint removing the claim of oppression and request for liquidation. This issue is a red herring. First, imposition of the stay pending disposition of the motion to change venue was within the circuit court's discretion and a prudent choice to conserve judicial resources.[5] *See* ***Latham v. Casey & King Corp.***, 23 Wis. 2d 311, 314, 127 N.W.2d 225 (1964) (quoted source omitted) ("'Every court has inherent power, exercisable in its sound discretion, consistent within the constitution and statutes, to control disposition of causes on its docket with economy of time and effort.'"). Second, the circuit court's venue decision was not based on the fact that the complaint

[4] Although Marie correctly points out that the Ozaukee County judge ultimately assigned to hear this case did not preside in the Kasten divorce case, she ignores that the circuit court judge presided in her lawsuit to compel the production of DD business records. Thus, as the Milwaukee County circuit court intended, the action was assigned to a judge familiar with the parties' business relationship and conflicts.

[5] Marie also contends that the stay permitted Craig and MOA to amend DD's operating agreement while the action was pending. The validity of the amendment is tested separately and that it occurred doesn't render the circuit court's stay an erroneous exercise of discretion.

sought dissolution of DD. Third, the circuit court was concerned about manipulation of the pleadings for the purpose of influencing the venue determination. The court sought to avoid the "ping-pong" effect whereby after permitting an amended complaint in Milwaukee County, Marie would amend her complaint again to reinstate the dissolution claim if venue was transferred to Ozaukee County. Finally, and most importantly, Marie had the opportunity to amend her complaint once venue was transferred to Ozaukee County and she did not do so. She cannot now complain that she was denied the opportunity to file an amended complaint.

¶10 Marie's claims on behalf of DD were dismissed because she was not authorized to bring derivative claims on behalf of DD. WISCONSIN STAT. § 183.1101(1) authorizes an action on behalf of a LLC by a member if the member is authorized to sue by an affirmative vote "except that the vote of any member who has an interest in the outcome of the action that is adverse to the interest of the limited liability company shall be excluded." Marie filed an action seeking dissolution. That remedy is contrary to the interests of the continued viability of the LLC. *See* ***Read v. Read***, 205 Wis. 2d 558, 567-68, 556 N.W.2d 768 (Ct. App. 1996). Thus, Marie would be disqualified from voting and no member authorized the suit.[6] The circuit court properly dismissed the derivative claims.

[6] Marie executed a written consent decree authorizing the suit on behalf of DD representing that she held more than 75% of the ownership interest eligible to vote on the issue. Even if WIS. STAT. § 183.1101(1) does not operate to disqualify Marie from voting, DD's operating agreement authorizes members with a personal interest in the outcome to participate in voting. Thus, Craig Kasten and MOA, the controlling members, were eligible to vote and the resolution without their vote was not properly adopted.

¶11 Marie contends that the complaint states individual claims that remain viable. To bring individual claims addressing corporate affairs, the plaintiff must allege facts sufficient to show an injury that is personal to him or her rather than an injury primarily to the corporation. ***Reget***, 242 Wis. 2d 278, ¶12. Whether the complaint states claims for relief that are all based on injury that is primarily to the corporation or primarily individual injury is a question of law that we review de novo. ***Borne v. Gonstead Advanced Techniques, Inc.***, 2003 WI App 135, ¶10, 266 Wis. 2d 253, 667 N.W.2d 709.

¶12 Marie argues that the primary injury rule does not apply to an LLC and that the rule has only been used in corporate shareholder suits. An LLC is a form of business that combines features of both partnership and corporate forms, including a corporate representative form of governance if governed by managers. ***Gottsacker v. Monnier***, 2005 WI 69, ¶¶14-15, 281 Wis. 2d 361, 697 N.W.2d 436. Although members and managers owe a duty to deal fairly with the LLC and its members, WIS. STAT. § 183.0402, the remedies relating to improper personal profits or allegedly wrongful distributions are vested in the LLC. Section 183.0402(2) provides in part that "[e]very member and manager shall account to the limited company and hold as trustee for it any improper personal profit." WISCONSIN STAT. 183.0608(1) provides that a member or manager who votes for or assents to a wrongful distribution is "personally liable to the limited liability company" for the improper amount. Under these provisions, the remedies for Marie's claims that managers, members, and DD's attorneys and accountants diverted assets from DD, diminished the value of DD, made inappropriate charitable donations with DD funds, paid legal and accounting fee expenses for the benefit of other entities, and permitted business opportunities belonging to DD

to be acquired by other entities, benefit only DD. They are derivative claims that Marie is not authorized to bring.

¶13 There are potential individual claims alleged in Marie's complaint. However, the record establishes that the claims are not viable. First Marie alleges that she was wrongfully denied the right to vote on actions taken by DD. DD's operating agreement provides that the manager, Craig Kasten, has sole authority to manage and may undertake a plethora of business operations without any voting by members. Further, under the operating agreement a "Supermajority of the Members," that is Craig and MOA, can vote on any matter even if they have an economic interest and the vote of the supermajority is the vote of the members. The supermajority can control DD's business operations. Marie was not damaged by the lost opportunity, if any, to vote.[7] The claim was properly dismissed.

¶14 Marie also alleges that she was denied access to company records. That claim was the subject of a prior lawsuit. Marie does not argue that the circuit court erroneously exercised its discretion in concluding that issue preclusion applies and supports dismissal of any claim that access to records was denied. *See* ***Mrozek v. Intra Financial Corp.***, 2005 WI 73, ¶15, 281 Wis. 2d 448, 699 N.W.2d 54.

¶15 The other potential individual claim that Marie identifies is one for minority oppression. As we have already noted, minority oppression is not itself a cause of action. ***Reget***, 242 Wis. 2d 278, ¶23. Minority oppression is a legal standard supporting a claim for dissolution. ***Id.*** Again, the remedy is mandated

[7] The complaint does not specify when and on what matters Marie was denied the opportunity to vote.

by statute. In the circuit court Marie repeatedly asserted that she did not want to dissolve DD. Thus, the claim was abandoned and Marie cannot revive it on appeal. We conclude dismissal of all claims was proper.[8]

¶16 On June 1, 2005, approximately four months after Marie commenced this action, a consent resolution was adopted amending DD's operating agreement to permit members with a financial interest in the outcome of pending actions to vote to dismiss such actions, to require members asserting or maintaining a derivative action without approval of a supermajority to indemnify DD for all costs and attorney fees incurred in the action, and to impose a one year limitation on claims asserted by a member against the company or other members. Under the amendment, the supermajority voted to dismiss Marie's lawsuit and hired counsel to pursue dismissal. Marie contends that the amendment is unenforceable because the voting members lacked authority to adopt the resolution and they failed to deal fairly with Marie in doing so. Independent of the amendment to the operating agreement and the resulting resolution to dismiss the lawsuit, we have decided that dismissal was proper. Regardless of the contention that the circuit court did not reach this issue and that this court need not reach the issue, it is sufficient to note that the amendment was valid as adopted by the supermajority as allowed in DD's operating agreement. Also, there is nothing unfair for DD or its members to take action to preserve its business against

[8] Marie argues for the first time on appeal that an interpretation of the Wisconsin Limited Liability Company Act, WIS. STAT. ch. 183, that denies her a remedy violates article 1, section 9 of the Wisconsin Constitution ("Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character."). We generally will not review an issue which is raised for the first time on appeal. *See* ***Evjen v. Evjen***, 171 Wis. 2d 677, 688, 492 N.W.2d 361 (Ct. App. 1992).

Marie's complaint for dissolution, particularly when the derivative claims by Marie were not properly authorized.

¶17 DD was allowed to intervene in the action and to seek dismissal of the action. Marie argues this was error because intervention is a form of initiating an action on behalf of the LLC and the members who voted on the issue were ineligible to vote because of their personal interest in the outcome. As we have previously discussed, the amendment to the operating agreement permitted the vote to intervene in the action and seek dismissal. We need not address the issue further. It is undisputed that DD had an interest in this case that supports intervention.

¶18 One additional issue that need not be addressed in detail concerns the intervention of Michelle Glasshof, the beneficiary of an estate holding an interest in MOA and consequently other LLC defendants in this action. Glasshof intervened and filed a motion to disqualify Marie's attorneys, Cook & Franke, because she had consulted with the firm about possible litigation against the estate linked to MOA and she sought to protect confidential information or documents she gave to the firm. Marie contends that the motion to intervene was untimely and there was no confidential information to protect because Glasshof waived any attorney-client privilege. The circuit court did not rule on the motions to disqualify Cook & Franke.[9] We deem the challenge to Glasshof's intervention moot. The lawsuit is dismissed on the merits. Glasshof's intervention for the limited purpose of seeking the disqualification of Cook & Franke no longer has

[9] Other defendants also filed a motion to disqualify Cook & Franke.

any practical effect on the litigation. *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425.

¶19 We turn to the appeal from the judgment awarding costs to Reinhart and Broomfield. Marie explains that the award of costs reflects expenses related to a motion to disqualify Cook & Franke, a motion that was ultimately withdrawn after the intervention of DD by separate counsel. Since that motion was not decided in Reinhart's and Broomfield's favor, she contends they cannot recover any costs associated with the undecided motion.

¶20 Under WIS. STAT. § 814.03(1), a prevailing defendant is entitled to statutory costs against each unsuccessful plaintiff in a lawsuit. ***Taylor v. St. Croix Chippewa Indians***, 229 Wis. 2d 688, 696, 599 N.W.2d 924 (Ct. App. 1999). The circuit court exercises its discretion when awarding necessary costs under WIS. STAT. § 814.04(2). *See* ***DeWitt Ross & Stevens, S.C. v. Galaxy Gaming and Racing, Ltd. P'ship***, 2004 WI 92, ¶ 54, 273 Wis. 2d 577, 682 N.W.2d 839. "We will uphold the circuit court's exercise of discretion, so long as it examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, arrived at a conclusion that a reasonable judge could reach." ***Id.***

¶21 Citing ***Jesse v. Danforth***, 169 Wis. 2d 229, 236-37, 485 N.W.2d 63 (1992), where the supreme court affirmed an order denying a motion to disqualify attorneys and awarding statutory costs to the attorneys, Marie contends that only a prevailing party on a motion for attorney disqualification can recover costs. Reliance on ***Jesse*** is misplaced because that appeal was taken from a nonfinal order and judgment on the merits had not been entered. *See* ***id.*** at 234. Here Reinhart and Broomfield are entitled to costs as prevailing defendants in the entire action. More than just costs associated with the successful motion are required to

be taxed in favor of the prevailing party. *See* ***Taylor,*** 229 Wis. 2d at 696 ("judgment costs, not motion costs, should be allowed to the prevailing defendant under § 814.03(1)"). There is no statutory directive that a prevailing defendant is only entitled to costs on the prevailing issue. The success or lack of ruling on motions filed during the litigation is not the controlling factor in what constitutes proper judgment costs.

¶22 Marie also claims that Reinhart and Broomfield had no attorney-client relationship with Cook & Franke and therefore lacked standing to pursue a motion to disqualify Cook & Franke. She contends that the costs related to the motion for disqualification were not necessarily incurred. The claim that Reinhart and Broomfield lacked standing to seek disqualification as a reason for denying costs was not included in Marie's objection to costs and is essentially raised for the first time on appeal.[10] We properly decline to review an issue on appeal when the appellant has failed to give the circuit court fair notice that it is raising a particular issue and seeks a particular ruling. ***State v. Salter***, 118 Wis. 2d 67, 79, 346 N.W.2d 318 (Ct. App. 1984).

¶23 Deposition costs are listed among the costs that a prevailing defendant is entitled to tax. WIS. STAT. § 814.04(2). Marie contends that the circuit court taxed costs without a hearing on her objection and thereby failed to exercise its discretion in determining that nine of the deposition transcripts related to Glasshof's motion for disqualification were necessary disbursements for Reinhart and Broomfield. In the absence of an expressed rationale for the taxation

[10] Marie's memorandum in opposition to the defendants' motion to disqualify Cook & Franke argued that all the defendants lacked standing to seek the firm's disqualification.

of costs, we will uphold the circuit court's decision when we can discern a reasonable basis for it in the record. *See* ***English Manor Bed & Breakfast v. Great Lakes Co's.***, 2006 WI App 91, ¶53, 292 Wis. 2d 762, 716 N.W.2d 531. Again, there is no statutory basis for separating out costs incurred by issue or motion. Further, Marie never suggested in her objection to costs that certain depositions were not related to Reinhart's and Broomfield's participation in the action. Marie never asked the circuit court to order them to allocate the costs. The same is true with respect to Marie's contention that Reinhart and Broomfield should not recover all their general copying/postage/faxing costs because they failed to establish which costs are unrelated to the motion to disqualify. Reinhart and Broomfield were entitled to tax these costs.

¶24 Finally, Marie contends that the costs of transcripts from various motion hearings ($239) cannot be taxed under the holding in ***J.F. Ahern Co. v. Wis. State Building Comm'n***, 114 Wis. 2d 69, 109-110, 336 N.W.2d 679 (Ct. App. 1983). In ***J.F. Ahern***, the court determined that the cost of a partial hearing transcript could not be taxed in favor of the prevailing party under the authorization to tax "[a]ll the necessary disbursements." ***Id.*** However, the holding was made under WIS. STAT. § 814.04(2) (1979-80), which allowed the taxation of all the necessary disbursements "and fees *of officers* allowed by law." (Emphasis added). ***J.F. Ahern*** noted that the cost statute had been amended to now allow all the necessary "disbursements and fees allowed by law," ***id.***, 114 Wis. 2d at 109 n.14, thus suggesting a different result under the amended language. The term "fee" (as contrasted with "fees of officers") includes a payment to a court reporter for the preparation of a transcript. ***State ex rel. Girouard v. Circuit Court for Jackson County***, 155 Wis. 2d 148, 157-58, 454

N.W.2d 792 (1990). The cost paid to court reporters for hearing transcripts were properly taxed in favor of Reinhart and Broomfield.[11]

By the Court.—Judgment and orders affirmed.

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

[11] In ***Alswager v. Roundy's Inc.***, 2005 WI App 3, ¶14, 278 Wis. 2d 598, 692 N.W.2d 333, the prevailing defendant was denied the transcription costs of discovery materials provided on a cd-rom. The court recognized that it has long been the law that costs incurred solely for the convenience of counsel are not taxable costs. ***Id.*** ***Alswager*** has no application here because the cost of the transcripts of the recorded conversations were not fees charged by an official court reporter.