

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 28, 2009**

David R. Schanker  
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. 2009AP149**

**Cir. Ct. No. 2008SC1485**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**ROBERT W. TESSEN,**

**PLAINTIFF-APPELLANT,**

**V.**

**AMY L. TRZINSKI,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Portage County:  
THOMAS T. FLUGAUR, Judge. *Affirmed.*

¶1 VERGERONT, J.<sup>1</sup> Robert Tessen appeals the circuit court's order dismissing this small claims action with prejudice on the ground of failure to appear. For the reasons we explain below, we affirm.

¶2 Tessen, an inmate at Columbia Correctional Institution, filed this small claims action against Amy Trzinski alleging that, when he and Trzinski stopped living together and he moved out, she refused to let him take the dog, which she had given him as a gift, and two crates of records. He sought \$3,000 in damages. The circuit court set December 3, 2008, at 11:15 a.m. as the date and time at which Trzinski was required to appear in order to dispute the matter. On November 20, 2008, Tessen wrote the clerk of courts asking that the hearing date set for December 3 be moved to a later date because he was in prison and had a court date in another county on December 4. In addition, Tessen asked that he be allowed to appear by telephone and he gave a telephone number at which he could be reached. The circuit court responded on November 26, 2008, in writing, stating that the request for a continuance was denied and that Tessen would be allowed to appear by telephone and should call the court at 715/346-1244 at 9:30 a.m. on 12/03/08 or his case would be dismissed.

¶3 The record does not contain a transcript of the proceeding on December 3, 2008, but the minute sheets show the following. Trzinski appeared in person and by an attorney. The court instructed the clerk to call the telephone number in Tessen's letter. At 11:34 a.m. the court called the case and stated appearances for the record. At that time Tessen had not been located at the prison.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) and (3) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

Trzinski's counsel asked for the opportunity to put on testimony and exhibits, which she did. Trzinski testified and the court questioned her. Trzinski's counsel asked for dismissal with prejudice and the court granted the request. Trzinski's counsel asked the court to make a finding regarding a frivolous filing by Tessen. The court stated that it would not make such a ruling but would remind Tessen that his sentence could be extended if he continued to file frivolous suits.

¶4 On appeal Tessen contends that he was entitled to an adjournment under WIS. STAT. § 799.27(1), which provides:

(1) On request. Except in eviction actions, a party who appears on the return date shall be given, on request, an adjournment of at least 7 days, or such longer period as the court grants. In eviction actions, no adjournments shall be granted except for cause shown under sub. (2) and (3), unless with the consent of the plaintiff.

¶5 Whether this statute applies to the undisputed facts in this case presents a question of law, which we review de novo. *State v. Martinez*, 2007 WI App 225, ¶7, 305 Wis. 2d 753, 741 N.W.2d 280. The plain language of this section applies only to “a party who appears on the return date....” Tessen did not appear on the return date because he was not available when the court placed the call to him at the designated time and at the number Tessen had provided.

¶6 Tessen also argues that the court erroneously exercised its discretion when it denied Tessen's request for an adjournment of the return date. We have already concluded as a matter of law that WIS. STAT. § 799.27(1) does not apply. Subsections (2) and (3) provide:

(2) For cause. For good cause shown to the court by either party, the court may extend the time within which any act may be done, except the time for the taking of an appeal.

(3) Same; terms. No continuance under sub. (2) shall be granted, unless by consent of the parties, except upon such terms as the court deems just.

Subsection (2) gives the circuit court discretion to extend the return date. When reviewing a discretionary decision such as this, we search the record for reasons to sustain the circuit court's exercise of discretion, *Lofthus v. Lofthus*, 2004 WI App 65, ¶21, 270 Wis. 2d 515, 678 N.W.2d 393, and we affirm if there is a reasonable basis for the court's decision. *Littmann v. Littmann*, 57 Wis. 2d 238, 250, 203 N.W.2d 901 (1973).

¶7 The record provides a reasonable basis for the court's denial of Tessen's request for an adjournment under WIS. STAT. § 799.27(2). Tessen's letter does not explain why the court date in another county on December 4 would require Tessen to be in a location on the morning of December 3 where he could not be reached by telephone. In the absence of an explanation, the circuit court had a reasonable basis for concluding that Tessen had not established a good cause for an adjournment.

¶8 Because the appellant has the responsibility to supply all parts of the circuit court record that are needed for an appeal, we assume that any omissions from the record that bear on the issue appealed support the circuit court's decision. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 634, 273 N.W.2d 233 (1979). Therefore, we assume the transcript, to the extent it addressed the court's decision not to allow a continuance of the return date, also supports the circuit court's exercise of discretion.

¶9 Accordingly, we affirm the dismissal of this action.

*By the Court.*—Order affirmed.

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

