

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 13, 2002

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. 02-0206-FT
STATE OF WISCONSIN**

Cir. Ct. No. 01-SC-514

**IN COURT OF APPEALS
DISTRICT IV**

GIL JENSEN,

PLAINTIFF-RESPONDENT,

V.

MARY BESCHTA-BACHMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Juneau County:
VIRGINIA WOLFE, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Mary Beschta-Bachman appeals from a judgment directing Bachman² to return a 1997 Ford Crown Victoria to Gil Jensen. She makes the following arguments on appeal:

1. Jensen failed to provide sufficient evidence to support the allegations of his complaint.
2. Bachman submitted sufficient evidence to prove the allegations in her affirmative defenses and counterclaims.
3. The Trial Judge's Findings of Fact were clearly erroneous.

We affirm.

¶2 This dispute arose in relation to a vehicle that Bachman purchased from Jensen in 1998. Jensen filed an action in small claims court against Bachman on July 26, 2001, seeking return of the vehicle and approximately \$5,000 in damages. In her answer, Bachman stated that she had paid Jensen in full the price upon which they had agreed. She also asserted a counterclaim, alleging that Jensen had violated WIS. STAT. § 422.304(1) because he had Bachman sign a blank wage assignment.

¶3 At trial, Jensen testified that he and Bachman agreed that she would pay him approximately \$18,000 for a 1997 Ford Crown Victoria in weekly installments of about \$100 and that Bachman had stopped making payments the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(a) (1999-2000), and expedited under WIS. STAT. RULE 809.17 (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² Because the appellant refers to herself in her brief as “Bachman” rather than “Beschta-Bachman,” we will do the same.

previous year after paying less than \$6,000. In addition, he offered several documents. The first stated in part:

THE ABOVE APPLICANT(S) [Mary Beschta] HEREBY AGREE TO PAY JENSEN'S BODY SHOP THE AMOUNT OF \$18,322.56 AS INDICATED BELOW FOR AUTO USE AND REPAIRS.

--(A) WEEKLY; ✓ INSTALLMENTS OF \$95.42 DUE ON _____ OF EACH WEEK UNTIL PAID IN FULL.

This agreement is signed by "Mary Beschta." The second document, also signed by "Mary Beschta," was entitled "Voluntary Wage Assignment." The document states that Bachman agrees to have \$95.43³ deducted from her paycheck each pay period until a balance of \$18,322.56 is paid.

¶4 Bachman testified that the agreement was that she would pay Jensen \$6,000 for the vehicle. The circuit court found in favor of Jensen and ordered Bachman to return the vehicle to Jensen.

¶5 Bachman argues that the circuit court's judgment must be reversed because there is insufficient evidence to support it. Specifically, she argues that the only evidence Jensen had was his own testimony and that he was not credible. In reviewing a circuit court's decision for sufficiency of the evidence, we will affirm the judgment if there is any credible evidence to support it. WIS. STAT. § 805.14(1); *Weiss v. United Fire & Cas. Co.*, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995). Further, we will only overturn a circuit court's determination regarding the credibility of a witness if we can conclude that the witness was

³ The amount on the agreement is one penny less than the amount of the wage assignment.

credible or incredible as a matter of law. *Schultz v. Sykes*, 2001 WI App 255, ¶32, 248 Wis. 2d 746, 638 N.W.2d 604.

¶6 Bachman has not demonstrated that Jensen is incredible as a matter of law. She argues that it is “obvious” that Jensen lied to her and filled in the amounts on the agreement and wage assignment after she signed them. In support of this assertion, she points to the vehicle’s title, which listed \$6,000 as the selling price. Jensen testified that he “just had [Bachman] pay taxes on the \$6,000” and that the remaining amount was for repairs that Jensen had made plus interest.⁴

¶7 The circuit court could have believed Bachman that the agreement had been for \$6,000 rather than \$18,000. However, based on the evidence presented at trial, the circuit court found Jensen to be more credible. In essence, Bachman asks us to conduct a de novo review of the circuit court’s credibility determination. It is well settled, however, that credibility of witnesses is a matter for the circuit court to decide and we cannot second guess its judgment. *See Weiderholt v. Fischer*, 169 Wis. 2d 524, 533, 485 N.W.2d 442 (Ct. App. 1992). Upsetting trial court credibility determinations on appeal is not much more likely than winning a multi-state lottery. Jensen presented sufficient evidence to sustain the judgment.

¶8 Bachman also argues that the circuit court erred when it refused to take judicial notice of a Sauk County case. The circuit court concluded that the

⁴ It is not necessarily “obvious” that the amount shown on the vehicle’s title was the vehicle’s selling price. It is possible that Bachman and Jensen agreed to put “\$6,000” on the title in order to defraud the Wisconsin Department of Revenue, or that Jensen’s explanation was correct.

case was not relevant.⁵ Although Bachman states in her brief that “the facts of the [Sauk County] case are exactly the same as the facts in Bachman’s case,” she did not explain to the circuit court nor does she explain in her brief, what those facts were. To successfully challenge a ruling excluding evidence, a party must make known “the substance of the evidence” being offered. WIS. STAT. § 901.03(1)(b). Bachman has failed to do this. Further, to the extent that Bachman sought to introduce the previous case to demonstrate that Bachman acted in conformity with a character trait, this is prohibited by WIS. STAT. § 904.04(1), and Bachman has not identified an acceptable purpose for which the evidence could have been considered. *See State v. Sullivan*, 216 Wis. 2d 768, 772, 576 N.W.2d 30 (1998).

¶9 Finally, Bachman challenges the circuit court’s decision regarding her counterclaim. She argues that Jensen violated WIS. STAT. § 422.304, which prohibits blank writings. This is a recharacterization of the same argument that Bachman made with respect to the sufficiency of the evidence. Bachman points to no evidence showing that Jensen used a blank writing that we have not already considered. The circuit court did not err in rejecting Bachman’s counterclaim.

⁵ The circuit court reasoned that “[t]he fact that another case was dismissed is not relevant to this case.” Bachman’s attorney, however, did not state that the other case had been dismissed. She did, however, state that the decision was “part of our filing.” The only document attached to Bachman’s answer, however, that related to another case was an order dated June 5, 2001, from the Sauk County Circuit Court, dismissing without prejudice a case that Jensen filed against Bachman before bringing the one in Iowa County. According to the order, the Sauk County Circuit Court dismissed the case because Jensen failed to appear at a pretrial conference. The circuit court may have thought that Bachman’s attorney was referring to that case. Regardless which case Bachman’s attorney was actually referring to, we agree that Bachman failed to show that it was relevant.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS.
STAT. RULE 809.23(1)(b)4.

