

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 17, 2004

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. 03-1671-FT

Cir. Ct. No. 94CV000263

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**AGRIBANK FCB, F/K/A FARM CREDIT BANK OF ST.
PAUL, F/K/A THE FEDERAL LAND BANK OF ST. PAUL,**

PLAINTIFF-RESPONDENT,

V.

RONALD MALUEG,

DEFENDANT-APPELLANT,

LESLIE MALUEG,

DEFENDANT.

APPEAL from a judgment of the circuit court for Outagamie County: JAMES T. BAYORGEON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Ronald Malueg appeals a judgment awarding him \$1,000 damages for Agribank's violation of WIS. STAT. § 428.103(1)(c),¹ and awarding him a fraction of the costs he requested.² Malueg argues that the finding that Agribank violated the Wisconsin Consumer Act entitles him to recover all costs and disbursements including attorney fees totaling over \$12,000. Because we conclude that the trial court properly exercised its discretion when it allowed 10% of the requested attorney fees and denied costs for an appeal, trial transcripts, depositions and mileage, we affirm the judgment.

¶2 In an earlier appeal (No. 95-0119), this court partially reversed a judgment in favor of Agribank and remanded the matter for the trial court to impose a statutory penalty for Agribank's violation of WIS. STAT. § 428.103(1)(c), and to consider whether Agribank violated § 428.103(1)(e). On remand, Agribank agreed to imposition of the maximum penalty, \$1,000, for its violation of § 428.103(1)(c), and the trial court found that it did not violate WIS. STAT. § 428.103(1)(e). The trial court awarded costs and fees totaling \$1,068.88 on the \$1,000 judgment.

¶3 Contrary to Malueg's argument, the award of costs and fees is discretionary. See *Chmill v. Friendly Ford-Mercury*, 154 Wis. 2d 407, 412, 453 N.W.2d 197 (Ct. App. 1990). The trial court properly exercises its discretion if it employs a logical rationale based on the appropriate legal principles and facts of record. *Id.* When a consumer prevails on only some of his claims under the

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

² This is an expedited appeal under WIS. STAT. RULE 809.17.

Wisconsin Consumer Act, he should recover attorney fees only as to successfully litigated issues. *See Footville State Bank v. Harvell*, 146 Wis. 2d 524, 540, 432 N.W.2d 122 (Ct. App. 1988).

¶4 The trial court properly exercised its discretion when it refused to award Malueg all of his attorney fees and expenses for several independently dispositive reasons. First, Malueg's attorney also represented Leslie Malueg. Although Malueg's counsel separated some of his appellate fees from Leslie's, other fees and expenses jointly benefited both of his clients and a portion should be attributed to his defense of Leslie. Second, Malueg did not prevail on the great majority of the issues he raised in the trial court or on appeal. Third, the only issue on which he did prevail was the \$1,000 penalty imposed against Agribank after Agribank agreed to imposition of the maximum penalty. Little of Malueg's attorney's time and effort should have been expended pursuing that claim. Fourth, the requested attorney fees were out of proportion to the entire case. Malueg seeks over \$12,000 in costs and fees based on collecting a \$1,000 penalty on a judgment in favor of Agribank for \$16,791.39. Fifth, the request for costs and fees related to the appeal is a matter committed to this court under WIS. STAT. RULE 809.25. In our earlier decision, we awarded no costs on appeal because, although Malueg succeeded in securing a partial reversal and remand, his appeal was substantially unsuccessful. It would not be appropriate for the trial court to award costs and fees for an appeal after this court refused to award them.

By the Court.—Judgment affirmed.

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

