COURT OF APPEALS
DECISION
DATED AND FILED

July 22, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-3428 **Cir. Ct. No. 03SC000476**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CJJ'S AUTO & TRUCK CENTER AND JAMES STOGSDILL,

PLAINTIFFS-RESPONDENTS,

V.

JAMES E. POUNDERS AND NORMALEE J. POUNDERS,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Juneau County: DENNIS C. SCHUH, Judge. *Affirmed.*

¶1 VERGERONT, J.[1] In this small claims action, James and Normalee Pounders appeal the judgment of $2000 plus costs entered against them on the claim of CJJ's Auto & Truck Center and James Stogsdill (collectively, CJJ) for storages fees for their vehicle. They contend the circuit court erred in not applying

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

the doctrine of claim preclusion to bar CJJ's claim and in awarding damages because CJJ did not prove its claim. We conclude the court properly exercised its discretion in not applying claim preclusion and that there was sufficient evidence to support CJJ's claim and damages. We therefore affirm.

BACKGROUND

¶2 Certain of the background facts are not disputed. Sometime in May 2002, shortly before May 24, Normalee dropped off the Pounders' car for repairs at CJJ. The repairs were to be done when she returned with the parts. Because of the death of the Pounders' daughter on May 24, 2002, she did not return as planned and instead called and spoke to Stogsdill and explained the situation. When she returned in January 2003 with the parts, Stogsdill told her he had sold her car. She later learned he had transferred title to his name, declaring it an abandoned vehicle, and that it was at his house.

¶3 In February 2003, the Pounders filed a small claims action against CJJ seeking either $5000 or return of their vehicle. Both the Pounders and Stogsdill appeared unrepresented for the trial, the Honorable Kent Houck presiding. After hearing the evidence, Judge Houck determined that the vehicle was not abandoned and ordered Stogsdill to either transfer title to the Pounders or pay $5000. After the court made that ruling and while the process of transferring the vehicle was being discussed, Stogsdill told the court he wanted to "sue for storage." The court responded: "You have the right to do that, you have to do that like anyone else …" and the discussion then continued on how to effectuate the transfer of the vehicle. Stogsdill transferred title of the vehicle as ordered.

¶4 Approximately seven weeks after the trial in that action, CJJ filed the complaint in this action, seeking storage fees for the vehicle. The Pounders

through counsel moved to dismiss based on the doctrine of claim preclusion, contending that CJJ should have counterclaimed in the first action for storage fees and was therefore barred from bringing this action. The court, the Honorable Dennis Schuh presiding, denied the motion because Stogsdill had asked Judge Houck about storage fees, Judge Houck told him to start a new proceeding, and Stogsdill was following Judge Houck's direction.

¶5 In the trial in this action, Stogsdill appeared unrepresented and the Pounders appeared with counsel. Stogsdill requested fees totaling $5000 for eight months of storage. He testified as follows. The vehicle was originally dropped off when he was not there, and Normalee called him three days later, which is when it was agreed she would pick up the parts and bring them in. When Normalee called him to tell him about her daughter's death, the car had been there a couple of weeks to a month; she asked if it was okay if it sat there another week and he said yes. He had no paperwork with her name on it and he did not know her name; he did not ask her for her name or phone number or address in the phone conversations. When he called the police department to try to learn the name of the owner of the vehicle, the department said it could not tell him the owner's name, only that it was not stolen. It is not his practice to charge $25 a day for storage if he is working on a vehicle, but he does charge $25 a day to store other vehicles, and that charge is posted in his office.

¶6 Normalee testified as follows. She and her husband went to CJJ and spoke to Stogsdill about repairing their vehicle. He suggested they get the parts themselves and he had them fill out and sign a form with a carbon "so that he could do the diagnostics." On the form Normalee wrote down her and James's names, their address and phone number, and James's work phone number. They later dropped the vehicle off at CJJ before the shop was open and followed

Stogsdill's instructions on where to put the key when the shop was not open. On June 28, 2002, she called Stogsdill, explained that her daughter had died, and asked for some time to get the parts. The bill for the parts shows a purchase date of January 13, 2003.

¶7 James corroborated the testimony of Normalee regarding filling out the forms and, in a general statement, agreed with all her testimony. He added that he had heard her call Stogsdill to tell him of their daughter's death and she did not ask Stogsdill to let the vehicle stay at CJJ for any specific period of time. Their understanding was that whenever they returned with the parts was okay.

¶8 The Pounders presented evidence of the mileage on the vehicle shortly before they dropped it off at CJJ and just after they picked it up from Stogsdill, which Normalee asserted, showed that Stogsdill had put approximately 5000 miles on the vehicle. The document transferring title to Stogsdill showed that it occurred on November 26, 2002.

¶9 Based on the various exhibits showing odometer readings, including the transfer of title, the circuit court found that the increase in mileage occurred after the title was transferred to Stogsdill. The court determined that, taking into account the death of the Pounders' daughter, it was nevertheless unreasonable for the Pounders to leave their vehicle at CJJ for six to seven months because Stogsdill was running a business and their vehicle was taking up the space of another car that he could be storing or working on. The court found although Stogsdill gave them an extension, it was unreasonable to assume the extension was for six or seven months. The court credited Stogsdill's testimony that he charged $25 a day for storage and that a sign posted in his office stated that. The court determined that it was reasonable for Stogsdill to begin to charge for storage some

reasonable period of time after June 28, when he told Normalee it would be okay to leave the vehicle there for some period of time, but it was not reasonable to charge for storage after the date on which he transferred title to himself. The court determined that $2000 was a reasonable amount for the Pounders to pay for storage, stating that ninety days was a reasonable period for imposition of storage fees.[2]

DISCUSSION

¶10 We consider first whether the court erred in denying the motion to dismiss based on claim preclusion. Under this doctrine, a final judgment is conclusive on all subsequent actions between the parties or their privies as to all matters that were litigated or that might have been litigated in the former proceeding. ***Northern States Power Co. v. Bugher***, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995). The purpose of the doctrine is "to draw the line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." ***Id.*** (quoting ***Purter v. Heckler***, 771 F.2d 682, 689-90 (3d Cir. 1985)).

¶11 The Pounders are correct that generally the question whether claim preclusion applies is an issue of law, which we review de novo. *See* ***Schaeffer v. State Pers. Comm'n***, 150 Wis. 2d 132, 138, 441 N.W.2d 292 (Ct. App. 1989). However, because this is a small claims action, we must take into account that the legislature has defined the role of the circuit court differently than in large claims actions. In order to facilitate the use of small claims actions by unrepresented

[2] We note that while the circuit court stated ninety days was a reasonable period for imposition of storage fees, the award of $2000 at $25 per day works out to an eighty-day period.

persons, the legislature has given the circuit court more latitude than in a large claims action and has relaxed the procedural rules. Thus, the proceedings are to be conducted informally, WIS. STAT. § 799.209(1); they are not governed by the rules of evidence, with certain specific exceptions, § 799.209(2); the court is to "ensure that the claims or defenses of all parties are fairly presented," § 799.209(3); and the court is to establish the procedure in "an appropriate manner consistent with the ends of justice and the prompt resolution of the dispute on its merits according to the substantive law." Section 799.209(4).[3] We conclude that it is consistent with the role the legislature has given the circuit court in a small claims action to

[3] WISCONSIN STAT. § 799.209 provides:

> **Procedure**. At any trial, hearing or other proceeding under this chapter:
>
> **(1)** The court or circuit court commissioner shall conduct the proceeding informally, allowing each party to present arguments and proofs and to examine witnesses to the extent reasonably required for full and true disclosure of the facts.
>
> **(2)** The proceedings shall not be governed by the common law or statutory rules of evidence except those relating to privileges under ch. 905 or to admissibility under s. 901.05. The court or circuit court commissioner shall admit all other evidence having reasonable probative value, but may exclude irrelevant or repetitious evidence or arguments. An essential finding of fact may not be based solely on a declarant's oral hearsay statement unless it would be admissible under the rules of evidence.
>
> **(3)** The court or circuit court commissioner may conduct questioning of the witnesses and shall endeavor to ensure that the claims or defenses of all parties are fairly presented to the court or circuit court commissioner.
>
> **(4)** The court or circuit court commissioner shall establish the order of trial and the procedure to be followed in the presentation of evidence and arguments in an appropriate manner consistent with the ends of justice and the prompt resolution of the dispute on its merits according to the substantive law.

commit the decision whether to apply claim preclusion to the court's discretion. The circuit court should consider whether to apply claim preclusion in view of the principles underlying that doctrine as well as the goal of small claims actions—to ensure that the claims and defenses of all parties are fairly presented and that the dispute is promptly resolved on its merits according to substantive law consistent with the ends of justice. Section 799.209(3)-(4).

¶12 Because we conclude the decision whether to apply the doctrine of claim preclusion was within the circuit court's discretion, we will affirm that decision if the court applied the correct law to the facts of record and reached a reasonable decision. ***State v. Garcia***, 192 Wis. 2d 845, 861, 532 N.W.2d 111 (1995). Applying this standard, we affirm the court's decision not to apply claim preclusion. The transcript of the trial in the first action shows that Stogsdill did raise the issue of storage fees as soon as he understood that he had to either transfer title of the car or pay its value, and this occurred before the court adjourned. Instead of telling Stogsdill that the storage fees had to be determined in this action—which could have been accomplished either at that time or by continuing the hearing—Judge Houck's response plainly indicated that Stogsdill had to file a suit of his own. Judge Schuh decided it would be unfair to penalize Stogsdill for doing as he was told by Judge Houck, and that is a reasonable decision.

¶13 We next address the Pounders' challenge to the award of damages. They assert that the court made a decision that was not supported by the evidence and reached an unreasonable result.

¶14 When we are reviewing the amount of damages awarded, we do not substitute our judgment for that of the circuit court but affirm if it is reasonable,

viewing the evidence in the light most favorable to supporting the award. ***Teff v. Unity Health Plans Ins. Corp.***, 2003 WI App 115, ¶41, 265 Wis. 2d 703, 666 N.W.2d 38. To the extent the court made findings of fact, we accept them unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). The credibility of a witness and the weight to be accorded a witness's testimony is for the circuit court to decide, not this court. ***Lessor v. Wangelin***, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998). When more than one reasonable inference can be drawn from the credible evidence, we must accept the inference drawn by the circuit court. *See* ***Siker v. Siker***, 225 Wis. 2d 522, 528, 593 N.W.2d 830 (Ct. App. 1999) (citations omitted). Even if the court does not make an express finding of fact, we assume the court made those findings that are necessarily implicit in its conclusion and we accept implicit findings if they are not clearly erroneous. *See* ***State v. Hubanks***, 173 Wis. 2d 1, 27, 496 N.W.2d 96 (Ct. App. 1992).

¶15 The court here credited Stogsdill's testimony on what he charged for storage and that a sign stated this amount. There was no evidence that $25 per day was an unreasonable amount. The court implicitly found that Stogsdill and Normalee did not agree that she had only one more week to leave the vehicle at CJJ; rather, the time period was left undefined. However, the court determined that undefined time period could not reasonably be understood to be six and one-half months—from June 28 to January 13. The court's award of $2000 for storage, cutting it off on November 26 when Stogsdill acquired the title, means the court found it reasonable for the Pounders to understand that they could leave their car there for approximately two months and ten days after June 28. We cannot fault the court's reasoning. The Pounders knew that Stogsdill had a business repairing cars and the court could reasonably infer that they knew their car would be taking up the space of another car. The court did not ignore the impact of the

death of the Pounders' daughter. It took that into account, but concluded it was unreasonable nonetheless for the Pounders to assume they could keep their car at CJJ for six and one-half months based on Normalee's conversation with Stogsdill.

¶16 The Pounders argue that the court erred in not taking into account the approximately 5000 miles Stogsdill put on the car after he acquired title and not taking into account Judge Houck's ruling that Stogsdill had improperly treated the vehicle as abandoned. However, in the first action, the Pounders asked only for either the return of the vehicle or its blue book value; they did not ask for any additional damages because of the improper use of the procedure for abandoned vehicles. Of course, at that time they did not know about the mileage put on the vehicle while in Stogsdill's possession. In this action, although they presented evidence of the additional mileage, they did not suggest they were entitled to any dollar amount for that mileage—either as a counterclaim or set-off against any storage fees. Their position was that they did not owe any storage fees because they understood they could keep their car at CJJ until they got the parts and Stogsdill never called to tell them otherwise. We cannot fault the circuit court for not reducing the storage fees it found reasonable by the mileage Stogsdill put on the vehicle after he acquired title, when the Pounders did not suggest to the court a method for translating the increased mileage into a dollar amount.

¶17 We conclude the court's award of $2000 in storage fees was reasonable and was supported by evidence in the record and reasonable inferences from that evidence. We therefore affirm the judgment.

By the Court.—Judgment affirmed.

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