COURT OF APPEALS
DECISION
DATED AND FILED

April 4, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2589-FT **Cir. Ct. No. 2012FO1918**

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

DANE COUNTY,

PLAINTIFF-RESPONDENT,

V.

RORIC A. GIBBS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: STEPHEN E. EHLKE, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] Roric A. Gibbs appeals an order denying Gibbs' request for costs. I affirm.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g)(2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶2 In August 2012, Dane County filed a civil forfeiture action against Gibbs, alleging a violation of Dane County Ordinance § 32.03, disorderly conduct. In October, the circuit court dismissed the action based on the stipulation of the parties. Gibbs subsequently moved the court for judgment against Dane County for the costs and fees he incurred, including $300 in attorney's fees and $36 for jury fees, under Chapter 778, WIS. STAT. §§ 814.04 and 814.23. The court denied Gibbs' motion. Gibbs appeals.

¶3 Gibbs contends that the circuit court erred in denying his motion for attorney's fees and costs. Gibbs appears to be relying on both Chapter 778 and Chapter 814.[2]

¶4 Forfeiture actions are governed by Chapter 778. WISCONSIN STAT. § 778.20 expressly authorizes the assessment of costs against a municipality in a forfeiture action. It provides:

> **Who is liable for costs.** In all actions brought under s. 778.10,[3] the town, city, village or corporation in whose name such action is brought shall be liable for the costs of prosecution; *and, if judgment be for defendant, for all the costs of the action,* and judgment shall be entered accordingly.

Section 778.20 (emphasis added). Gibbs does not assert that a judgment was entered in favor of him, nor does he develop an argument as to why the circuit court was wrong in denying his request for costs, despite the absence of a judgment.

[2] Gibbs' brief is poorly organized and his arguments are difficult to follow. I have done my best to discern and address the arguments that were raised. However, to the extent that I have not addressed arguments raised on appeal, those arguments are deemed rejected. *See* ***Roberts v. Manitowoc Cnty. Bd. of Adjustment***, 2006 WI App 169, ¶35, 295 Wis. 2d 522, 721 N.W.2d 499.

[3] Dane County does not dispute that this action was brought under WIS. STAT. § 778.10.

¶5 Gibbs also relies on Chapter 814, which addresses "court costs, fees, and surcharges." I read his brief as arguing that he is entitled to costs under WIS. STAT. § 814.23, which provides: "In all actions by or against a county … costs shall be awarded to the *prevailing party* as in actions between individuals." He asserts that because the County dismissed their civil forfeiture complaint, he was the prevailing party in that action.

¶6 Whether a circuit court properly determined whether a party was a "prevailing party" is a question of law that this court reviews independently. ***Credit Acceptance Corp. v. Woodard***, 2012 WI App 43, ¶6, 340 Wis. 2d 548, 812 N.W.2d 525. The supreme court has explained that the purpose of cost statute is "to recompense the prevailing party for some of the cost of the vindication of his [or her] rights" and that costs "are payable by the defeated party upon completion of *the litigation process.*" ***Finkenbinder v. State Farm Mut. Auto Ins. Co.***, 215 Wis. 2d 145, 150, 572 N.W.2d 501 (Ct. App. 1997).

¶7 Gibbs argues that he became the prevailing party by virtue of Dane County's dismissal of its claim. According to Gibbs, he "prevailed" because Dane County did not recover anything. I am not persuaded.

¶8 Dane County and Gibbs stipulated to the dismissal of the action. Gibbs does not direct this court to any legal authority which supports his claim that a defendant "prevails," as that term is used in WIS. STAT. § 814.23, when parties stipulate to the dismissal of a plaintiff's claim. We have described a "prevailing party" as one who "achieves some significant benefit in litigation." ***Estate of Wheeler v. Scott***, 2002 WI App 190, ¶8, 256 Wis. 2d 757, 649 N.W.2d 711. Gibbs has not directed this court to any facts in the record before it that could persuade this court to conclude that he achieved a significant benefit in litigation

over that achieved by Dane County. Because dismissal was by stipulation, this court assumes that dismissal was mutually beneficial to both parties. Furthermore, the record does not reflect that dismissal of the complaint was with prejudice, meaning Dane County is free to refile its complaint against Gibbs.[4] Accordingly, I conclude that the circuit court did not err in determining that Gibbs was not a prevailing party.

¶9 In addition, Gibbs argues that he is entitled to a refund of the $36 jury fee he paid. Gibbs relies on ***State v. Graf***, 72 Wis. 2d 179, 188, 240 N.W.2d 387 (1976), wherein the supreme court concluded:

> [T]he prepayment of jury fees and other costs as a condition for a jury trial [in that case] was not a violation of the Wisconsin Constitution's preservation of the right to a jury trial. *However, the retention of such fees and costs after a verdict in the defendant's favor is violative of such right*. (Emphasis added).

Gibbs argues that because he was the prevailing party, ***Graf*** requires that he be refunded the jury fees he paid. However, ***Graf*** does not require refund of jury fees to prevailing parties in general, but only "after a verdict in the defendant's favor." ***Id.*** Gibbs has not presented this court with any argument or legal authority for the proposition that jury fees are refundable where a verdict is not entered, but instead the plaintiff and the defendant mutually agree to dismiss the case, even assuming, notwithstanding ¶8, that Gibbs was the prevailing party. Accordingly, I do not further address this argument. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-67, 492

[4] Gibbs also argues that he is entitled to costs under WIS. STAT. § 814.04(6) and to, at a minimum, the jury fees he paid, under WIS. STAT. § 814.61(4). The record before this court does not reflect that Gibbs raised these arguments before the circuit court and they will not be considered now. *See* ***Segall v. Hurwitz***, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App.1983).

N.W.2d 633 (Ct. App. 1992) (we need not address issues that are inadequately briefed or lacking in legal authority).

By the Court.—Order affirmed.

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