COURT OF APPEALS
DECISION
DATED AND RELEASED

July 18, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0754-FT

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

GUNDERSEN CLINIC,

Plaintiff-Respondent,

v.

GERALD R. LYDEN,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed*.

DYKMAN, J. This is a single-judge appeal decided pursuant to § 752.31(2)(a), STATS. Gerald R. Lyden appeals from a money judgment for $3,019.60. Lyden argues that the trial court erred by not finding that acceptance of Lyden's settlement check constituted an accord and satisfaction of Lyden's entire account. We conclude that the circuit court's finding that the settlement was only an accord and satisfaction of a single claim and not Lyden's entire account is not clearly erroneous. Accordingly, we affirm.

BACKGROUND

Gerald Lyden was a patient of Gundersen Clinic for many years. From 1990 to 1994, Lyden incurred various medical bills at Gundersen in the aggregate amount of $3,019.60. These bills were turned over to a collection agency. On January 5, 1995, Lyden was admitted to Gundersen following an accident and was billed $7,371.30 for services rendered as a result of the accident. Lyden did not pay these bills, and Gundersen turned these bills over to the same collection agency.

Lyden attempted to settle his past-due accounts with Gundersen. Lyden and Gundersen entered into an agreement under which Lyden would pay Gundersen $5,200, plus an additional $105.00 for a current charge never turned over for collection. Lyden complied with the agreement and Gundersen released Lyden from the $7,371.30 debt. Lyden attempted to get Gundersen to sign a full release and satisfaction upon making the $5,200 payment, but Gundersen refused.

Later, Gundersen attempted to collect the additional $3,019.60 owed. Gundersen offered Lyden a settlement of $1,200 for the amount outstanding. Lyden refused to pay, claiming that the $5,200 payment was intended as a release of his entire debt to Gundersen. Gundersen denies this, maintaining that the $5,200 settlement was solely for the $7,371.30 account. The circuit court found that the $5,200 payment was only intended as a release of the 7,371.30 account and did not amount to a satisfaction of the entire debt owed by Lyden. Lyden appeals.

DISCUSSION

Accord and satisfaction is an agreement between parties to discharge an existing disputed claim. ***Flambeau Products Corp. v. Honeywell Info. Sys., Inc.***, 116 Wis.2d 95, 112, 341 N.W.2d 655, 664 (1984). Under this rule, if the creditor cashes a check from a debtor that has been offered as full payment for a disputed claim, the creditor is deemed to have accepted the debtor's conditional offer of full payment for the entire claim notwithstanding

any reservations by the creditor. ***Id.*** at 101, 341 N.W.2d at 658. In other words, the creditor's act of cashing the check discharges the entire debt, even if the creditor objects to the amount either verbally or in writing. *See* ***Butler v. Kocisko***, 166 Wis.2d 212, 219, 479 N.W.2d 208, 211-12 (Ct. App. 1991).

In order for accord and satisfaction to apply, two conditions must be met. ***Flambeau***, 116 Wis.2d at 111, 341 N.W.2d at 663. First, there must be a good faith dispute about the debt. ***Id.***[1] Second, the creditor must have reasonable notice that the check is intended to be in full satisfaction of the debt. ***Id.***

The issue presented to the circuit court was a factual dispute about whether Lyden offered the check as full payment for the entire debt or whether he was only settling the $7,317.30 claim. The circuit court determined that, based on the evidence, Lyden's payment was not intended as full and final payment of all claims, but only represented satisfaction of one account.

Drawing an inference from undisputed facts when more than one inference is possible is a finding of fact which is binding upon the appellate court. ***State v. Friday***, 147 Wis.2d 359, 370, 434 N.W.2d 85, 89 (1989). Findings of fact by the trial court will not be upset on appeal unless they are clearly erroneous. ***Noll v. Dimiceli's, Inc.***, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983). Thus, we may only reject a clearly unreasonable inference. ***Friday***, 147 Wis.2d at 371, 434 N.W.2d at 89.

The circuit court's finding that the payment was not intended as satisfaction of Lyden's entire past-due balance is reasonable based on the evidence in the record. The receipt given to Lyden upon payment indicated

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[1] We question whether this condition is satisfied. Lyden does not explain what dispute existed. It appears that the only reason for Gundersen's offer of settlement was its conclusion that half-a-loaf was better than none. But we pursue this issue no further, because the parties have not briefed it. ***Waushara County v. Graf***, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19 (1992) (stating "appellate courts need not and ordinarily will not consider or decide issues which are not specifically raised on appeal"), *cert. denied*, 506 U.S. 894 (1992).

only that the $7,371.30 claim was paid in full. In addition, Pauline Seim of Gundersen's patient accounts department, Kelley Dohlby, Gundersen's patient accounts clerk, and Amy Brown of Gundersen's collection agency all testified that the $5,200 payment was intended only to settle the $7,371.30 claim and not the entire past-due balance. Based on this testimony, the circuit court reasonably discounted the testimony of Lyden, who claimed his entire past-due balance was settled in full. Accordingly, we affirm the circuit court's decision.

By the Court.—Judgment affirmed.

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