

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 31, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-2441-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN, DEPARTMENT OF
INDUSTRY, LABOR & HUMAN RELATIONS,

PLAINTIFF-RESPONDENT,

v.

RUCKER DETECTIVE AGENCY
AND CARL RUCKER,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Judge, and ROBERT C. CANNON, Reserve Judge.¹ *Affirmed.*

¹ The judgment of conviction was entered on June 30, 1997, by the Hon. Michael G. Malmstadt. The order denying Rucker's § 806.07, STATS., motion was entered August 11, 1997, by the Hon. Robert C. Cannon, Reserve Judge.

CURLEY, J.² Carl Rucker and his detective agency, Rucker Detective Agency (collectively, “Rucker”) appeal from a judgment entered in favor of Rucker’s former employee, Joe Moss, following a trial to the court. Rucker also appeals from an order denying his § 806.07, STATS., motion to vacate the judgment. Rucker asserts that the trial court erroneously exercised its discretion when denying his § 806.07 motion.

Because the trial court handling the post-trial motion requesting relief from the judgment addressed all the subsections of § 806.07, STATS., cited by Rucker when denying his motion and its findings regarding those subsections constituted a proper exercise of discretion, this court affirms the judgment and order.

I. BACKGROUND.

Rucker runs a detective agency. The testimony at trial revealed it is his practice to pay his employees in cash and have them sign a receipt for their wages. One of his former employees, Moss, claimed he was not paid for a two-week period and complained to the Wisconsin Department of Industry, Labor and Human Relations (DILHR), who brought suit against Rucker. A trial was held in front of Judge Michael Malmstadt on June 30, 1997. Rucker represented himself and an assistant corporation counsel for Milwaukee County represented DILHR. During the trial, the authenticity of a receipt for wages, which Rucker proposed be entered as an exhibit, became an issue. Rucker claimed the receipt was signed by Moss, but Moss denied that it was his signature. Had the receipt been admitted, it would have defeated Moss’s claim for back wages. The trial court found that the

² This appeal is decided by one judge, pursuant to § 752.31(2), STATS.

document was not credible evidence because it was a xerox copy and was produced for the first time at trial, despite numerous requests by DILHR and opposing counsel for documentation of Rucker's position that Moss had been paid in full. As a result, at the close of testimony, the trial court found in favor of the plaintiff and entered a judgment against Rucker for \$727.54.

On July 31, 1997, Rucker, now represented by an attorney, brought a motion for relief from the June 30, 1997 judgment pursuant to § 806.07, STATS. The motion was heard on August 11, 1997, by Reserve Judge Robert C. Cannon. In his motion, Rucker asked the court to either set aside the original judgment or order a new trial. Rucker's § 806.07 motion stated that he should be relieved of the judgment for three reasons. First, Rucker stated that there was newly-discovered evidence pursuant to § 806.07(1)(b), STATS. He claimed that shortly after the trial he found the original receipt for wages, the xerox copy of which the trial court failed to admit into evidence. He also was prepared to call a handwriting expert at the motion hearing who would testify that the handwriting was, indeed, Moss's. Second, Rucker asked to be relieved of the judgment based upon § 806.07(1)(c), because Moss engaged in fraud and misrepresentation by suing him for wages that had already been paid. Finally, Rucker claimed he should be relieved of the judgment under § 806.07(h), STATS., which allows a trial court to vacate a judgment for "any other reason justifying relief from the operation of the judgment." Apparently, Rucker believed that there was a miscarriage of justice because Moss was awarded money to which he was not entitled. The trial court denied Rucker's motion and refused to allow the handwriting expert to testify. Rucker now appeals.

II. ANALYSIS.

Rucker argues that the trial court erroneously exercised its discretion when, at the hearing on Rucker's motion seeking relief from the judgment, the trial court failed to make findings concerning the various subsections of § 806.07, STATS., that Rucker claimed supported his request. Rucker charges that the trial court failed to: (1) make a finding as to his newly-discovered evidence—the original receipt; (2) address his request for relief on the basis of Moss's fraud and misrepresentation; and (3) liberally construe subsection 806.07(1)(h), STATS., so as to afford him relief.

“Motions for relief from judgments under sec. 806.07, Stats., are directed to the sound discretion of the trial court.” *Brown v. Mosser Lee Co.*, 164 Wis.2d 612, 616-17, 476 N.W.2d 294, 296 (Ct. App. 1991) (citation omitted). This court will not reverse a trial court's order denying such a motion unless the trial court has erroneously exercised its discretion. *See id.* at 617, 476 N.W.2d at 296. Rucker correctly notes that in order to properly exercise its discretion when determining whether to grant relief from a judgment, the trial court must address the arguments set forth and make appropriate findings:

A discretionary determination, to be sustained, must demonstrably be made and based upon facts appearing in the record and in reliance on the appropriate and applicable law. Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of the record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.

Hartung v. Hartung, 102 Wis.2d 58, 66, 306 N.W.2d 15, 20 (1981). Contrary to Rucker's claim, however, that the trial court did not address his arguments or

make findings in support of its denial of the motion, the record discloses that the trial court addressed his arguments and made appropriate findings.

At the motion hearing, the trial court was apprised of the evidence presented at trial, reviewed the motion and permitted both counsel to argue their position. In its decision, the trial court noted that Rucker's argument hinged upon the allegedly recently found written receipt. Rucker argued that the only reason the trial court failed to admit the receipt as an exhibit at trial was because it was a xerox copy. Rucker conceded that this fact obligated the trial court to find in favor of the plaintiff. However, the trial court noted that the original trial court also made a credibility call in refusing to admit the receipt because of Rucker's failure to mention its existence or provide it previously. After stating that the original trial court refused to allow the admission based partially on Rucker's failure to produce it before trial, the motion hearing trial court gave Rucker an opportunity to explain his failure to produce the document or even reveal its existence until the first day of trial. Rucker was unable to satisfactorily answer the court's question. Eventually the trial court found: "I'm satisfied from listening to the arguments here that none of the reasons for vacation or holding the judgment or security come within the statute here based upon the facts presented to me, counsel." Later, the trial court noted: "For example, this isn't newly discovered evidence under the circumstances. He didn't have it. Now all of the sudden he's got it. He's got a photostat of it." This determination by the trial court that finding an original after the trial was not "newly discovered evidence" is correct because Rucker testified during the original trial that he had the receipt in his possession "ever since [Moss] signed it" on "September 14, [1995]." Further, the trial court's comments about the surprise discovery of the original are similar to the doubts harbored by the trial judge about the authenticity of the receipts. After suggesting,

to no avail, that the attorneys compromise their positions, the trial court went on to find:

Well, counsel, I've stated my reasons here. I'm satisfied that there's no fraud. I'm satisfied there's no misrepresentation. I'm satisfied that under the statute excusable neglect or surprise or inadvertence, the factual situation is[sic] argued before me this morning is—doesn't qualify this case as far as coming within the statute.

Although the trial court made no explicit finding regarding Rucker's request that he be relieved of the judgment based upon "any other reasons justifying relief from the operation of the statute," the trial court's comment that this case "doesn't qualify ... as far as coming within the statute," and "none of the reasons for vacation or holding the judgment or security come within the statute here based upon the facts presented to me," clearly indicate that the trial court had considered but rejected Rucker's argument. Rucker claims the trial court did not evaluate or consider his position. However, a review of the record discloses that the trial court simply disagreed with Rucker's version of the events that occurred at trial. The trial court did not believe a miscarriage of justice had occurred because Rucker was unable to introduce the receipt into evidence. Rather, the trial court implicitly agreed with the original trial court which had noted at trial:

A xerox copies of receipts produced at trial, given all the investigative work that goes into these cases prior to their being brought into court, had never been produced for DILHR, never been produced for County, for counsel. They are just brought into court, xerox copies. Mr. Moss says he didn't write that. That's not me. They conveniently appear at the trial in a xeroxed state, not the originals, xeroxes. To me, the presentation of those documents detract from the credibility of Mr. Rucker.

The trial court properly exercised its discretion in making its findings and addressed all the pertinent arguments presented by Rucker. As a consequence, the judgment and order must be affirmed.

By the Court.—Judgment and order affirmed.

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

