

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 11, 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. 97-2699**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**DAVID W. BARROW, IV, AND  
HEIDI A. DUCHARME,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**WAYNE WATRY AND KAREN WATRY,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Ozaukee County:  
WALTER J. SWIETLIK, Judge. *Affirmed.*

BROWN, J. David W. Barrow, IV, and Heidi A. DuCharme contend that the trial court erred when it awarded Wayne and Karen Watry, their former landlords, \$500 in damages for the cost of repainting an apartment. Barrow and DuCharme argue that the evidence in the record only points to one conclusion—the Watrys fabricated their painting claim because Barrow and DuCharme demanded the return of their security deposit. We disagree and affirm.

In July 1996, Barrow and DuCharme rented half of a duplex owned by the Watrys. The term of the lease was for one year, and they were to pay \$650 a month for rent as well as give the Watrys a \$650 security deposit. Under an addendum to the lease, if Barrow and DuCharme broke the lease and moved out between the start of November through the end of February, they would be liable for the entire lease. On January 4, 1997, Barrow and DuCharme notified the Watrys that they planned to move out of the apartment at the end of February. On February 24, Barrow and DuCharme vacated the apartment.

Barrow and DuCharme then asked the Watrys to return their \$650 security deposit. In a letter dated March 9, the Watrys notified Barrow and DuCharme that they were going to apply their security deposit to the March rent. The Watrys stated that they could not rent the apartment for March because Barrow and DuCharme vacated the apartment in February, and under the lease, they were liable for the March rent. On March 24, Barrow and DuCharme received another letter in which the Watrys claimed that they owed them an additional \$1680.99 to cover the cost of repairing damages to the apartment. Among other things, the Watrys claimed that Barrow and DuCharme had damaged the walls and that it would cost \$1200 to repair and paint them. Also, the Watrys threatened legal action if Barrow and DuCharme did not pay them by the end of March.

On March 27, Barrow and DuCharme filed a suit in small claims court to recover their security deposit. The Watrys counterclaimed, asking for \$1680.99 in damages to cover the costs of repairing the apartment. On April 4, the Watrys found new tenants for the apartment

The case went to trial and after hearing the testimony of all the parties, the trial court dismissed Barrows and DuCharme's claim to recover their security deposit, finding that under the terms of the lease, they were liable for the March rent. The court also dismissed a large part of the Watrys' counterclaim, and it only awarded them damages in the amount of \$156.71 for carpet cleaning and \$500 for painting the walls.

Barrow and DuCharme only appeal the trial court's award of \$500 for painting the apartment walls. We will not reverse the trial court's findings of fact unless they are clearly erroneous. *See* § 805.17(2), STATS. Although the trial court did not make any findings to support its decision, in the absence of a finding by the trial court, we may search the record for evidence to support the trial court's decision. *See Davidson v. Davidson*, 169 Wis.2d 546, 558, 485 N.W.2d 450, 454 (Ct. App. 1992).

Barrow and DuCharme point out that the Watrys did not make a claim for damages until after they asked them to return their security deposit.<sup>1</sup> Moreover, they note that the Watrys were able to rent the apartment in April and that the Watrys did not have the apartment walls painted until June. Barrow and DuCharme argue that because the Watrys were able to rent the apartment in April, before they painted the walls, this contradicts the Watrys' claim that the walls were in terrible condition. Barrow and DuCharme contend, therefore, that the evidence in the record supports only one conclusion—the Watrys fabricated their

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<sup>1</sup> To support their claim, Barrow and DuCharme also refer us to the text of the Watrys' March 9 letter, a copy of which they have reproduced in the appendix of their brief. This letter, however, was not presented to the trial court and it is not part of the record. Evidence which is not part of the record will not be considered. *See Jenkins v. Sabourin*, 104 Wis.2d 309, 313, 311 N.W.2d 600, 603 (1981).

claim that the walls were damaged and needed painting because Barrow and DuCharme asked them to return their security deposit.

We disagree. On appeal, we do not search the record for facts to support a finding the trial court could have made, but rather for those facts which support the trial court's decision. See *Becker v. Zoschke*, 76 Wis.2d 336, 347, 251 N.W.2d 431, 435 (1977). Here, Wayne Watry testified that he had repainted and repaired the apartment before Barrow and DuCharme moved in. He further pointed out that after Barrow and DuCharme moved in and inspected the apartment, they did not note any damage to the apartment on the lease.

The Watrys also testified that when Barrow and DuCharme moved out, the apartment was damaged far beyond what could be expected from normal wear and tear. The walls in the kitchen and bathroom were blackened, and there was soot on the bathroom mantle. These blackened areas did not wash away when they tried to clean the walls. Moreover, Barrow and DuCharme had not repaired the nail holes in the walls with putty and touch-up paint. The Watrys also testified that because of the damage to the walls, they had a hard time renting the apartment because it looked dirty even after they tried to clean it. Moreover, Wayne testified that because he was busy building another duplex, he did not have time to do the painting himself and he had to find an outside contractor to do the work.

Based on our review of the record, we conclude that there was sufficient evidence to support a finding that Barrow and DuCharme damaged the walls, and as a result, the walls needed painting. We therefore decline to reverse the trial court's decision to award the Watrys \$500 to cover the cost of painting the apartment.

*By the Court.*—Judgment affirmed.

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

