

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 19, 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. 97-2983

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

SEAN SIMPSON,

PLAINTIFF-APPELLANT,

V.

CAMELOT MUSIC,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Judge. *Affirmed.*

SCHUDSON, J.¹ Sean Simpson, *pro se*, appeals from the small claims court judgment awarding him \$13.69 damages against Camelot Music. He argues that the court erred in amending the original judgment that had also ordered Camelot to pay him \$80.00 for service and filing fees. This court affirms.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

On April 25, 1996, Simpson filed a complaint against Camelot alleging that he had not been allowed in the Camelot Music store and, as a result, had not been able to return an unopened compact disc that he had wanted to return for a \$13.69 refund. The court record includes Simpson's petition for waiver of fees/costs and affidavit of indigency and Simpson's complaint stamped, "ORDER SIGNED WAIVING COSTS." Simpson does not dispute that he was not required to pay the service and filing fees.

When Camelot failed to appear at the court trial on August 15, 1996, a default judgment was entered for \$13.69 damages, \$20.00 service, and \$60.00 filing fees. On appeal, Simpson does not dispute the explanation Camelot provides in its brief to this court:

Camelot Music was unaware of this default judgment until May 19, 1997, when Mr. Simpson filed a petition for a hearing on contempt. Camelot Music did not appear at the hearing and a contempt order was entered against Camelot Music and Todd Fritz, a Camelot Music employee. Camelot Music eventually received notice of the contempt order and the default judgment. Then, in order to prevent Mr. Simpson from recovering costs which were not paid, Camelot Music brought a motion to reduce judgment.

(Citations omitted.) The small claims court granted Camelot's motion and amended the judgment.

Simpson argues that the small claims court had no authority to amend the judgment because Camelot's request came more than six months after entry of the original judgment. *See* § 806.07, STATS., and § 805.16, STATS. He offers no authority, however, to counter Camelot's contention that while § 799.25, STATS., governing payment of costs in small claims actions, provides for "costs in favor of the party recovering judgment," it allows for assessment of the filing fee only "if paid," § 799.25(1), STATS., and for assessment of the service fees and

other charges only if “paid to the sheriff ... or other person serving the summons or any other document,” § 799.25(6), STATS.

Thus, this court agrees with Camelot that the original judgment was a nullity to the extent that it ordered payment of fees that Simpson had not actually paid. Thus, the small claims court correctly exercised discretion in amending the judgment. *See* § 806.07(1)(h), STATS. (judgment may be reduced for “other reasons justifying relief from the operation of the judgment”); *see also Price v. Hart*, 166 Wis.2d 182, 195, 480 N.W.2d 249, 254 (Ct. App. 1991) (§ 806.07(1)(a) and (h), STATS., “must be construed liberally to allow relief whenever appropriate to accomplish justice”).

By the Court.—Judgment affirmed.

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

