

**COURT OF APPEALS
DECISION
DATED AND FILED**

JULY 28, 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. 97-3504-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

COLUMBIA SAVINGS AND LOAN ASSOCIATION,

PLAINTIFF-RESPONDENT,

v.

RAYFORD N. DRAKE,

DEFENDANT-APPELLANT,

LINDA F. DRAKE, A/K/A FIKES, RICHARD ROE (A/K/A FIKES), FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, SINAI SAMARITAN MEDICAL CENTER, INC., HERITAGE MUTUAL INSURANCE COMPANY, MILWAUKEE COUNTY, GREAT LAKES HIGHER EDUCATION CORPORATION, MILWAUKEE TELEPHONE COMPANY, TELECHECK OF WISCONSIN, INC., WISCONSIN DEPARTMENT OF REVENUE, RONALD P. BRITTON, VANESTRA JAMISON, PSYCHOLOGY CENTER, WISCONSIN GAS COMPANY, HANDY ANDY OF WISCONSIN, CARPET TOWN USA, INC., AETNA FINANCE COMPANY, D/B/A ITT FINANCIAL SERVICES AND LINDA A. LEAF,

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
ARLENE D. CONNORS, Judge. *Reversed and remanded with directions.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Rayford Drake appeals from the trial court's order awarding him \$224 in attorney fees and costs. Drake argues that the trial court did not award him sufficient attorney fees and costs under § 814.025, STATS. We conclude that the trial court did not adequately explain its award. Accordingly, we reverse and remand for proceedings consistent with this opinion.

Section 814.025(3), STATS., provides that the trial court may award reasonable attorney fees and costs if it finds that an action is frivolous because either: (1) the action was commenced or continued in bad faith, solely for purposes of harassing or maliciously injuring another; or (2) the party or the party's attorney knew, or should have known, that the action was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. Drake moved for attorney fees and costs under this statute in both his motion to reopen the default judgment against him and his brief on the motion. He also moved for attorney fees and costs at the evidentiary hearing held on the motion to reopen.¹ He was entitled to attorney fees and costs under the statute because the fraudulent conduct of Columbia Savings and Loan was frivolous as a matter of law. Without explanation, the trial court awarded Drake \$224 in fees and costs.

¹ In its respondent's brief, Columbia Savings and Loan contends that Drake has raised this issue for the first time on appeal. This is incorrect.

Because the trial court did not explain why it awarded Drake only \$224 in fees and costs, we conclude that this matter must be remanded to the trial court to hold a hearing or otherwise determine what Drake's reasonable attorney fees and costs were and to award Drake those fees and costs under § 814.025, STATS.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

