

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 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. 98-0088

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ARLO M. TRATZ,

PLAINTIFF-APPELLANT,

V.

JUDY P. SMITH, AND DAVID J. STEINERT,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

ROGGENSACK, J.¹ Arlo Tratz appeals from a judgment of the circuit court affirming the court commissioner's denial of Tratz's request for costs in a small claims action in which he partially prevailed. The circuit court reasoned that Tratz was not entitled to costs because § 799.25(13), STATS., authorizes an

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

award of costs only to a party who prevails in whole. On appeal, the respondents argue Tratz is not entitled to costs because the court commissioner has no authority to award costs. We agree that Tratz is not entitled to costs; therefore, we affirm.

BACKGROUND

On May 2, 1997, Tratz filed a complaint in small claims court alleging that the respondents owed him \$5.12 for an excess deduction in prison pay and \$27.20 in back wages. The filing and service fees were waived by the court, based on Tratz's affidavit of indigency. On August 29, 1997, the court commissioner awarded Tratz \$5.12 for the payroll error, but denied Tratz's claim for \$27.20 in back wages. On September 4, 1997, Tratz filed an unitemized request for \$10 in costs, contrary to the small claims court's order. On September 9, 1997, Tratz filed a request for a *de novo* review of the small claims court's judgment. On October 31, 1997, Tratz filed a second unitemized request for \$15, "for the expenses he incurred during this case." On November 3, 1997, the circuit court upheld the small claims court's determination on the merits and it denied costs as well. This appeal, *solely* on the issue of costs, followed².

DISCUSSION

Standard of Review.

On appeal, we review the decision of the circuit court because the circuit court decision, not the small claims court decision, is a judgment

² On appeal Tratz waived the issue of the \$27.20 payment he originally said was due and elected to proceed solely on his unitemized request for \$25.00 in costs.

appealable to this court. *State v. Trogeau*, 135 Wis.2d 188, 191-92, 400 N.W.2d 12, 13-14 (Ct. App. 1986).

Awarding costs to a prevailing party in a particular case is a discretionary determination. Section 814.02(2), STATS. When we review discretionary determinations, we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *State v. Keith*, 216 Wis.2d 61, 69, 573 N.W.2d 888, 892-93 (Ct. App. 1997). To facilitate our review, the circuit court should explain the reasoning behind its exercise of discretion. However, if the circuit court reaches the correct result for the wrong reason, we will affirm the result based on a different theory. *State v. Amrine*, 157 Wis.2d 778, 783, 460 N.W.2d 826, 828 (Ct. App. 1990).

Costs.

Section 799.25, STATS., authorizes the award of costs to a prevailing party in a small claims action. It states in relevant part:

The clerk shall without notice to the parties tax and insert in the judgment as costs in favor of the party recovering judgment the following:

(1) FILING FEE. The fee prescribed in s. 814.62(3)(a), *if paid*.

(3) MAILING FEE. The mailing fee prescribed in s. 814.62(4), *if paid*.

(5) GARNISHEE FEE. Any garnishee fee paid.

(6) SERVICE FEES AND OTHER CHARGES. Lawful fees or charges paid to the sheriff, constable or other person for serving the summons or any other document, and charges paid to the sheriff in connection with the execution of any writ of restitution.

(7) WITNESS FEES. Amounts necessarily paid out for witnesses fees

....

(10) ATTORNEY FEES. ... No attorney fees may be taxed in behalf of any party unless the party appears by an attorney other than himself or herself.

....

(13) ADDITIONAL COSTS AND DISBURSEMENTS. The court may permit additional costs and disbursements to be taxed pursuant to ch. 814.

(Emphasis added.)

The costs referenced in subsections (1) through (12) are not at issue in this appeal because he incurred no costs therein described. Subsection (13), addressing additional costs that could be available under ch. 814, is the only provision of § 799.25, STATS., that could possibly be applicable to this case. The respondents contend that a small claims court cannot award costs because “court” means only the circuit court, not the small claims court. They cite *Hessenius v. Schmidt*, 102 Wis.2d 697, 307 N.W.2d 232 (1981), in support of this argument. The respondents’ reliance on *Hessenius* is misplaced. This is an appeal of the decision of the circuit court, which decided not to award costs. We do not review the decision of the small claims court here. *Trogeau*, 135 Wis.2d at 191-92, 400 N.W.2d at 13-14.

Tratz asks for a total of \$25 in costs. Neither of his written requests for costs explained the charges in any detail, stating only that the amounts reflected expenses he incurred during his case. When asked by the court at his trial *de novo*, “[w]hat costs are you entitled to?”, Tratz responded, “[t]he cost of copies, the cost of notice of claim, the cost of my postage and the cost of papers and envelopes” Itemization of costs is required. Section 814.10(2), STATS.

Tratz's bills of costs and his responses are insufficient evidence upon which the circuit court could have exercised its discretion, without guessing what, if any of his expenses, were awardable under the relevant statutes because of Tratz's failure to itemize. Additionally, the supreme court has held that ordinary copies, as well as out-of-pocket expenses not mentioned in the statutes, are not recoverable costs. *See Kleinke v. Farmer's Coop.*, 202 Wis.2d 138, 147-49, 549 N.W.2d 714, 717-18 (1996). Therefore, we conclude the circuit court did not err in denying costs.

CONCLUSION

Based on the record and relevant statutes, Tratz is not entitled to costs in this case. Statutory costs of this appeal are awarded to the respondents.

By the Court.—Judgment affirmed.

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

