COURT OF APPEALS DECISION DATED AND FILED

August 27, 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. 98-1176-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DARNELL CAULEY,

PLAINTIFF-RESPONDENT,

V.

PONDEROSA STEAK HOUSE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: MORIA KRUEGER, Judge. *Affirmed.*

VERGERONT, J.[1] Ponderosa Steak House appeals a judgment for $2,119.84 plus costs entered in favor of Darnell Cauley by the circuit court in this small claims action. After the court commissioner issued a decision in Cauley's favor awarding him this amount, Cauley timely demanded a trial de novo before

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

the circuit court pursuant to § 799.207(2)(b), STATS., but subsequently withdrew this demand and asked that judgment be entered consistent with the court commissioner's decision. Ponderosa objected and filed a motion with the circuit court, arguing that it was entitled to a trial de novo even though it had not requested one, because Cauley had done so. While acknowledging that Ponderosa's construction of the statute had arguable merit, the court concluded that the more reasonable interpretation was that Ponderosa was not entitled to a trial de novo because it had not demanded one in the manner prescribed by the statute. The trial court therefore entered judgment consistent with the decision of the court commissioner, at the same time granting Ponderosa's motion for a stay pending appeal. We conclude that the circuit court correctly interpreted the statute, and we therefore affirm.

Since this appeal presents a question of statutory construction based on undisputed facts, we review the circuit court's decisions de novo. *See* ***Sievert v. American Family Mut. Ins. Co.***, 190 Wis.2d 623, 628, 528 N.W.2d 413, 415 (1995). The goal of statutory interpretation is to ascertain and give effect to the legislature's intent. ***Lake City Corp. v. City of Mequon***, 207 Wis.2d 155, 163, 558 N.W.2d 100, (1997). If the meaning of a statute is clear from its language, we are prohibited from looking beyond such language. ***Stockbridge Sch. Dist. v. Dept. of Pub. Instruction Sch. Dist. Boundary Appeal Bd.***, 202 Wis.2d 214, 220, 550 N.W.2d 96, 98 (1996). However, if the language of a statute is ambiguous, we look at the history, scope, context, subject matter, and object of the statute to discern legislative intent. *See* ***Lake City Corp.*** at 163, 558 N.W.2d at 103; ***DeMars v. LaPour***, 123 Wis.2d 366, 370, 366 N.W.2d 891, 893 (1985). Statutory language is ambiguous if reasonably well-informed individuals could differ as to its meaning. ***Harnischfeger Corp. v. LIRC***, 196 Wis.2d 650, 662, 539 N.W.2d

98, 103 (1995). Whether a statute is ambiguous is a question of law. ***Awve v. Physicians Ins. Co. of Wis., Inc.***, 181 Wis.2d 815, 822, 512 N.W.2d 216, 218 (Ct. App. 1994).

The provisions pertinent to this appeal are:

> (2) The court commissioner's decision shall become a judgment 11 days after rendering, if oral, and 16 days after mailing, if written, except that:
>
> (a) Default judgments will have immediate effect.
>
> (b) Either party may file a demand for trial within 10 days from the date of an oral decision or 15 days from the date of mailing of a written decision to prevent the entry of the judgment.
>
> (3) (a) There is an absolute right to have the matter heard before the court if the requirements of this section are complied with.
>
> (b) The court commissioner shall give each of the parties a form and instructions which shall be used for giving notice of an election to have the matter heard by the court.
>
> (c) The demand for trial must be filed with the court and mailed to the other parties within 10 days from the date of an oral decision or 15 days from the date of mailing of a written decision. Mailing of the notice and proof of such mailing is the responsibility of the party seeking review.
>
> (d) Notice of a demand for trial may also be given in writing and filed by either of the parties at the time of an oral decision.
>
> (4) Following the timely filing of a demand for trial, the court shall mail a trial date to all of the parties.

Section 799.207(2), (3), (4), STATS.

Ponderosa argues that the language in § 799.207(3)(a), STATS., in combination with para. (2)(b) unambiguously provides that if "either party" demands a trial de novo, the other party has an "absolute right" to a trial de novo. We do not agree with Ponderosa that this meaning is plain. The "absolute right"

of para. (3)(a) applies only "if the requirements of this section are complied with." Section 799.207(3)(a). The question remains: what are the requirements of the section that must be met in order for a party to have the absolute right to a trial in circuit court? We will assume for purposes of argument that the references to "either party" could reasonably be interpreted to mean, as Ponderosa argues, that if either party meets the requirements the other has an absolute right to a trial de novo. However, it is also reasonable to read the statute as requiring that a party has an absolute right to a trial de novo only if that party meets the requirements. This is a reasonable interpretation because, typically, one does not speak of one party having a right to something based on actions taken by the opposing party to obtain it.

When presented with two reasonable interpretations, we consider the context and object of the statute to resolve the ambiguity. The general purpose of the small claims procedures is to provide a speedy, summary and inexpensive procedure for resolving certain disputes below a designated dollar amount. *See* ***County of Portage v. Steinpreis***, 104 Wis.2d 466, 479-80, 312 N.W.2d 731, 737 (1981). To this end, the time periods are short; procedures are simplified; forms and information are provided to litigants; and court involvement is minimized. Thus, for example, a hearing before a court commissioner is promptly provided, *see* §§ 799.206 and 799.207(1), STATS.; the commissioner's decision becomes a judgment unless certain action is taken within a very short time, *see* § 799.207(2)(b); and the responsibility for mailing the notice of a demand for a trial de novo is on "the party seeking review," not on the court. Section 799.207(3)(c).

We conclude that requiring a party to file a timely and adequate demand for a trial de novo in order to have the right to a trial de novo is more

consistent with these purposes than the construction Ponderosa proposes. First, the interpretation proposed by Ponderosa may require additional court action. When one party has made a timely request and withdrawn it, the court must inquire whether the other party consents to withdrawal before judgment is entered consistent with the court commissioner's decision. This creates an extra step in the process, one in which the court must be involved. On the other hand, if a party must request a trial de novo in order to be entitled to one, if one party withdraws its request, the court knows simply by looking at the file whether a trial de novo is still required. Second, the time period for requesting a trial de novo is short—ten days from the date of an oral decision and fifteen days from the mailing of a written decision. *See* § 799.207(2)(b), STATS. This in itself suggests that each party must make such a request if each wants a trial de novo, since more than likely the decision whether to request a trial de novo will need to be made before one knows the other party's intent. Moreover, requiring each party to make this decision within the short time period, rather than permitting one party to make no decision unless or until the other party withdraws a request, makes for a more expeditious process.

Third, the procedure for requesting a trial de novo is a simple one. The court commissioner must inform each party of the procedure and give each party a form. *See* § 799.207(3)(b). There is no reason that a party who wishes a trial de novo cannot request one in the manner prescribed by the statute. Finally, we observe that nothing in the statute prevents a party from withdrawing its demand for a trial de novo or conditions withdrawal on the other party's consent. Silence on this point supports a construction requiring a party to demand a trial de novo in order to have a right to one, rather than relying on the demand of the other party.

We acknowledge that there are arguments that support Ponderosa's construction. Under § 799.207(5), STATS., a trial de novo is on all issues; therefore the court proceeds in the same fashion whether one or both parties has requested a trial de novo. However, this is only true if a party does not withdraw a demand after making one under Ponderosa's construction. If that happens, as we have discussed above, the court must then determine the wishes of the other party. We are persuaded that the correct construction is the one that the trial court adopted: a party does not have an "absolute right" to a trial de novo unless that party demanded one in the time and manner prescribed by the statute.

Cauley moves for attorney fees on appeal in the amount of $1,625.20. Ponderosa Steak House objects and asks for attorney fees for responding to the motion. We deny both requests.

By the Court.—Judgment affirmed.

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