COURT OF APPEALS
DECISION
DATED AND FILED

March 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2084

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

MIKE HANNA AND CURTIS BURGESS

PLAINTIFFS-RESPONDENTS,

V.

THOMAS A. BRAUN,

DEFENDANT-APPELLANT.

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

EICH, J. Thomas Braun, appearing *pro se*, appeals from an order denying his motion to reopen a judgment of eviction. According to the record, the judgment was entered in December 1997 when Braun failed to appear at the scheduled hearing. He moved to reopen the case and the proceedings were stayed. When he failed to appear at the January 9, 1998, hearing on his motion to reopen, it was denied, the stay was lifted, and the writ of restitution was issued. When

Braun again petitioned to reopen the proceedings, another hearing was scheduled, and the stay order was reinstated. Midway through the hearing, the court adjourned the proceedings to see whether the parties could reach a stipulation. The parties apparently agreed to mediate the dispute and, on June 12, 1998, again appeared in court with a stipulation whereby Braun agreed to pay the landlord, Curtis Burgess, $450 in back rent and to pay current rent of $450 per month "on or before the 5th of each month as it is due." The stipulation provided that, if any payment was not made on or before the due date, "plaintiff shall be entitled to an ex parte judgment of eviction … and to the immediate issuance of the writ of restitution …."

On July 8, 1998, Burgess filed an "Affidavit of Default" with the court stating that Braun had defaulted on the terms of the stipulation by failing to pay the July rent on or before the July 12 due date. A writ of restitution was issued on the same date. The next day Braun petitioned to reopen the proceedings once again, claiming that he had mailed the rent payment to Burgess, and that Burgess and his attorney had "file[d] a false affidavit with this Court, to get a false writ to harass the disabled."

Braun's motion was heard by the circuit court on July 13, 1998. Braun made a lengthy statement to the court indicating, so far as is pertinent here, that he had endorsed a Western Union money order refund to Burgess and placed it in an envelope addressed to Burgess on July 4, 1998. He produced what he said was the envelope in which he had placed the money order. Burgess testified that neither he nor anyone in his employ ever received an envelope containing a money order or money orders for the payment of the July rent—or for payment of the back rent. On cross-examination by Braun, Burgess testified that he regularly

receives rent checks from other tenants, bank statements, tax information—and even mail from Braun himself—at his business address.

Based on that testimony, the court determined that Braun had not complied with the earlier stipulation and order, noting that Braun's explanation was "strange" in light of the fact that Burgess regularly receives mail at the address on Braun's envelope, and that the envelope "doesn't show a cancellation and [is] not certified."

The "argument" put forth by Braun in his brief to this court consists of a statement that he had "compl[ied] with all stipulations," followed by several pages of allegations stating, among other things: that the trial judge made a false ruling and acted so as to "deprive Braun of any and all rights in Court as [the judge] has done for the past 5 years"; that another Dane County Circuit Court Judge had made "false statements to deny Braun any and all rights in Court as [he] has done in the past 5 years"; that this other judge "lied to Braun" in an attempt "to deny Braun all and any rights in court, and keep disabled former marines and poor persons homeless"; that Burgess "cause[d] … Braun's rent envelope to be delivered to [someone else] and cause[d] this whole eviction"; that the trial judge "hates Braun for speaking the truth [and] exposing corruption"; that Burgess "committed perjury" when he testified he never received Braun's envelope; that Burgess's lawyer "lie[d] to the court for the purpose of casting Braun in a bad light"; that the trial judge was part of a "conspiracy" to deny Braun his rights, his housing and "a good reference"; and, finally, that the judge "attempted to sabotage the appeal process."

We will affirm a trial court's findings of fact unless they are clearly erroneous. ***State v. Pitsch***, 124 Wis.2d 628, 634, 369 N.W.2d 711, 714 (1985).

Braun's "argument" has not persuaded us that the court's finding in this case that Burgess did not receive the July 1998 rent by the agreed-upon due date was clearly erroneous. The finding is supported by Burgess's testimony. And, to the extent that the trial court's determination rejected Braun's (unsworn) statements at the July 13, 1998, hearing, we note that where, as here, the trial court is the finder of fact, that the trial court, not this one, is the ultimate arbiter of the credibility of the witnesses. ***Fidelity & Deposit Co. v. First Nat'l Bank of Kenosha***, 98 Wis.2d 474, 485, 297 N.W.2d 46, 51 (1980).

By the Court.—Order affirmed.

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