

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 10, 1999

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. 99-0146

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STEVEN HAUSE AND JUSTINE HAUSE,

PLAINTIFFS-APPELLANTS,

V.

ROBERT SAUER AND CHERYL SAUER,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Sauk County:
VIRGINIA A. WOLFE, Judge. *Affirmed in part; reversed in part and cause remanded.*

ROGGENSACK, J.¹ Steven and Justine Hause appeal the circuit court's award of attorney fees pursuant to § 100.20(5), STATS. The circuit court concluded that the requested \$7,263 in attorney fees was unreasonable and that

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

\$450 was appropriate given the amount of work the claim required and the timing and reasonableness of the settlement offers. We conclude that the circuit court's determination of reasonable attorney fees incurred during the circuit court action, reflected a rational, reasoned decision-making process that applied the correct legal standard to the facts; therefore, we affirm that part of the order pertaining to attorney fees incurred in the circuit court action. However, we also conclude that the circuit court erred in awarding no appellate attorney fees. Accordingly, we reverse that part of the circuit court's decision pertaining to appellate attorney fees and remand for a determination of reasonable attorney fees incurred during the original appeal and during this appeal.

BACKGROUND

On August 1, 1996, Steve and Justine Hause rented a house on Belter Drive in North Freedom under a month-to-month tenancy. On November 1, 1996, Robert and Cheryl Sauer closed on the house, which they bought for their own use. Because the Hauses had not vacated prior to closing, the Sauers received an assignment of the Hauses' lease and their \$700.00 security deposit. The Hauses vacated the property on November 15th, but the Sauers kept \$302.75 of the security deposit for general damage and carpet cleaning.

On January 6, 1997, after the Hauses had retained counsel, but before filing a lawsuit, the Sauers offered to settle the claim for \$302.75. Because the offer did not include double damages or attorney fees, the Hauses rejected the offer and on January 15, 1997, they commenced a small claims action to recover the monies withheld from their security deposit. After the Sauers filed their answer and the Hauses initiated discovery, the Sauers offered to settle the case

pursuant to § 807.01(1), STATS., for the sum of \$302.75, inclusive of statutory costs and disbursements. The Hauses did not accept this statutory settlement offer.

After a hearing on the matter, the circuit court determined that the Sauers had failed to prove that the claimed damage and cleaning were the responsibility of the plaintiffs; however, the court refused to award double damages and attorney fees. On appeal, we concluded that the circuit court erroneously exercised its discretion when it failed to award the Hauses double damages and reasonable attorney fees pursuant to § 100.20(5), STATS., and *Armour v. Klecker*, 169 Wis.2d 692, 486 N.W.2d 563 (Ct. App. 1992). Accordingly, we remanded and instructed the circuit court to determine the reasonable amount of attorney fees, including any reasonably incurred in the appellate proceedings. On remand, the circuit court concluded that the requested \$7,263 in attorney fees was unreasonable and that \$450 was appropriate given the amount of work required prior to the statutory settlement offer. This appeal followed.

DISCUSSION

Standard of Review.

We will uphold the circuit court's determination of the amount of attorney fees which are reasonable in a given case, unless the circuit court erroneously exercised its discretion. *Michael A.P. v. Solsrud*, 178 Wis.2d 137, 153, 502 N.W.2d 918, 925 (Ct. App. 1993). When we review a discretionary decision, 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).

Attorney Fees.

1. Attorney fees incurred in the circuit court action.

Section 100.20(5), STATS., requires the court to award a tenant twice the amount of pecuniary loss, together with costs, including reasonable attorney fees, where a landlord has violated the provisions of WIS. ADM. CODE § ATCP 134.06. Several policies underlie this rule: (1) the double damages encourage injured tenants to bring legal actions to enforce their rights, and the attorney fees award encourages attorneys to take this type of case when otherwise, the anticipated recovery would not justify the expense of litigation; (2) the aggregate effect of individual suits enforces the public's rights; (3) the tenant suits deter impermissible conduct by the landlords and strengthen the bargaining power of tenants in dealing with landlords; and (4) private tenant actions constitute an enforcement mechanism reinforcing that of the justice department. *Shands v. Castrovinci*, 115 Wis.2d 352, 357-39, 340 N.W.2d 506, 509 (1983).

In determining what constitutes reasonable attorney fees, the circuit court considers the amount and type of services rendered; the labor, time and trouble involved; the character and importance of the litigation; the professional skill and experience called for; the standing of the attorney; the general ability of the client to pay; and the pecuniary benefit derived. *Pierce v. Norwick*, 202 Wis.2d 587, 597, 550 N.W.2d 451, 455 (Ct. App. 1996).

The circuit court found that the requested \$7,263 in attorney fees was unreasonable given the small claims forum, and the nature of the claim. It also found that the time spent and the discovery employed, in relation to the \$302.75 that the Hauses claimed the Sauers wrongfully withheld, were excessive. The court also found relevant that the Hauses had an opportunity to settle the case

by the Sauers' return of the entire \$302.75 that they had retained from the Hauses' security deposit, before the complaint was filed. Although the court recognized the policies underlying § 100.20(5), STATS., it noted that "when there is a reasonable offer, the court finds that unreasonable to hold out for all of the things that the statute may entitle the plaintiff to claim." The circuit court concluded that \$450 in attorney fees was reasonable because five hours of time at \$90 per hour prior to the statutory settlement offer was reasonable for a \$302.75 claim. Because the record demonstrates that the circuit court considered the purpose and policy of § 100.20(5) and specifically applied the facts of this case to the relevant factors, we conclude that the court's determination of reasonable attorney fees reflected a rational, reasoned decision-making process. Therefore, even though we might have arrived at a different determination, we must defer to the discretionary act of the circuit court.

2. *Attorney fees incurred on appeal.*

While we defer to the circuit court's determination of reasonable attorney fees incurred in the circuit court action, we conclude that the court erred in awarding no attorney fees incurred on appeal.

Because the Hauses were not successful until they recovered damages and attorney fees after appellate review undertaken to overturn the circuit court's decision, the Hauses' right to recover reasonable attorney fees pursuant to § 100.20(5), STATS., includes a right to recover reasonable appellate attorney fees. *Shands*, 115 Wis.2d at 359, 340 N.W.2d at 510. To deny appellate attorney fees in such a situation would undercut the objective of the statute because the same purposes and policies that underlie the award of attorney fees in the original action apply on appeal. *Id.* For example, permitting recovery of attorney fees for

successful appellate work recognizes that the attorney's work at that stage is essential to the tenant's success. *Id.* Furthermore, if attorney fees were not recoverable on appeal, landlords could defeat the statutory purposes by commencing an appeal, which would be prohibitively expensive for many tenants; similarly, tenants would have little incentive to pursue a meritorious claim on appeal where they had not prevailed in the circuit court. *Id.*

The circuit court failed to consider these important interests when it concluded that no appellate attorney fees were reasonably incurred. Accordingly, we reverse that part of the circuit court's order pertaining to appellate attorney fees and remand for a determination of reasonable attorney fees incurred during the original appeal and during this appeal. In so doing, we do not suggest that the circuit court award any particular amount and we do so while affirming the circuit court's finding that the \$7,263 the Hauses have generated in this action is unreasonable.

CONCLUSION

We conclude that the circuit court's determination of reasonable attorney fees incurred during the circuit court action reflected a rational, reasoned decision-making process because the record demonstrates that the circuit court considered the facts and the policies of § 100.20(5), STATS., and applied the law in a rational fashion; therefore, we affirm that part of the order pertaining to attorney fees incurred in the circuit court action. However, the court failed to consider the purpose and policy of § 100.20(5) when it concluded that no attorney fees were reasonably incurred on appeal. Accordingly, we reverse that part of the circuit court's decision pertaining to appellate attorney fees and remand for a

determination of reasonable attorney fees incurred during the original appeal and during this appeal. No costs on appeal shall be awarded to either party.

By the Court.—Order affirmed in part; reversed in part and cause remanded.

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

