

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 1, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2582

Cir. Ct. No. 2012CV398

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JASON L. EDMONSON,

PLAINTIFF-APPELLANT,

V.

LAMOND CARSON AND LORI FLEMING,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Outagamie County: MICHAEL W. GAGE, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jason Edmonson appeals a judgment awarding him \$2200 for breach of contract against Lamond Carson, but denying his request for punitive damages against Carson, and dismissing all claims against Edmonson's former wife, Lori Fleming. Edmonson argues: (1) the circuit court erroneously

failed to consider Carson's and Fleming's statements at a scheduling conference, their failure to respond to requests for admissions, and Edmonson's itemization of damages; (2) the court erred by denying Edmonson's request for default judgment and summary judgment; and (3) the court improperly denied Edmonson a jury trial. We reject these arguments and affirm the judgment.

BACKGROUND

¶2 Edmonson contracted to sell a car to Carson for \$3000. Carson paid an \$800 down payment and agreed to pay \$150 bi-weekly until the balance of \$2200 was paid. Edmonson was incarcerated shortly after the sale, and Carson made periodic payments to Edmonson's then-wife, Fleming. Fleming eventually gave Carson title to the car, which was later junked.

¶3 Edmonson brought this action alleging breach of the agreement for the remaining \$2200 on the contract, wrongful taking of the vehicle, forgery, fraud, conspiracy, and seeking a declaration that Carson and Fleming violated various statutes by transferring the car. He requested the \$2200 remaining on the contract, damages for wrongful transfer of the car, and punitive damages. Carson and Fleming wrote letters to the circuit court, which the court treated as answers to the complaint. Carson and Fleming both appeared for a scheduling conference, at which all three parties explained their positions. The court asked Edmonson to submit an itemized statement of damages, which Edmonson later supplied. Fleming appeared at subsequent hearings, but Edmonson has not provided transcripts of those proceedings. Carson failed to appear at subsequent hearings, resulting in the court finding him in default and awarding Edmonson the \$2200 Edmonson claimed he never received.

¶4 Edmonson claimed in the circuit court that he served on Fleming requests for admissions, broadly asking Fleming to admit to the facts alleged in the complaint; “admit to the statements and opinions of fact of each of the plaintiff’s witnesses,” none of whom were identified; admit to Edmonson’s “application of law to the facts as true, including the genuineness of any document presented by the plaintiff”; and admit Edmonson’s “application of the law to facts as true regarding the plaintiff’s relief according to the complaint.” The defendants did not respond to the request for admissions. The circuit court concluded the request for admissions would have no effect because Edmonson did not include any affidavit or certificate of service or time of service. In addition, the court held the requests for admissions were ambiguous and failed to separate “each matter” as required by WIS. STAT. § 804.11¹; they failed to identify Edmonson’s witnesses whose opinions Fleming was asked to verify; and they lacked sufficient specification, vaguely aggregating multiple matters.

¶5 Edmonson moved for summary judgment and filed an affidavit in support of the motion. The circuit court concluded the affidavit supported the \$2200 balance due for the car, but in other respects was not based on personal knowledge concerning the transfer of ownership. The court also concluded Fleming was not a party to the contract and could not be sued for breach of contract. Finally, it concluded there was no clear and satisfactory showing that Fleming was involved in a wrongful effort to transfer title, and Edmonson’s argument on that question consisted of pure speculation. The court noted the vehicle was presumptively marital property regardless of it being titled in

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Edmonson's name, and Fleming merely honored an apparent commitment to transfer title after the payments were received. The circuit court further concluded there could be no double recovery for the value of the car, and therefore the \$2200 due on the contract was the only allowable damages. The court denied Edmonson's requests for punitive damages, following the general rule that punitive damages are not available on a simple contract claim. The court concluded Edmonson failed to establish any particularized special or actual damages arising from the various intentional torts he alleged, and the circumstances of Edmonson's then-wife honoring his contract to transfer the vehicle would not support a claim for punitive damages, as a matter of law. Finally, the court concluded there was no basis for Edmonson's requests for declaratory relief.

DISCUSSION

¶6 Edmonson appears to contend that Fleming and Carson made statements at the scheduling conference sufficient to support his claims as a matter of law. However, many of their statements support several of the circuit court's key rulings which Edmonson's arguments on appeal fail to address. By failing to address the circuit court's rationale, he concedes the validity of its holding. *See Schlieper v. DNR*, 188 Wis.2d 318, 322, 525 N.W.2d 99 (Ct App. 1994). Edmonson does not address the court's observation that the vehicle constituted marital property, Fleming's statement that she gave Carson the "paperwork" after he completed the payments, or Carson's statement that he paid Fleming after Edmonson was incarcerated. Edmonson also relies on the requests for admission, but he does not address the court's reasons for disregarding them. Edmonson has not produced proof of service or the date of service of the requests, and the court appropriately summarized the requests as "vaguely aggregating multiple matters."

The court also appropriately disregarded the parts of Edmonson's affidavit that were not based on personal knowledge or consisted of argument rather than fact. *See* WIS. STAT. § 802.08(3).

¶7 The circuit court also properly limited Edmonson's damages to the amount he claimed was not paid on the contract. The award of damages requested in a complaint is not automatic upon entry of a default judgment. *See* WIS. STAT. § 806.02(1). Edmonson's itemization of damages consisted of double counting the value of the car. Edmonson cannot recover for both the amount due on the contract and the value of the car he claims was wrongfully transferred. Regarding his request for punitive damages, any claim for punitive damages requires proof by clear and convincing evidence. *See Wangen v. Ford Motor Co.*, 97 Wis. 2d 260, 300, 294 N.W.2d 437 (1980). Punitive damages are generally not available as a remedy in a breach of contract action. *Autumn Grove Joint Venture v. Rachlin*, 138 Wis. 2d 273, 279-80, 405 N.W.2d 759 (Ct. App. 1987). Punitive damages are appropriate only when the plaintiff proves a particular kind of conduct on the part of the wrongdoer, variously characterized as malicious, willful or wanton conduct, and reckless disregard of rights or interests. *Id.* In other words, punitive damages are appropriate only when the wrongdoer's conduct is so aggravated that it meets the elevated standard of an "intentional disregard of rights." *Wischer v. Mitisubishi Heavy Indus. Am., Inc.* 2005 WI 26, ¶31, 279 Wis. 2d 4, 694 N.W.2d 320. The transfer of title to the vehicle by the titleholder's wife after full payment has been made does not meet that standard.

¶8 Finally, Edmonson argues he is entitled to a jury trial on these claims. Whether there is sufficient evidence to submit a question of punitive damages to a jury is a question of law that this court reviews independently. *Id.*, ¶32. Because the "wrongdoing" Edmonson alleges is not sufficiently egregious to

justify punitive damages as a matter of law, he was not entitled to a jury trial on that issue. Because Edmonson cannot recover the value of the car more than once, there is no issue for a jury to decide regarding his claims for compensatory damages.

By the Court.—Judgment affirmed.

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

