COURT OF APPEALS
DECISION
DATED AND FILED

July 14, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2218 **Cir. Ct. No. 2014SC617**

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

VERNON MEMORIAL HOSPITAL,

PLAINTIFF-RESPONDENT,

V.

KRISTINE M. WEIGEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed*.

¶1 KLOPPENBURG, P.J.[1] This appeal concerns a collection action in small claims court, in which the debtor has raised a series of arguments, some of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). Weigel states in her brief-in-chief that she has filed a motion for a three-judge panel. However, a motion was never filed with the clerk of the Wisconsin Court of Appeals in this appeal.

(continued)

which appear to be most appropriately directed to the legislature, but all of which have no basis in the facts or controlling law. The action began when Vernon Memorial Hospital sued to recover the cost of services that it provided to Kristine Weigel. The case was transferred from La Crosse County to Vernon County, where it was tried to the circuit court. The court entered judgment for the Hospital in the amount of $7,419.10. Weigel appeals, arguing that: (1) the Vernon County circuit court's judgment is supported neither by its findings of fact nor by sufficient evidence; (2) the La Crosse County circuit court erred in transferring the case without determining whether the Hospital's claim arises from a transaction covered by the Wisconsin Consumer Act; and (3) the La Crosse County circuit court's signing the order transferring the case constitutes a miscarriage of justice warranting this court's discretionary reversal under WIS. STAT. § 752.35. As I proceed to explain, I reject Weigel's arguments and affirm.

BACKGROUND

¶2 The pertinent facts are not in dispute.[2] The Hospital provided medical services to Weigel on April 17, 2010. Weigel did not have insurance. The Hospital mailed Weigel an invoice for $7,022.60 for the cost of those services, and Weigel obtained assistance from the Community Care Program, which reduced the account to $2,556.22 with the condition that she pay the reduced balance in full within thirty days or pursuant to a twelve-month installment plan. Weigel made no payments, and, consistent with the information

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

[2] The Hospital misrepresents the record in several respects, and Weigel misrepresents the facts and the law in several respects, calling into question the reliability of the briefing by both parties. The facts presented in this opinion are supported by the record before the circuit court.

that the Hospital had provided Weigel after it billed her, the Hospital "reversed" the discount and sent the full original amount for collection.

¶3 In November 2014, the Hospital filed a small claims summons and complaint in La Crosse County, stating Weigel's last-known address in La Crosse, and seeking recovery of the original $7,022.60. Weigel, who had moved to Vernon County in August 2010, moved to dismiss for improper venue and failure to meet the pleading requirements of the Wisconsin Consumer Act. The parties appeared before the La Crosse County circuit court, which ordered venue changed to Vernon County because Weigel is a resident of Vernon County. The court stated that it was making no findings pertaining to Weigel's Wisconsin Consumer Act claims.

¶4 The Hospital filed a brief in opposition to Weigel's motion to dismiss. The Vernon County circuit court held a hearing, denied the motion based on its finding that "[t]he role of the trial court needs to play out in this case," and set a trial date. Weigel filed a second motion to dismiss for insufficiency of process and lack of personal jurisdiction, and the Hospital filed a brief opposing the motion. The circuit court denied the motion and proceeded with trial. Only one witness, the Hospital's manager of patient accounts, testified. After trial, the court entered judgment for the Hospital.

¶5 I relate additional facts as relevant to each of the issues that Weigel raises in the discussion that follows.

DISCUSSION

¶6 As stated, Weigel argues that: (1) the Vernon County circuit court's judgment is supported neither by its findings of fact nor by sufficient evidence; (2)

the La Crosse County circuit court erred in transferring the case without determining whether the Hospital's claim arises from a transaction covered by the Wisconsin Consumer Act; and (3) the La Crosse County circuit court's signing the order transferring the case constitutes a miscarriage of justice warranting this court's discretionary reversal under WIS. STAT. § 752.35. I address and reject each argument in turn.

I. Factual Findings and Evidence Supporting Judgment

¶7 Weigel argues that the Vernon County circuit court's judgment is supported neither by its findings of fact nor by sufficient evidence. An appellate court's "role is to search the record for evidence to support the findings of fact reached by the [circuit] court." ***Teubel v. Prime Dev., Inc.***, 2002 WI App 26, ¶20, 249 Wis. 2d 743, 641 N.W.2d 461 (2001). "[W]hen the record does not include a specific finding on an issue, [an appellate court] will assume that the issue was resolved by the [circuit] court in a manner which supports the final judgment ...." ***State v. Berggren***, 2009 WI App 82, ¶18, 320 Wis. 2d 209, 769 N.W.2d 110.

¶8 "When considering the sufficiency of the evidence, we apply a highly deferential standard of review. Furthermore, the fact finder's determination and judgment will not be disturbed if more than one inference can be drawn from the evidence." ***Jacobson v. American Tool Cos., Inc.***, 222 Wis. 2d 384, 389, 588 N.W.2d 67 (Ct. App. 1998). "The circuit court's findings of fact will not be set aside unless we conclude that they are clearly erroneous." ***Id.*** at 389-90. "As part of our analysis, we will accept the circuit court's determination as to weight and credibility. If a circuit court does not expressly make a finding about the credibility of a witness, we assume it made implicit findings on a witness'

credibility when analyzing the evidence." ***Id.*** at 390 (citation omitted). Further, "when a [circuit] court fails to make express findings of fact necessary to support its legal conclusions, we assume that the [circuit] court made such findings in the way that supports its decision." ***State v. Long***, 190 Wis. 2d 386, 398, 526 N.W.2d 826 (Ct. App. 1994).

¶9 At the trial to the circuit court, the Hospital presented one witness, its manager of patient accounts, and Weigel presented no witnesses. The manager testified as to an itemized statement for services that Weigel received on April 17, 2010, amounting to $7,022.60. The manager testified further as set forth in the remainder of this paragraph. Weigel was uninsured; Weigel and the Hospital did not negotiate or discuss a payment plan before the Hospital provided the services on April 17, 2010; and before receiving the services Weigel signed a consent form stating, "I hereby guarantee payment of all charges incurred for services rendered." The statement for $7,022.60 was mailed to Weigel and never returned as undeliverable. Weigel was given written information about the Community Care Program; Weigel applied for a reduction of the amount charged pursuant to that program; and under the program, if the reduced amount is not paid, the full amount charged is sent to collection. Weigel made no payments. The Hospital never applied interest to Weigel's account, and does not collect interest.

¶10 The trial concluded after the circuit court asked Weigel's counsel if counsel had "questions for this witness [the manager] that relate to whether this debt is owed." No further questioning took place, and no other witnesses were called. The court then ruled, "Judgment for the plaintiff." The court subsequently entered a written judgment, which states:

> IT IS ORDERED, ADJUDGED AND DECREED,
> that the plaintiff, Vernon Memorial Hospital, a Wisconsin

> corporation, whose address is 507 S. Main St, Viroqua, WI 54665, and whose business is medical services, shall have and recover Judgment against Kristine M. Weigel, a Wisconsin resident, whose address is E7704 Oakwood Ln, Viroqua, WI 54665. Judgment is in the sum of $7,419.10, which covers the $7,022.60 principal balance, the $94.50 Small Claims filing fee, $2.00 mail service fee, and $300.00 attorney fee.

¶11 Weigel argues that the written judgment omits necessary factual findings, including that: the Hospital provided services to Weigel; there was an agreement between Weigel and the Hospital; Weigel owed money to the Hospital pursuant to that agreement; and Weigel failed to pay what she allegedly owed the Hospital pursuant to that agreement. Weigel's argument elevates form over substance, because all of the findings that she asserts are missing from the judgment were testified to by the Hospital manager, and Weigel presented no evidence to dispute that testimony. The underlying factual findings are implicit in the judgment, and Weigel does not argue otherwise.

¶12 The Hospital asserts that the Hospital presented through the manager's testimony "sufficient evidence to establish that Weigel received services from [the Hospital] and failed to pay the amount owed for those services." Weigel argues that the evidence is not sufficient because: (1) the invoice and consent form were not admitted into evidence and therefore cannot be considered; (2) the manager's testimony is inadmissible hearsay; (3) the manager did not have personal knowledge about Weigel's signature; (4) the manager was unable to identify who provided the medical services and therefore did not prove the services were provided; and (5) the manager was unable to testify whether any of the medical services were necessary. Neither the law nor the record supports Weigel's argument.

¶13 Wisconsin's rules of evidence, with exceptions not relevant here, do not apply to small claims actions that are tried to the court. WIS. STAT. § 911.01(4)(d).[3] Rather, the court shall admit all evidence "having reasonable probative value." WIS. STAT. § 799.209(2). However, "[a]n essential finding of fact may not be based solely on a declarant's oral hearsay statement unless it would be admissible under the rules of evidence." WIS. STAT. § 799.209(2).

¶14 As a general matter, Weigel does not identify any essential finding of fact based solely on any oral hearsay statement by the manager that would not be admissible under the rules of evidence.

¶15 In addition, and specifically addressing the five asserted deficiencies listed above, Weigel did not object at trial to the manager's references to the invoice and consent form, did not object at trial to the manager's testimony as inadmissible hearsay, and did not question the manager about her signature. She has, therefore, forfeited those objections on appeal. *See* ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶15, 273 Wis. 2d 76, 681 N.W.2d 190 ("Issues that are not preserved at the circuit court ... generally will not be considered on appeal."). Also, Weigel does not develop an argument as to why the manager's knowledge about Weigel's signature, about who provided the services, and about whether the services were reasonable, matters. Those topics do not, therefore, warrant further discussion. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed."). In light of her failure to present any defense to the evidence that the Hospital provided her

[3] Weigel identifies four exceptions to the rule cited above, but she does not argue that any of those exceptions applies here.

medical services for which she did not pay, that evidence sufficed to support the circuit court's judgment in favor of the Hospital for the cost of those services.

¶16 In sum, Weigel fails to show that the Vernon County circuit court's judgment is not supported either by its findings of fact or by sufficient evidence.

II. Transferring the Case Without Determining Application of Wisconsin Consumer Act

¶17 Weigel argues that the La Crosse County circuit court erred in transferring the case without determining whether the Hospital's claim arises from a transaction covered by the Wisconsin Consumer Act. According to Weigel, this matters because if the Act does apply, then the La Crosse County circuit court should have awarded her attorney's fees upon either transferring the case to Vernon County or dismissing the case outright. Weigel's argument is attenuated and aspirational, and not supported by the facts or the law.

¶18 The Wisconsin Consumer Act[4] applies to consumer transactions; consumer transactions are transactions in which one or more of the parties is a customer; pertinent here, a customer is a person who seeks or acquires services, which include hospital accommodations. WIS. STAT. § 421.301(13), (17), (42).

¶19 Certain provisions of the Act, such as heightened pleading requirements for creditors suing to enforce an action, apply only to a subset of consumer transactions called consumer *credit* transactions, which are consumer transactions undertaken "on credit and the customer's obligation is payable in

[4] The Wisconsin Consumer Act consists of WIS. STAT. chs. 421-27. WIS. STAT. § 421.101.

installments or for which credit a finance charge is or may be imposed." WIS. STAT. §§ 421.301(10), 425.109.

¶20 If the venue is improper for an action arising out of a consumer transaction, then the circuit court shall transfer the action to the county of proper venue. WIS. STAT. § 421.401(1) and (2)(a). If the venue is improper for an action arising out of a consumer *credit* transaction, then the circuit court shall dismiss the action for lack of jurisdiction. WIS. STAT. § 421.401(2)(b).

¶21 A customer who "prevails in an action arising from a consumer transaction" shall recover attorney's fees and costs. WIS. STAT. § 425.308.

¶22 I understand Weigel to argue first that because the action here arises out of a consumer transaction and the venue was improper, when the La Crosse County circuit court transferred the case to Vernon County, Weigel was entitled to attorney's fees as a prevailing party under WIS. STAT. § 425.308. Therefore, Weigel argues, the La Crosse County circuit court should have first established that the Wisconsin Consumer Act applies before transferring the case, so that Weigel could be awarded attorney's fees.

¶23 Weigel bases her argument on our supreme court's decision in ***Community Credit Plan, Inc. v. Johnson***, 228 Wis. 2d 30, 596 N.W.2d 799 (1999), but does not explain how that case shows that the transfer of venue means that she was a "prevailing party" under WIS. STAT. § 425.308. Even if Weigel is correct that this action arises out of a consumer transaction, ***Community Credit Plan*** does not support her argument. ***Community Credit Plan*** concerned customers who purchased vehicles in consumer *credit* transactions, and the court held that the customers were prevailing parties when they obtained the opening and *dismissal* of default judgments against them for lack of jurisdiction on the

grounds of improper venue. ***Id.*** at 33-34, 37. Unlike in that case, this case does not concern a consumer *credit* transaction. *See generally* ***Dean Medical Ctr., S.C. v. Conners***, 2000 WI App 202, ¶¶1, 12-13, 238 Wis. 2d 636, 618 N.W.2d 194 (purchase of hospital services is not a consumer credit transaction). Also unlike in ***Community Credit Plan***, this action was not dismissed. Accordingly, Weigel's first argument fails for lack of legal support.

¶24 Weigel argues second, or in the alternative, that the cause of action here does arise out of a consumer credit transaction and should therefore have been dismissed for lack of jurisdiction based on improper venue, because the account statement attached to the complaint mentions the word "interest." That statement is under the name of "Certified Recovery, Inc.," which is the Hospital's collection agency for delinquent accounts. The statement provides Weigel's name, address, and date of service, and states:

> The following is an itemization of your accounts. Please retain this copy for your records. For your convenience we have included all interest paid last year and this current year to date.
>
> Accounts:
>
ACCT#	CLIENT	AMOUNT	INT	FEES	TOTAL
989366	[VMH]	7022.60	0.00	0.00	7022.60

¶25 Because the statement mentions the word "interest," Weigel argues that the transaction could be one in which a finance charge might be imposed, and therefore it is a consumer credit transaction. Weigel's argument lacks factual and legal support. As reflected in the statement, the Hospital never imposed interest on Weigel's account, because the value in the column "INT" is zero. Weigel could see from the account statement attached to the complaint that no interest was imposed. It is uncontested that when she was billed for the Hospital's services and awarded the discount under the Community Care Program, no finance charges

were discussed or imposed. Furthermore, Weigel's argument ignores our holding in ***Dean Medical Ctr.***, cited above, that the purchase of medical services is not a consumer credit transaction. 238 Wis. 2d 636, ¶¶1, 12-13. Accordingly, Weigel's argument fails for lack of factual and legal support.

¶26 Third, Weigel seems to argue that after she moved the La Crosse County circuit court to dismiss for improper venue all actions taken by that court and the Vernon County circuit court were invalid. The reason, Weigel asserts, is that the La Crosse County circuit court failed, before hearing her motion, to determine whether the Wisconsin Consumer Act applies, particularly whether the transaction from which the Hospital's claim arises is a consumer credit transaction under the Act. Weigel's argument fails because she does not cite any legal authority to support putting that burden on the circuit court at the start of the action. Moreover, even if the La Crosse County circuit court did so err, that error was harmless. As I have explained, the transaction is not a consumer credit transaction and Weigel was not a prevailing party when the court transferred the case to Vernon County. Therefore, she was entitled to neither dismissal nor attorney's fees, nor any relief other than the relief the court ordered, namely the transfer of the case to the county where venue was proper.

¶27 In sum, Weigel fails to show that the La Crosse County circuit court erred in transferring the case without determining whether the Hospital's claim arises from a transaction covered by the Wisconsin Consumer Act.

III. Entry of Order Changing Venue

¶28 Weigel argues that the La Crosse County circuit court's signing the order transferring the case to Vernon County constitutes a miscarriage of justice warranting this court's discretionary reversal under WIS. STAT. § 752.35, for three

reasons: (1) the order was submitted by an individual or entity who is neither an attorney nor a party; (2) the order is not consistent with the court's oral ruling; and (3) the court signed the order before Weigel had the opportunity to object. None of these reasons shows a miscarriage of justice warranting reversal.

¶29 We exercise our discretionary reversal power only in exceptional cases. ***Vollmer v. Luety***, 156 Wis. 2d 1, 11, 456 N.W.2d 797 (1990). To establish entitlement to a discretionary reversal based on a miscarriage of justice, a party must show that there is a "substantial degree of probability" that a new proceeding would lead to a different result. ***State v. Caban***, 210 Wis. 2d 597, 610, 563 N.W.2d 501 (1997) (quoted source omitted). As I explain, Weigel fails to demonstrate that there was a miscarriage of justice when the La Crosse County circuit court signed the order transferring the case to Vernon County, where Weigel resides.

¶30 As stated, the parties appeared before the La Crosse County circuit court after Weigel moved to dismiss for improper venue and other deficiencies under the Wisconsin Consumer Act. The court found that venue was improper because Weigel is a resident of Vernon County and, therefore, transferred the case to Vernon County. The court expressly stated that it was making no findings regarding Weigel's Wisconsin Consumer Act claims. The court subsequently signed an order changing venue to Vernon County.

¶31 Weigel argues that the La Crosse County circuit court erred in signing the order because it was submitted by cover letter from Andy Kelly, Certified Recovery, Inc., "Agent for Plaintiff," who is neither an attorney nor a party to this action. Weigel is wrong. This is a small claims action governed by WIS. STAT. ch. 799, and under WIS. STAT. § 799.06(2) a person may appear "in

his, her, or its own proper person or by an attorney," and "a person is considered to be acting in his, her, or its own proper person if the appearance is by ... [an] agent." The order was the standard form "GF-120, 11/11 Order for Change of Venue §§ 799.11(1) and 801.52, Wisconsin Statutes." It was not improper for the Hospital's agent to submit the proposed order using the standard form to the court.

¶32 Weigel argues that the La Crosse County circuit court erred in signing the order because the order is inconsistent with the court's oral ruling in four respects. Weigel does not identify or develop an argument based on these errors in the argument section of her initial brief on appeal, and I could reject her argument on that basis. *See* ***Pettit***, 171 Wis. 2d at 646. However, I understand Weigel to refer to the four errors she identified in her letter to the circuit court, reproduced in her statement of facts in her initial brief on appeal, and I address them briefly on their merits.

¶33 The four errors are that the circuit court checked boxes in the order to indicate that the court (1) on its own motion, (2) determined that venue must be changed under WIS. STAT. § 799.11, and (3) and (4) ordered that the venue fee and transmittal of documents fee be paid by "plaintiff or plaintiff's agent." As to error (1), Weigel argues that the court changed venue on her motion, not on its own motion. However, Weigel's motion was grounded in the Wisconsin Consumer Act, and the court clearly stated that it was not reaching her Wisconsin Consumer Act claims but was changing venue based on its own finding that Weigel is a resident of Vernon County. As to error (2), Weigel argues that the court did not specifically reference WIS. STAT. § 799.11. However, it is implicit in the court's finding that venue must be changed in this small claims action, that the court was acting pursuant to the venue provision applicable to small claims actions. As to errors (3) and (4), Weigel argues that the circuit court did not address either of

these fees. As far as I can tell from the transcript, Weigel is correct, and the Hospital responds that it simply took on the obligation to pay the fees even though they were not discussed. To the extent these are errors, they are harmless.

¶34 Finally, Weigel argues that the La Crosse County circuit court signed the order before Weigel had the opportunity to object. The Hospital submitted the proposed order on December 17, the court signed it on December 19, and the order was filed on December 22, the same date that Weigel faxed the court a letter objecting to the proposed order because of the four errors stated above and because it was submitted by a non-attorney non-party. Weigel does not develop this argument; therefore, I do not address it further. *See* ***Pettit***, 171 Wis. 2d at 646.

¶35 In sum, Weigel fails to show that the La Crosse County circuit court's signing the order transferring the case to Vernon County constitutes a miscarriage of justice warranting this court's discretionary reversal under WIS. STAT. § 752.35.

CONCLUSION

¶36 For the reasons stated, Weigel fails to show that: (1) the Vernon County circuit court's judgment is supported neither by its findings of fact nor by sufficient evidence; (2) the La Crosse County circuit court erred in transferring the case without determining whether the Hospital's claim arises from a transaction covered by the Wisconsin Consumer Act; or (3) the La Crosse County circuit court's signing the order transferring the case constitutes a miscarriage of justice warranting this court's discretionary reversal under WIS. STAT. § 752.35. Accordingly, the judgment is affirmed.

By the Court.—Judgment affirmed.

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