

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 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. 2015AP2071

Cir. Ct. No. 2014SC2207

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

PJL PROPERTIES, LLC AND PETER J. LONG,

PLAINTIFFS-APPELLANTS,

V.

KARI J. SKINNER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Winnebago County:
THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 REILLY, P.J.¹ PJL Properties, LLC (PJL) and Peter J. Long appeal pro se from a circuit court order dismissing the small claims complaint against Kari J. Skinner for damages resulting from painting the walls and ceiling of her rental apartment. For the following reasons, we affirm the order of the circuit court.

¶2 PJL owns a number of residential real properties in Appleton and Neenah, Wisconsin, which it rents to tenants. Long is the owner of PJL, and serves as the property manager at the residential rental locations. For large periods during the events of this dispute Long was incarcerated in state prison, and during these periods, Alvin Long (A. Long), Long's father, acted as general manager of PJL and served as property manager for the rental properties.

¶3 Skinner and A. Long signed two lease agreements for the upper apartment unit at 316 East Doty Avenue, Neenah, Wisconsin, from August 1, 2010 to October 31, 2012. The subject of this suit is the term in each lease agreement, section 12, paragraph XVI, which provided that written permission was required to paint the unit. It is uncontested that Skinner painted the stained, tongue-and-groove wood paneling on the ceiling and walls of her rental apartment white.

¶4 Long argues that Skinner breached the terms of her lease agreement by failing to obtain written permission to paint the interior of her apartment. Skinner counters that she obtained oral permission to paint from A. Long who showed her where the paint and paint supplies were located in the basement of her

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

unit after she complained that water and sap were leaking through the paneling. According to Skinner, Long also became aware that Skinner had painted the unit around the summer of 2011 and did not object. Skinner does not dispute that she had read the lease agreement and understood the terms of the lease.

¶5 Skinner moved out of the unit on May 31, 2012, and Long took no action until May 9, 2014, when he obtained an estimate to return the wood paneling to its original dark wood stain. The estimate to remove the paint and stain the wood paneling was \$7584.36. Long filed a complaint for damages against Skinner in the amount of the repair on June 26, 2014.

¶6 Following a court trial, the circuit court issued a written decision on September 10, 2015, dismissing the complaint without costs. Long responded with a motion for reconsideration, which the circuit court denied, stating that its decision was made after “considering the credibility of the witnesses” and that the reconsideration motion was made due to Long being “unhappy with the Court’s factual findings.” Long appealed.

¶7 Long contends that the circuit court “committed manifest error in law and fact by finding that because the Plaintiff, Peter Long, did not expressly tell the Defendant to discontinue painting she had reason to believe she had implied authority to continue painting.”² We disagree. As an error correcting court, we will uphold the circuit court’s findings of fact unless clearly erroneous. WIS.

² Long also argues that by “destroying the natural woodwork by painting over it” Skinner has committed waste. According to the record, Long did not present this argument to the circuit court. As failure to raise an issue before the circuit court waives its consideration on appeal, we refuse to address Long’s waste argument. *Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980), *superseded on other grounds by* WIS. STAT. § 895.52.

STAT. § 805.17(2) (“Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”). On review, we must look to the record to determine whether the circuit court undertook “a reasonable inquiry and examination of the facts” to establish the basis of its decision. *See Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982) (citation omitted).

¶8 In this case, there is sufficient evidence in the record to conclude that the circuit court’s decision was not clearly erroneous. The circuit court specifically found that “because Peter Long did not expressly tell the defendant to discontinue the painting she had reason to believe she had implied authority to continue painting” and “[w]ithout further proof the court finds the plaintiff has failed to prove its case.” The circuit court considered the testimony of Skinner and A. Long, which reflected that painting and maintenance requests were not consistently made in writing, in contravention of the lease agreements. A. Long also completed a tenant inspection/acceptance form on June 7, 2012, after Skinner left the apartment and did not note any damage as a result of Skinner painting the apartment. Further, Skinner’s testimony that A. Long gave her oral permission to paint and showed her the location of the paint and paint supplies, as well as Skinner’s testimony that Long saw the partially painted apartment and did not instruct her to discontinue painting, sufficiently supports the circuit court’s conclusion.

¶9 We conclude that after reviewing the record, the evidence demonstrates that the circuit court undertook “a reasonable inquiry and examination of the facts” to establish the basis of its decision.

By the Court.—Order affirmed.

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

