

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 12, 2005

Cornelia G. Clark
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. 2004AP1660

Cir. Ct. No. 2003SC905

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE FINDING OF CONTEMPT IN JAMES J.
VALONA, PLAINTIFF, V. JAMES A. O'CONNOR,
DEFENDANT:**

JAMES A. O'CONNOR,

APPELLANT,

v.

MILWAUKEE COUNTY SHERIFF'S DEPARTMENT,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
PATRICIA D. McMAHON, Judge. *Affirmed.*

¶1 KESSLER, J.¹ James A. O'Connor appeals from an order denying his motion to show cause to hold the Milwaukee County Sheriff's Department in contempt for failing to properly remove all of his property during the execution of a writ of restitution. The trial court concluded that O'Connor has not alleged facts which, if true, would demonstrate that he was the owner of property in question at the time of the execution of the writ of restitution, and therefore he lacks standing to bring his motion. The record supports the trial court's finding. Consequentially, we affirm the order.

BACKGROUND

¶2 James J. Valona commenced an eviction action against O'Connor in the small claims court of Milwaukee County. Following a judgment of eviction in favor of Valona, the small claims court issued a writ of restitution to the Milwaukee County Sheriff, ordering the Sheriff to remove O'Connor and his property, pursuant to WIS. STAT. § 799.45. The small claims court explicitly told O'Connor that he had three days to remove himself and his property from the premises. O'Connor did not remove the property which is in dispute in this appeal. The writ was issued in October 2003, and not acted upon by the Sheriff until December 2003.²

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² After the court issued the writ of restitution, O'Connor filed for personal bankruptcy, prohibiting the Sheriff from executing the writ. On November 4, 2003, Valona obtained an emergency order for a stay of the writ of restitution, allowing the Sheriff up to sixty days to deliver the writ of restitution on the eviction order.

¶3 On May 17, 2004, O'Connor moved for an order to show cause to hold the Milwaukee County Sheriff in contempt for the Sheriff's failure to comply with WIS. STAT. § 799.45(2)(b) in the execution of the writ of restitution. As best we can discern from the record, O'Connor argues that the Sheriff was required to remove all property on the premises and put it in storage as mandated by § 799.45(2)(b). The Sheriff did not do so. Instead, the Sheriff determined that the boxes of telephone parts that were found on the property had no monetary value, and he therefore turned the property over to Valona, as permitted by § 799.45(3)(c).

¶4 O'Connor claimed he lost valuable antique telephones when the Sheriff executed the writ. At the hearing on the motion, the trial court determined that O'Connor lacked standing because he failed to demonstrate that he was the owner of the property in question at the time of the execution of the writ of restitution. The trial court dismissed the motion for contempt. This appeal followed.

DISCUSSION

¶5 To have standing, a claimant must show that the proceedings will have a direct effect upon the claimant's legally protected interest; "a strong desire to be heard by the court is not enough to establish standing." *In re Adoption of J.C.G.*, 177 Wis. 2d 424, 427, 501 N.W.2d 908 (Ct. App. 1993). Whether the person claiming standing has such an interest is a question of law. *Id.* This court determines standing by examining whether the claimant was injured in fact, and "whether the interest allegedly injured is arguably within the zone of interests to be protected...." *Mogilka v. Jeka*, 131 Wis. 2d 459, 467, 389 N.W.2d 359 (Ct. App. 1986).

¶6 O'Connor complains that his interest in the personal property within the premises from which he was evicted was harmed because the Sheriff failed to remove all of the property for safekeeping as he was legally obligated to do. *See* WIS. STAT. § 799.45(2)(b). O'Connor argues that although he does not own the property, his physical possession of the property was based on a consignment agreement which gives him standing to pursue this claim. O'Connor is correct that if he established a valid consignment agreement, then he would have standing to bring this action because he would hold the property as a bailment. *See State v. Kuhn*, 178 Wis.2d 428, 433, 504 N.W.2d 405 (Ct. App. 1993). However, O'Connor failed to allege sufficient facts to establish the existence of a consignment agreement, or other facts that might have established a common law bailment.

¶7 Although the trial court did not make specific findings about O'Connor's alleged consignment agreement, it is clear from the record that the trial court rejected O'Connor's claim. This implicit finding is not clearly erroneous. As the County explains in its brief on behalf of the Sheriff, O'Connor failed to provide specific references to the record supporting his claims, including a list of the property that was allegedly on the premises when the Sheriff entered with the writ of restitution. O'Connor did not allege facts necessary to support a finding that he was "injured" or had a "personal stake in the outcome," in regard to the Sheriff's actions. *See City of Madison v. Town of Fitchburg*, 112 Wis.2d 224, 228, 332 N.W.2d 782 (1983). For this reason, O'Connor does not have standing to pursue this claim against the Sheriff.

By the Court.—Order affirmed.

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

