

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 27, 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. 2004AP2307

Cir. Ct. No. 2004SC1276

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

PLAINTIFF-APPELLANT,

V.

PAULA EDWARDS AND PATRICK EDWARDS,

DEFENDANTS-RESPONDENTS,

COVANTAGE CREDIT UNION,

GARNISHEE.

APPEAL from an order of the circuit court for Sheboygan County:
JAMES J. BOLGERT, Judge. *Reversed and cause remanded with directions.*

¶1 SNYDER, J.¹ American Family Mutual Insurance Company appeals from an order dismissing its garnishment action against Paula and Patrick Edwards. American Family contends that the circuit court erred in dismissing the garnishment action because the underlying judgment remains unpaid. The court determined that a factual dispute over a previous payment arrangement warranted dismissal. We agree with American Family that the dismissal was error.

¶2 On March 23, 2003, American Family filed a small claims complaint against the Edwardses. Judgment was awarded to American Family on September 22, 2003, in the amount of \$3781.95. On March 23, 2004, Patrick Edwards met with counsel for American Family to discuss a payment arrangement to satisfy the judgment. At this meeting, American Family conducted a supplementary examination of the Edwardses' assets and liabilities to determine the best arrangement. Although both parties seem to have agreed on \$200 per month as a satisfactory monthly payment, the parties disagree on when payments were to begin. While American Family asserts that payments were to begin on April 15, 2004, the Edwardses believed that payments were to begin on May 15, 2004.

¶3 Having received no payment from the Edwardses by April 15, 2004, American Family filed a garnishment summons and complaint in Sheboygan county on May 11, 2004.

¶4 The garnishment summons and complaint were served upon the garnishee, Covantage Credit Union, on May 14, 2004, and were served upon the

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

Edwardses on May 17, 2004. American Family received a payment from the Edwardses on May 20, 2004, which had been postmarked May 18, 2004. On May 26, 2004, Covantage Credit Union, the garnishee, answered the garnishment summons and complaint, stating that it held the amount requested under the garnishment complaint.

¶5 A trial was held on July 1, 2004, at which Patrick Edwards appeared by telephone. The trial testimony revealed the dispute over when monthly payments were to begin. The circuit court addressed American Family's counsel, stating, "[b]y a confirming letter, you could have so easily avoided this. You are the professional." The court dismissed the garnishment action and ordered that the Edwardses reimburse American Family the expenses of the garnishment action and begin making \$200 payments toward the underlying judgment by the fifteenth of each month starting in August 2004 until the initial judgment, the postjudgment costs, and an interest rate of twelve percent per annum were satisfied. The court stated that if the Edwardses did not follow the court's order, American Family could reopen the garnishment action.

¶6 A circuit court's decision to dismiss an action is discretionary and will not be disturbed on appeal unless the court erroneously exercised its discretion. *Johnson v. Allis Chalmers Corp.*, 162 Wis. 2d 261, 273, 470 N.W.2d 859 (1991). A court's discretionary determination must rely on applicable law as well as the record. *See Kenosha Hosp. & Med. Ctr. v. Garcia*, 2004 WI 105, ¶15, 274 Wis. 2d 338, 683 N.W.2d 425. "If a judge bases the exercise of his [or her] discretion upon an error of law, [the judge's] conduct is beyond the limits of discretion." *Id.* (citation omitted).

¶7 Garnishment is a purely statutory remedy. *See Liberty Loan Corp. & Affiliates v. Eis*, 69 Wis.2d 642, 646, 230 N.W.2d 617 (1975). Under Wisconsin garnishment law, “[a] plaintiff may commence a garnishment action at any time after ... [a] summons and complaint are filed ... [i]n an action upon a judgment.” WIS. STAT. § 812.02(1)(a)2. Based upon the plain language of the statute, a creditor holding a judgment against a debtor may commence a garnishment action at any time so long as the judgment is not satisfied. A garnishment action must follow the procedures identified by WIS. STAT. § 812.01. Neither party has alleged a procedural defect in American Family’s garnishment action.

¶8 We hold that the circuit court inappropriately exercised its discretion when it dismissed the garnishment action. The court rested its decision on the disputed starting date for payments on the judgment. The court reasoned that American Family could have acted in a more professional manner by pursuing a “confirming letter” to clarify the payment start date. However, a concern about professionalism and the circuit court’s determination that an alternate payment arrangement could have been clearer do not grant the court the authority to deny a judgment creditor the statutory right to pursue a garnishment action. A failed alternate payment arrangement between the Edwardses and American Family does not preclude American Family, the judgment creditor, from employing statutory remedies to satisfy its judgment.

¶9 We conclude that American Family is entitled to pursue its garnishment action against the Edwardses and the garnishee, Covantage Credit Union. We reverse the order for dismissal and remand the cause to the circuit court for further proceedings in accordance with this decision.

By the Court.—Order reversed and cause remanded with directions.

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

