

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2006

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. 2005AP1861

Cir. Ct. No. 2005SC8848

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DAVID W. JUNGE,

PLAINTIFF-APPELLANT,

v.

**PETER W. MESSER, M.D.,
D/B/A DERMATOLOGY INTERNAL MEDICINE PHYSICIANS,**

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. DWYER, Judge. *Affirmed.*

¶1 CURLEY, J.¹ David W. Junge appeals the dismissal of his small claims case brought against Dr. Peter W. Messer seeking a refund and bill cancellation for medical bills incurred for the treatment of Junge's medical

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

condition. On appeal, Junge seems to be arguing that his case should not have been dismissed because he filed a demand for a jury trial in a timely manner and that the paperwork was lost or misplaced by a person or persons in the judicial system.² Because the record, as it stands, supports the trial court's determination that no timely jury demand was made, and Junge has not submitted any proof that his jury demand was filed in a timely manner or that he paid the jury fee, the judgment is affirmed.

I. BACKGROUND.

¶2 Dr. Messer treated Junge for what was diagnosed as basal cell carcinoma. Junge underwent surgery for this condition and was told that additional procedures would be necessary. Junge disputes the diagnosis and treatment and believes he is entitled to a refund of whatever monies were paid to Dr. Messer by his insurance company and a cancellation of his bill. Junge contends that because he prevailed in another case he brought seeking reimbursement for bills related to medical treatment, he is entitled to judgment in this case. Of the little relevant information contained in the record are two letters that suggest that, in the past, both the Medical College of Wisconsin and Aurora Health Care have forgiven Junge's medical debts. In the case of Aurora Health Care, they agreed to forego payment and requested that in the future Junge not use their facilities or clinics. These letters may be what Junge is referring to when he claims to have been successful in obtaining relief from his medical bills.

² Junge's briefs are marginally intelligible, contain vast amounts of paperwork having no bearing on the issues complained of, and are a bit disturbing, because if Dr. Messer's diagnosis was correct, then Junge has refused to get the appropriate treatment for what appears to be a serious medical condition.

¶3 In any event, on March 3, 2005, Junge brought a small claims action against Dr. Messer seeking reimbursement and bill cancellation. The document served on Dr. Messer instructed him to appear in court on March 28, 2005. An answer was filed on behalf of Dr. Messer on March 15, 2005. In it, Dr. Messer's attorney denied Junge's claim and declared that Junge's complaint was frivolous. On March 28, 2005, a court commissioner rendered a decision in Dr. Messer's favor and Junge was advised of his options. One of the options was to file a demand for trial and a demand for jury trial. A time limit of ten days was given. Unfortunately, Junge did not file either demand until April 26, 2005, well after the deadline stated in the documents given to him on March 28, 2005. Junge claims that he filed a demand for trial and a demand for a jury on April 6, 2005. No evidence has been submitted to substantiate that claim.³ Junge claims to have a right to a jury regardless. It appears that Junge may be confusing the right to a jury, found in WIS. STAT. § 805.01 of the civil procedure code, with the right to a jury trial in small claims actions, listed in WIS. STAT. § 799.21. Moreover, in order to obtain a jury under either procedure, the jury fee must be paid. Here, there is no evidence that Junge ever paid the jury fee. Therefore, this court concludes that the trial court properly determined that Junge failed to substantiate that he filed a demand for trial or a demand for a jury in a timely fashion, or paid the jury fee, resulting in dismissal of his action.

¶4 Accordingly, the order of the trial court is affirmed.

³ Indeed, Junge has not filed an affidavit claiming to have filed a demand for a trial or a demand for a jury on April 6, 2005. Instead, he argues that unknown persons are tampering with his file.

By the Court.—Order affirmed.

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

