

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 23, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-0397

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

RICK'S MEQUON CAR CARE,

PLAINTIFF-RESPONDENT,

V.

TARLY S. DALL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Ozaukee County:
THOMAS R. WOLFGRAM, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Tarly S. Dall appeals from a judgment for money in favor of Rick's Mequon Car Care (Rick's). Dall argues that he should be

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1997-98). Further, all references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

granted a new trial for two reasons. First, he contends that Rick's mistakenly asserts an implied-in-fact contract. Dall maintains that there was no meeting of the minds on the charging of storage fees or on the amount of storage fees. Therefore, he believes the trial court erred in awarding Rick's storage fees. Second, Dall contends that even if Rick's is entitled to storage fees, the amount awarded was improper because the trial court failed to recognize that Rick's had a duty to mitigate its damages. Dall's analysis is off point because this appeal is governed by WIS. STAT. § 779.43(3). Therefore, we affirm.

¶2 The relevant facts are not disputed. Dall's car was towed to Rick's on August 4, 1998, for an estimate of the cost of repairs. On August 7, 1998, Rick's provided Dall an estimate. On November 22, 1998, having not heard from Dall, Rick's phoned Dall to inform him that unless the car was going to be repaired, it would need to be removed from Rick's lot before November 28, 1998. Rick's further informed Dall that if the car was not removed by November 28, 1998, a storage fee of \$6 per day would be charged until the car was either repaired or removed. Dall did not ask for repair nor did he remove his car from Rick's lot by November 28, 1998. On December 1, 1998, Rick's began assessing storage charges for Dall's car. Over the course of six months, Rick's sent five storage statements to Dall. No payments were made to Rick's for storage of Dall's car. Subsequently, Rick's sought and properly received a judgment for payment of storage fees.

¶3 Dall's first contention, that there was no meeting of the minds on the charging of storage fees, is not the issue. The issue is whether there was notice of and consent to storage fees. WISCONSIN STAT. § 779.43(3) gives every keeper of a garage a mechanic's lien for the storage of vehicles, provided that the keeper gives notice that there will be charges for storage and provided that the vehicle's owner

is found to have consented to the storage of the vehicle.² See *Bob Ryan Leasing v. Sampair*, 125 Wis. 2d 266, 268-69, 371 N.W.2d 405 (Ct. App. 1985).

¶4 Rick's provided notice to Dall. The requirement of notice is met when "the keeper gives notice of the charges for storing automobiles ... on a signed service order or by posting in some conspicuous place in the garage ... a card that is easily readable at a distance of 15 feet." WIS. STAT. § 779.43(3). Rick's manager testified that a storage fee notice is posted in Rick's office: "We have a big sign in our front office. After three days of estimates or repairs, \$6 a day outside storage, \$10 a day inside storage." There was no testimony from Dall contradicting this evidence. We conclude that notice of storage fees was given.

¶5 Dall consented to storage fees. Rick's manager testified that Dall had been in Rick's "often enough" to see the posted notice of storage fees. Again, there is no testimony from Dall contradicting this evidence. Based on this evidence and the fact that Dall had his vehicle towed to Rick's for an estimate and did not pick up his vehicle even after being called by Rick's, we conclude that Dall consented to storage fees.

² WISCONSIN STAT. § 779.43(3) provides that

every keeper of a garage, marina, livery or boarding stable, and every person pasturing or keeping any carriages, automobiles, boats, harness or animals, and every person or corporation, municipal or private, owning any airport, hangar or aircraft service station and leasing hangar space for aircraft, shall have a lien thereon and may retain the possession thereof for the amount due for the keep, support, storage or repair and care thereof until paid. But no garage or marina keeper shall exercise the lien upon any automobile or boat unless the keeper gives notice of the charges for storing automobiles or boats on a signed service order or by posting in some conspicuous place in the garage or marina a card that is easily readable at a distance of 15 feet.

¶6 Dall's next contention is also misguided. He argues that even if storage fees are owed, the amount awarded was improper because Rick's had a duty to mitigate its damages. Dall argues that Rick's had a duty to release Dall's vehicle so as to stop the storage costs from accruing. Rick's had no such duty. The garage keeper when storing an automobile "may retain the possession thereof for the amount due for the keep, support, storage or repair and care thereof *until paid*." WIS. STAT. § 779.43(3) (emphasis added).

¶7 Finally, we note that despite having no duty to mitigate, Rick's gave Dall ample opportunity to avoid storage charges altogether. Rick's provided Dall a repair estimate for his car on August 7, 1998. Rick's waited almost four months without hearing a word from Dall. Rick's then contacted Dall on November 22, 1998, and gave him an additional six days to either order a repair of the car, remove it from Rick's lot or expect a storage charge of \$6 per day. Rick's then waited until December 1, 1998, to begin assessing storage charges. Rick's graciously chose not to charge Dall storage fees for August, September, October and November of 1998. Dall had a chance to reclaim his vehicle from Rick's at no cost to himself. Dall chose not to do so.

By the Court.—Judgment affirmed.

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

