

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 6, 2001

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.

No. 00-2244

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GEORGE R. HARDY,

PLAINTIFF-APPELLANT,

V.

CHRISTINE HARDY, N/K/A CHRISTINE TRUDELL,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Florence County:
ROBERT A. KENNEDY, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. George Hardy appeals from a judgment ordering him to pay a certain sum to Christine Trudell, his former wife. The issue is whether Trudell's motion seeking to enforce the judgment was barred by a statute of limitations or laches. We conclude it was not, and we affirm.

¶2 The facts are not in dispute. The parties divorced in 1976 without agreeing to a division of assets. That issue was addressed in a February 1978 judgment. The judgment stated that \$27,000 owed by Hardy to Trudell would be satisfied in part by a note for \$25,000. The judgment set forth certain terms for the note, including an initial payment of principal, the interest rate, and specific subsequent monthly and annual payments. A note containing these terms was executed in June 1978. Hardy last made payment in December 1997, but a balance still remained on the note. Trudell filed an “Order to Show Cause and Motion to Enforce Divorce Judgment” in November 1999. She sought, among other things, an order enforcing the judgment and the note, and a finding that Hardy was in contempt of court. Hardy raised statutes of limitations and laches as defenses. The circuit court rejected these defenses, and entered judgment in Trudell’s favor. Hardy appeals.

¶3 Hardy first argues that the obligation Trudell is attempting to enforce arises from the 1978 judgment, and should be barred by the twenty-year statute of limitation for actions on judgments provided in WIS. STAT. § 893.40 (1999-2000).¹ The trial court concluded that Trudell really was seeking enforcement of the note, not the judgment. We agree. By itself, the judgment created no obligation on Hardy to pay money. It simply required him to execute a note on certain terms. Hardy’s obligation to pay arose from the note.

¶4 Hardy next argues that if Trudell’s motion is construed as one to enforce the note, it is barred by the six-year limitation for actions on contract, as

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

provided in WIS. STAT. § 893.43. Trudell responds, and the circuit court ruled, that the six-year period runs from Hardy's last payment. On appeal, Trudell cites several cases to this effect, including *St. Mary's Hosp. Med. Ctr. v. Tarkenton*, 103 Wis. 2d 422, 424, 309 N.W.2d 14 (Ct. App. 1981) and *Cornell Univ. v. Roth*, 149 Wis. 2d 745, 748-49, 439 N.W.2d 154 (Ct. App. 1989). These cases have not been overruled. Therefore, we reject Hardy's argument.

¶5 Finally, Hardy argues that Trudell's motion should be barred by laches. The parties agree that the elements of laches include an unreasonable delay by a party in asserting her right. We see no evidentiary basis for this element in this case. As long as Hardy was making at least some payments, it was reasonable for Trudell to forego further legal action to enforce the note. After Hardy stopped making payments, Trudell brought a motion within two years, and that is not an unreasonable delay.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

