

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 11, 2009

David R. Schanker
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. 2008AP2158-FT

Cir. Ct. No. 2005SC371

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**FARMERS & MERCHANTS BANK,
PLAINTIFF-RESPONDENT,**

v.

**ROSALINE NAVAS,
DEFENDANT,**

**ANGEL NAVAS,
DEFENDANT-APPELLANT,**

**BADGER FEDERAL SERVICES, INC.,
GARNISHEE DEFENDANT.**

APPEAL from an order of the circuit court for Green Lake County:
WILLIAM M. McMONIGAL, Judge. *Reversed.*

¶1 SNYDER, J.¹ Rosaline and Angel Navas (Angel)² appeal from a June 4, 2008, court order that continued the garnishment of Angel's wages from his employer, Badger Federal Services, Inc., based upon a prior money judgment entered in favor of Farmers & Merchants Bank (the Bank). Angel contends that he was exempt from wage garnishment because he had received or was eligible for need-based public assistance. The Bank did not file a response brief. We reverse the garnishment order. Angel also seeks relief from an assignment of wage agreement that he entered into with the Bank. We conclude that we have no jurisdiction over that matter.

¶2 The facts are undisputed. The Bank obtained a money judgment against Angel in January 2006 and filed an earnings garnishment notice on April 25, 2008. Angel filed a WIS. STAT. § 812.37(1) debtor's answer on May 20, 2008, stating that he was exempt from wage garnishment because he was receiving, or was eligible to receive, or had within the past six months received medical assistance and food stamps. *See* WIS. STAT. § 812.34(2)(b)2. On May 22, 2008, the Bank filed an objection to Angel's answer and requested a hearing.

¶3 On June 2, 2008, the trial court held a hearing at which Angel appeared pro se with an interpreter. Angel advised the court that he was on food stamps less than six months prior to the hearing and provided a financial statement. Based upon the information in Angel's financial statement, the court

¹ This case is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise stated.

² Rosaline Navas is residing in Florida and is apparently unconcerned about this matter. We refer only to Angel as the appellant.

determined that the wage garnishment was warranted and denied Angel relief. On June 5, Angel signed a wage assignment agreement with the Bank to avoid further garnishment and then obtained legal counsel through Legal Action of Wisconsin, Inc.

¶4 Angel's counsel moved for reconsideration of the court's June 4, 2008 order that continued the wage garnishment and requested that the court: (1) hold that Angel's earnings are completely exempt from earnings garnishment because he receives, is eligible for, or has within the last six months received food stamps and medical assistance; and (2) order the rescission of the June 5, 2008 wage assignment. On July 14, 2008, the court denied the motion and continued the garnishment order. Angel appeals. We address each of Angel's contentions in turn.

¶5 *Garnishment Exemption.* At the June 4 hearing, as well as at the July 14 reconsideration motion hearing, Angel represented that he was receiving, was eligible for, or had received within the past six months need-based public assistance. Under the provisions of WIS. STAT. §§ 812.37(1) and 812.34(2)(b), Angel would therefore be exempt from wage garnishment. The Bank did not file a response brief in this appeal and thereby concedes that Angel was exempt from wage garnishment. See *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993). The Bank's attorney advised this court in writing of the Bank's appellate position:

I am writing to advise you that ... my client, Farmers & Merchants Bank, does not wish for me to be involved in this appeal....

[M]y client is not proceeding with this appeal based upon the economics of the case.

¶6 We conclude, based upon the Bank's concession, that it has abandoned the garnishment claim that is based upon the trial court's order. A respondent's abandonment of an appeal may invite the sanction of summary reversal. See *Raz v. Brown*, 2003 WI 29, ¶3, 260 Wis. 2d 614, 660 N.W.2d 647. Imposing summary reversal based upon the abandonment of an appeal involves the exercise of our discretion. See *State v. Smythe*, 225 Wis. 2d 456, 462-63, 592 N.W.2d 628 (1999). A discretionary decision involves examination of the relevant facts, application of a proper standard of law, and the use of a demonstrated rational process in reaching a decision that is reasonable. *Raz*, 260 Wis. 2d 614, ¶15. The record and the law support summary reversal of the wage garnishment order.

¶7 Accordingly, we reverse the June 4, 2008 order to garnish. Our search of the record and Angel's briefs does not disclose that any wages were garnished on or after June 4, 2008. Any such wage garnishment payments received by the Bank under the June 4 order, however, would be contrary to this summary reversal decision and must be returned to Angel.

¶8 *Assignment of Wages.* Angel contends that the wage assignment agreement he entered was not voluntary on his part, but was the product of economic duress based on the existence of the wage garnishment order. He requests that we hold the agreement null and void, and that any money received by the Bank through the agreement be returned to him. Citing to *Maxwell v. Reed*, 7 Wis. 493, [*582] (1859), Angel argues that the wage assignment, a contractual waiver of his statutory exemption from garnishment, is void because it is against public policy.

¶9 In *Maxwell* a debtor had signed a promissory note which included a waiver of any property, otherwise exempted, from note foreclosure. *Id.* at 495, [*590]. The creditor demanded execution against exempt property used by the debtor in his business and trade. *Id.* The promissory note evidence was presented to a jury, and:

[T]he judge charged the jury, that the agreement contained in the said power of attorney, to release, waive and forego in respect to said indebtedness, all manner of benefit or advantage of exemption of property from levy and sale upon execution, was null and void, being against the policy of the law

Id. at 496, [*591].

¶10 The appellate issue in *Maxwell* was whether the trial court erred in charging the jury that the agreement to waive all benefit of exemption was null and void. The *Maxwell* appeal was taken from the execution on a judgment, rendered on the promissory note placed in evidence that contained the exemption waiver. Citing to WIS. CONST. art. I, § 17,³ the *Maxwell* court held that agreements waiving the protection of statutory exemptions “are null and void as against the policy of the law.” *Maxwell*, 7 Wis. at 498, [*593].

¶11 Nonetheless, *Maxwell* is of little help to Angel, whose case must be distinguished due to the lack of a final court order or judgment from which to

³ WISCONSIN CONST. art. 1, § 17 read then, and reads now:

The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

appeal. *See* WIS. STAT. § 808.03(1). Angel’s appeal does not point to an order or judgment of the circuit court that involved the agreement.⁴ While the circuit court referenced the wage assignment as being an alternative to wage garnishment, it specifically stated that “I can’t order [a wage assignment].” At the reconsideration motion hearing, the following exchange took place between the circuit court and Angel’s counsel:

THE COURT: [Angel is] not being garnished.

COUNSEL: But [he was]. You have to understand how he felt. [Angel] would have continued to be garnished had he not entered into this stipulation.

THE COURT: Then we would be back here on motion to seek relief from a garnishment. You are seeking relief from a voluntary wage assignment.

COUNSEL: I am making a motion for reconsideration from the initial garnishment.

THE COURT: So I can order now that he is not subject to a garnishment but then the voluntary wage assignment stays in effect; correct?

COUNSEL: I have also asked in my motion that the voluntary wage assignment be rescinded.

THE COURT: That is not something that the court is involved in.

COUNSEL: I appreciate that.

¶12 The court of appeals has mandatory jurisdiction over appeals from a final order or judgment entered in an action or special proceeding, and those

⁴ Angel’s wage assignment agreement was attached to his motion for reconsideration. The agreement does not contain a provision waiving his garnishment exemption in the same manner that the *Maxwell v. Reed*, 7 Wis. 493, [*582], 496, [*591] (1859), promissory note waived “all manner of benefit or advantage of exemption of property” upon execution of the judgment.

appeals are a matter of right. *See* WIS. STAT. § 808.03(1). The court of appeals may also exercise discretionary jurisdiction over any order or judgment not appealable as a matter of right. The record discloses no final order or judgment relating in any fashion or manner to the wage assignment agreement, nor does Angel cite to any such order or judgment, final or nonfinal, involving the agreement. We conclude we have no jurisdiction to address Angel's second appellate issue.

¶13 In sum, we summarily reverse the June 4, 2008 continuing garnishment order. As to the merits of the wage assignment issue, we conclude that we have no jurisdiction to address the issue because the matter is not before us from a final or nonfinal order or judgment of the circuit court.

By the Court.—Order reversed.

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

