

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 10, 2002

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. 01-2493

Cir. Ct. No. 00-SC-4340

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

DAVID SCHMIDT AND SHELBY WILLIAMS,

PLAINTIFFS-APPELLANTS,

V.

WISCONSIN O'CONNOR CORPORATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Appeal dismissed.*

¶1 SNYDER, J.¹ David Schmidt and Shelby Williams (collectively, Schmidt) appeal from a circuit court order dismissing their postjudgment motion to reconsider a WIS. STAT. ch. 799 small claims judgment based on a court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All statutory references are to the 1999-2000 version unless otherwise noted.

commissioner's decision that denied them double damages and attorney's fees pursuant to WIS. STAT. § 100.20(5). The circuit court determined that in small claims actions the law contemplates a trial de novo from a disputed court commissioner's decision and that Schmidt's reconsideration motion was untimely. The circuit court also indicated that the reconsideration motion failed to establish a basis for relief from the judgment. We conclude that the circuit court lacked competency to address the reconsideration motion. In addition, we conclude that this court cannot address Schmidt's appeal because it is from a final judgment entered from a court commissioner's decision, rather than from the circuit court. Accordingly, we dismiss the appeal.

¶2 Schmidt entered into a one-year residential lease agreement commencing October 1, 1999, with Wisconsin O'Connor Corporation. O'Connor required, and Schmidt provided, a security deposit of \$1075. Schmidt gave O'Connor notice of their intention to surrender the premises early, and did so on June 16, 2000. Schmidt demanded a refund of the total security deposit. Schmidt filed a small claims action on October 5, 2000, requesting the recovery of the security deposit with interest, recovery of the August 2000 rent paid to O'Connor and the costs of the action. In addition, Schmidt sought double damages and attorney's fees "awarded pursuant to Wis. Admin. Code 134.06, as adopted pursuant to sec. 100.20(5), Wis. Stats."

¶3 A hearing occurred on Schmidt's small claims complaint before a Waukesha county court commissioner and an oral decision was rendered on March 13, 2001. The court commissioner awarded O'Connor judgment for a

security deposit balance of \$47.48.² Schmidt requested double damages and attorney's fees under WIS. ADMIN. CODE § ATCP 134.06 and WIS. STAT. § 100.20(5). The court commissioner denied Schmidt's request for double damages and assessed statutory costs against O'Connor of \$162.12, including \$25 in statutory attorney's fees. Judgment on the court commissioner's decision was entered on March 30, 2001. O'Connor paid the \$162.12 balance owed on the judgment five days after entry of the judgment.

¶4 Schmidt filed a motion for double damages and reasonable attorney's fees pursuant to WIS. STAT. § 100.20(5) on April 26, 2001.³ On June 14, 2001, a different Waukesha county court commissioner denied Schmidt's motion because the motion was untimely and Schmidt should have sought de novo review of the court commissioner's decision in the circuit court. Undeterred, on June 21, 2001, Schmidt filed a motion for reconsideration of the June 14, 2001, court commissioner's decision in the circuit court. The circuit court refused to reconsider the small claims judgment.

¶5 Schmidt presents the appellate issue as whether the motion requesting double damages and reasonable attorney's fees under WIS. STAT. § 100.20(5) was properly filed after entry of the small claims judgment. We conclude that it was not, and that Schmidt's quest must fail because the circuit court lost competence to address the small claims judgment when Schmidt failed

² Judgment was entered for \$426.96. O'Connor had already issued two checks in the amounts of \$153.33 and \$226.15 to Schmidt, leaving a balance of \$47.48. Schmidt does not object to that part of the commissioner's decision or the small claims judgment.

³ Schmidt's counsel submitted an April 25, 2001 affidavit asking for \$1500 in attorney's fees representing 15 itemized hours at \$100 per hour.

to file an appeal de novo to the circuit court as required by WIS. STAT. § 799.207. We further conclude that Schmidt's attempt to challenge the court commissioner's decision in the court of appeals is contrary to the jurisdictional appeal provisions outlined in WIS. STAT. § 808.03.

¶6 The wrongful withholding of a tenant's security deposit is a violation of WIS. ADMIN. CODE § ATCP 134.06(3) that entitles the tenant to double damages and attorney fees under WIS. STAT. § 100.20(5). *Armour v. Klecker*, 169 Wis. 2d 692, 695, 486 N.W.2d 563 (Ct. App. 1992). Schmidt prevailed as a wronged tenant in the action and requested § 100.20(5) damages and fees. The court commissioner acknowledged Schmidt's request, and addressed it by denying § 100.20(5) double damages and reasonable attorney's fees in the oral decision. Schmidt argues that because he prevailed in the action, the court commissioner erred as a matter of law in denying § 100.20(5) damages and attorney's fees. Whether Schmidt is correct in his contention, however, must give way to an analysis of his failure to follow the small claims statutory procedure to seek circuit court redress from the court commissioner's alleged error of law.

¶7 While a circuit court may have subject matter jurisdiction to consider and determine any type of action, failure to comply with a statutory mandate results in a loss of competency which prevents a court from adjudicating the specific case before it. *State v. Bollig*, 222 Wis. 2d 558, 565, 587 N.W.2d 908 (Ct. App. 1998).

Competency is a narrower concept than subject matter jurisdiction and is grounded in the court's power to exercise its subject matter jurisdiction.... Although a court is vested with subject matter jurisdiction by the constitution, the legislature may enact statutes which limit a court's power to exercise subject matter jurisdiction. Such

legislative measures affect a court's competency rather than its jurisdiction.

Id. at 565-66. Failure to comply with a statutory directive may result in a loss of competency to proceed. *Id.* at 566.

¶8 Here, the legislature has specifically dictated what events must occur as a prerequisite to the circuit court obtaining competency over a small claims matter that was previously heard and decided by a court commissioner. A party has an absolute right to have the matter heard anew before the circuit court if certain requirements are met. WIS. STAT. § 799.207(3)(a). A mandatory requirement for circuit court access is the filing of a demand with the circuit court and the mailing of the demand to the other party within ten days from the date of the commissioner's oral decision. Sec. 799.207(3)(c). Schmidt concedes that he failed to comply with the statutory requirements of § 799.207(3)(c). We conclude that Schmidt's failure to comply with the statutory requirement deprived the circuit court of competency to hear the postjudgment challenge to the court commissioner's decision and to the resulting judgment.

¶9 All of Schmidt's appellate arguments challenge the court commissioner's decision to deny his prayer and request for WIS. STAT. § 100.20(5) double damages and attorney's fees.⁴ The court commissioner's decision evolved into a small claims judgment as a matter of law when Schmidt failed to timely demand a trial de novo in the circuit court. In effect, Schmidt seeks to appeal a court commissioner's decision, resulting as a matter of

⁴ We reject as specious Schmidt's argument that the appealed motion for reconsideration was from the postverdict court commissioner's denial rather than from the court commissioner's decision and resulting judgment.

legislative prerogative in a small claims judgment, directly to this court. “A final judgment or a final order *of a circuit court* may be appealed as a matter of right to the court of appeals unless otherwise expressly provided by law.” WIS. STAT. § 808.03(1) (emphasis added). Such final judgments or orders include those recorded in small claims cases. Sec. 808.03(1)(b). We conclude that this court lacks authority to review an appeal from a court commissioner’s decision that is reduced as a matter of law to a WIS. STAT. ch. 799 judgment.

¶10 The circuit court lacked competence to address Schmidt’s postjudgment motion for relief from the WIS. STAT. ch. 799 judgment and this court lacks authority to review a ch. 799 judgment entered upon a court commissioner’s decision. Accordingly, the appeal must be dismissed.

¶11 O’Conner seeks an award for frivolous appeal costs and fees under WIS. STAT. § 809.25(3). Costs were denied to both parties in the circuit court order and we see no reason to do otherwise in dismissing this appeal. The motion for frivolous appeal costs and fees is denied.

By the Court.—Appeal dismissed.

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

