

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 11, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2009AP1626

Cir. Ct. No. 2004CV9728

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DESMOND JONES,

PLAINTIFF-APPELLANT,

v.

**COURTYARD APARTMENTS, LLP, ROGER CARLTON, BRENDA CARLTON,
JANET HUEHNS, WAYNE HUEHNS, MILWAUKEE COUNTY SHERIFF,
DEPUTY BRIAN ANDERSON, DEPUTY JON NILSEN AND AEGIS CORPORATION,**

DEFENDANTS-RESPONDENTS,

EAGLE MOVERS, INC. AND GENERAL CASUALTY COMPANY OF WISCONSIN,

DEFENDANTS.

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

Before Fine, Kessler and Brennan, JJ.

¶1 FINE, J. Desmond Jones appeals the circuit court’s order partially overturning a jury verdict entered in his favor. The order dismissed Jones’s wrongful-eviction claims against Courtyard Apartments, LLP, Roger Carlton, Brenda Carlton, Wayne Huehns, Janet Huehns, Milwaukee County Sheriff, Deputy Brian Anderson, Deputy Jon Nilsen and Aegis Corporation. Jones argues the circuit court: (1) erroneously exercised its discretion when it dismissed his claims as a sanction for lying to the circuit court, (2) should have allowed punitive damages to go to the jury, and (3) erred in dismissing his constitutional claims. We affirm.

I.

¶2 This is Jones’s second appeal to us on his eviction from the Courtyard Apartments. The background facts are set forth in our other opinion. *See Jones v. Carlton*, No. 04-9728, unpublished slip op. ¶¶5–14 (WI App June 19, 2007). In his first appeal, Jones appealed the circuit court’s order granting summary judgment to Courtyard Apartments on his wrongful-eviction claims. *Id.*, ¶1.

¶3 We affirmed in part, but reversed in part because there was an issue of fact “whether Courtyard Apartments had notice of a hearing at which Jones sought to reopen a judgment for restitution.” *Id.*, ¶¶2–3. We remanded for an evidentiary hearing. *Ibid.*

¶4 On remand, the circuit court held the evidentiary hearing, and found that the eviction writ was invalid when served, that the Milwaukee County deputy sheriffs should have known it was invalid, and that Courtyard Apartments had constructive notice of Jones’s motion to re-open. The circuit court set the matter for a jury trial.

¶15 In March of 2009, the jury found:

- Courtyard Apartments did not lie to the circuit court in January of 2004 to get a writ of restitution to evict Jones.
- Jones did lie to the circuit court in February of 2004 to get the circuit court to cancel the eviction writ.¹
- Jones's lie caused the circuit court to cancel the eviction writ.²
- Jones's lie did not cause him damage.
- Courtyard Apartments caused damage to Jones during the eviction.
- The Milwaukee County deputy sheriffs caused damage to Jones during the eviction.
- \$6,000 would reasonably compensate Jones for the damages caused by the eviction.
- By breaching its covenant of quiet enjoyment to Jones when he was evicted from his apartment, Courtyard Apartments caused Jones \$9,000 in damages.

¹ The question to the jury asked: "Did Desmond Jones make misrepresentations of fact to the Court on February 12 or February 23, 2004 for the purpose of obtaining an order from the Court to reinstate the Stipulation of September 26, 2003 and to cancel the writ of restitution that was ordered by the Court on January 27, 2004 in order to prevent his eviction?" The jury answered: "Yes."

² The jury was also asked: "Did such misrepresentations result in the Court reinstating the Stipulation of September 26, 2003 and cancelling the writ of restitution that was ordered by the Court on January 27, 2004?" Again the jury answered: "Yes."

- The Milwaukee County deputy sheriffs were not negligent in supervising the removal of Jones's property from his apartment during the eviction.
- Eagle Movers were not negligent in removing property from Jones's apartment during the eviction.
- Jones was not entitled to any damages to compensate him for loss of his property as a result of his eviction.
- Jones suffered a \$7,500 loss of his personal property as a result of conversion by the Milwaukee County deputy sheriffs and Eagle Movers.
- Courtyard Apartments did not give Jones a proper accounting of the money it withheld from his security deposit, but that nothing was improperly withheld from the deposit.

¶6 After the jury's verdict, Courtyard Apartments asked the circuit court to overturn the verdict because the jury found that Jones had lied to the circuit court. Jones sought a new trial because the circuit court did not submit his punitive-damages claim to the jury. He also asked for attorney fees. The circuit court denied Jones's requests and granted Courtyard Apartments' motion to dismiss Jones's claims for wrongful eviction and for violation of his quiet enjoyment "as a sanction against Jones, for his perpetration of fraud on the court." It also ruled that had the jury awarded any damages on the security deposit claim, it would have dismissed that claim as well. The circuit court accepted the jury's verdict on the conversion claim because Jones's "lies, perjury,

misrepresentation, fraud on the court does not negatively impact the conversion claim.”

II.

A. *Dismissal as a Sanction*

¶7 The primary issue in this case is whether the circuit court erroneously exercised its discretion when it set aside, as a sanction, that part of the jury’s verdict that awarded Jones damages, based on the jury’s finding that Jones lied to the court. A circuit court may impose sanctions for a party’s misconduct, including dismissal of the case, as long as the sanctioned party’s conduct is “egregious.” *Schultz v. Sykes*, 2001 WI App 255, ¶¶9–10, 248 Wis. 2d 746, 763–764, 638 N.W.2d 604, 611–612. *Schultz* held:

Wisconsin appellate courts have affirmed the power of circuit courts to impose dismissal as a sanction for litigation misconduct. Because dismissal is such a harsh sanction, however, the supreme court has held that dismissal is proper only when the plaintiff has acted in bad faith or has engaged in egregious misconduct.

Ibid. Imposition of sanctions is a discretionary determination. *Id.*, ¶8, 248 Wis. 2d at 763, 638 N.W.2d at 611. We look for reasons to sustain the circuit court’s discretionary decisions, *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318, 320 (1968), and will uphold a discretionary decision if the circuit court considered the pertinent facts of record, applied the proper legal standards, and reached a reasonable decision, *Loy v. Bunderson*, 107 Wis. 2d 400, 414–415, 320 N.W.2d 175, 184 (1982).

¶8 Here, the circuit court did not erroneously exercise its discretion. It explained:

[T]he jury found that Desmond Jones perpetrated a fraud on the court ... to ... cancel the writ of restitution, and that it ended up in that result. In essence that his fraud on the court cancelled a writ of restitution that Courtyard Apartments was granted and was entitled to have.

This case with respect to wrongful eviction, with respect to breach of covenant of quiet enjoyment, with respect to the security deposit claim boils down to whether the plaintiff is entitled to any judgment or whether based on fraud on the court he should be denied his verdict.

After considering the pertinent case law, the circuit court ruled:

This court is satisfied, based on the jury's answer, that Mr. Jones perpetrated a very serious fraud on the court in February 2004, done with the purpose to get the writ quashed, which purpose he accomplished by his fraud on the court. It is egregious. It is serious. ... it is extreme, it is substantial, it is persistent to the point that he came into court on two occasions in February and then throughout this trial, and the jury rejected his testimony with respect to the misrepresentation issues in this case. There is no clear or justifiable excuse for perjury.

¶9 We agree with the circuit court's legal conclusion that Jones's lie to the circuit court in order to get the writ of restitution withdrawn was "egregious"—indeed, although Jones argues to the contrary, reasonable persons could reach no other conclusion. *See Garfoot v. Fireman's Fund Ins. Co.*, 228 Wis. 2d 707, 717, 599 N.W.2d 411, 416 (Ct. App. 1999) (We review *de novo* whether the circuit court applied the correct legal standard.). The circuit court did not erroneously exercise its discretion in dismissing the claims.

B. *Punitive Damage Claim*

¶10 Jones argues that the circuit court should have submitted the issue of punitive damages to the jury. We disagree. As we have seen, the circuit court dismissed Jones's eviction claims against Courtyard Apartments because Jones lied to the court in an attempt to prevent his eviction. Jones's claim for punitive damages is based on what he contends was his wrongful eviction and thus falls with his wrongful-eviction claim.

C. *Constitutional Claim*

¶11 Jones also argues that Milwaukee County deputy sheriffs violated 42 U.S.C. § 1983 when they removed his personal property from the apartment. He does not develop this argument and, therefore, we do not address it. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992) (we decline to address arguments that are inadequately briefed).

By the Court.—Order affirmed.

Publication in the official reports is not recommended.

