

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

March 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 94-2402**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**IN THE MATTER OF THE ASSESSMENT  
OF JURY FEES IN EDWARD AND ALICIA  
VANLENNEP, PLAINTIFFS, v. CITIZEN  
INSURANCE COMPANY, ET AL, DEFENDANTS:**

**EDWARD VANLENNEP  
and ALICIA VANLENNEP,**

**Plaintiffs-Appellants,**

**v.**

**CIRCUIT COURT FOR CRAWFORD COUNTY,  
THE HONORABLE MICHAEL T. KIRCHMAN,  
PRESIDING,**

**Respondents.**

APPEAL from an order of the circuit court for Crawford County:  
MICHAEL KIRCHMAN, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. Edward and Alicia VanLennep appeal from an order of the circuit court assessing jury fees of \$940 against them for failure to reach settlement within forty-eight hours of trial, as provided in § 814.51, STATS. For the reasons set forth below, we affirm.

Section 814.51, STATS., provides:

The court shall have discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror fees for a jury, including all mileage costs, against either the plaintiff or defendant or to divide the cost and assess the cost against both plaintiff and defendant, or additional parties plaintiff or defendant, if a jury demand has been made in any case and if a jury demand is later withdrawn within 2 business days prior to the time set by the court for the commencement of the trial. The party assessed shall be required to make payment to the clerk of circuit court within a prescribed period and the payment thereof shall be enforced by contempt proceedings.

It is undisputed that in this case, the VanLenneps accepted the settlement offer within the statutory "2 business days prior to the time set by the court for the commencement of the trial." In response, the circuit court originally ordered the VanLenneps to pay \$1,500 in jury fees. In response to a motion for reconsideration, the circuit court reduced the fees to \$940 on the grounds that this sum more accurately represented the actual amount for mileage and fees authorized by the statute.

Citing *Jacobson v. Avestruz*, 81 Wis.2d 240, 260 N.W.2d 267 (1977), the VanLenneps argue that the circuit court improperly exercised its discretion for several reasons. First, the delay in accepting the settlement offer was understandable in that the offer was made shortly before the trial, and the delay in acceptance came from taking the weekend to consider the offer. Second, all the jurors were called with news of the settlement, and no juror was required to travel to the courthouse on the day of trial. Third, no other cases were

"bumped," and no bailiffs were required to report for duty. Therefore, the county was not put to any actual expense.

We affirm because the statute contemplates that the fees are assessable in the discretion of the circuit court. *Burkes v. Hales*, 165 Wis.2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991), discusses at length the limited scope of our review of a trial court's discretionary act. Specifically, we review only to determine whether the trial court considered the facts of record, and reasoned its way to a rational, legally sound conclusion. The court here properly exercised its discretion. As the court indicated, the prospective jurors were inconvenienced. They were required to make arrangements for milking cows and baby sitting, and for others to handle their businesses. The fact that they were relieved from the necessity at the last moment does not eradicate the inconvenience. The court also noted that the statute would be meaningless as a deterrent if the only time it could be invoked is after monies were actually expended.

Because this is a rational application of the law to the facts, we affirm.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.