

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 31, 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. 95-3546**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**SHARON McCARTEN,**

**Plaintiff-Appellant,**

**v.**

**TROY BRENNNA, CARL GALDINE,  
and JEREMY LEE,**

**Defendants-Respondents.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIS J. ZICK, Reserve Judge, and FRANK T. CRIVELLO, Judge. *Affirmed.*

FINE, J. Sharon McCarten appeals from a judgment entered by the trial court, the Honorable Willis Zick presiding, and from an order, the Honorable Frank Thomas Crivello presiding, denying her motion to reopen the judgment. We affirm.

This is a small-claims landlord-tenant dispute. Both sides appeared before the trial court *pro se*. The plaintiff, the landlord, is represented

by counsel on this appeal; Troy Brenna, Carl Galdine, and Jeremy Lee, represent themselves.<sup>1</sup>

The action was started by McCarten. In her small claims complaint, she sought damages based on the following claims: “Tenants moved out of property before lease expiration - Broke lease - Damages to property - Rekeyed due to non return of keys.” (Uppercasing and some capitalization omitted.) The defendants counterclaimed for return of their security deposit and for damage to their personal property allegedly caused by a water leak in the ceiling. The trial court, faced with conflicting testimony on almost all the elements of both sides' claims, found in essence that neither side had carried its burden with respect to those claims and disallowed all claims except: the plaintiff's claims for \$35 for a “heater board” and \$32 for advertising expense in order to re-rent the property, and the defendants' claim for their security deposit.<sup>2</sup> The trial court also ordered that the plaintiff return to the defendants their exercise and gym equipment, and when it appeared that she would not agree to do so, the trial court added \$1,500 to the judgment.

The plaintiff asserts four grounds for reversal. First, she claims that she was denied her day in court because of the alleged arbitrary way the trial was conducted. Second, she contends that the trial court did not make proper findings of fact. Third, she charges that the trial court was biased against her. Fourth, she challenges the \$1,500 assessment.

Given the trial court's superior position to discern nuances from oral testimony, its findings of fact will not be overturned unless they are clearly erroneous. RULE 805.17(2), STATS. Thus, when more than one reasonable

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<sup>1</sup> McCarten requests that we summarily reverse the trial court because the respondents' brief was late. Given the *pro se* status of the respondents, however, and the lack of prejudice to the appellant by the late filing of the brief, we decline the request. Pursuant to RULE 809.82(2)(a), STATS., the respondents' brief is accepted and the appeal is decided as if all briefs were submitted timely.

<sup>2</sup> The plaintiff was able to re-rent her property. The only dispute about rent centered on the plaintiff's contention that the defendants moved into the apartment several days earlier than their tenancy was scheduled to start. The plaintiff claimed that the defendants agreed to do some work for her in return for those extra days; the defendants testified that they did not. The trial court believed the defendants.

inference can be drawn from the evidence, we must accept the inference drawn by the trial court. *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979). Further, a trial court's finding of fact may be implicit from its ruling. *Schneller v. St. Mary's Hosp. Medical Ctr.*, 162 Wis.2d 296, 311, 470 N.W.2d 873, 879 (1991); *Marshall v. Lonberger*, 459 U.S. 422, 433 (1983) (Although trial court failed to make express findings on credibility, failure to grant relief reflects implicit adverse finding.). Thus, our review of the trial court's decision is narrow, especially because it is clear from the trial transcript that the trial court based its determinations on its assessment of the witnesses' credibility.

The plaintiff contends that she was denied her day in court. The record belies her assertion. As the trial court reflected, *pro se* disputes are hard to resolve—the parties are unskilled in the presentation of their proof and the testimony is often contradictory. Moreover, the presentation of the evidence is often disjointed and the parties interrupt both each other and the trial court frequently. This is what happened here. This court has read the trial transcript in detail and concludes that the trial court conducted the trial well within the scope permitted by RULE 906.11, STATS. Additionally, contrary to the plaintiff's contention, the trial court *did* make findings with respect to each of the items of damage claimed by both sides. Plaintiff has not indicated how any of those findings are “clearly erroneous.”

The plaintiff's charge that the trial court's conduct of the trial reflected bias against her is without merit. The transcript reflects a patient trial judge attempting to make sense of conflicting evidence presented disjointedly. Although the trial court admonished the plaintiff several times for not responding directly to the trial court's questions, and prevented her from arguing with it once it had announced its decision, the trial court's comments were, under the circumstances, restrained, respectful, and fully within the bounds of propriety.

The plaintiff also challenges the trial court's assessment of \$1,500 in the face of her refusal to agree to return to the defendants their exercise and gym equipment. It was undisputed that the defendants owned the equipment. It was also undisputed that the equipment was in the plaintiff's possession at the time of trial. The plaintiff claimed that the defendants left the equipment behind; the defendants contended that they could not retrieve the equipment

from the basement because the health authorities had sealed the basement as the result of asbestos infestation. The trial court believed the defendants, and directed that the plaintiff return the equipment:

THE COURT:... I'm going to order you turn over that equipment. If you do not, I'm going to enter judgment for the extra \$1,500. Would that pay for the equipment? So it will be \$835 [the security deposit, less the damages the trial court awarded to the plaintiff] if she turns over the equipment. If she does not, it will be additional \$1,500 then, \$2,335.

The plaintiff, however, rather than agreeing to return the equipment to the defendants continued to argue with the trial court about its rulings. The trial court took this failure to respond as her unwillingness to comply with the order, and assessed the \$1,500.

The plaintiff argues that the assessment was punishment and was not justified by the evidence. We disagree. First, it is apparent from the transcript that the trial court asked someone, presumably the defendants, albeit in cursory fashion, whether the \$1,500 would "pay for the equipment." Presumably, the trial court received an affirmative response that was not challenged by the plaintiff. As noted, we must accept the inferences from the evidence that are drawn by the trial court when more than one inference is possible. *Cogswell*, 87 Wis.2d at 250, 274 N.W.2d at 650. The plaintiff has not demonstrated how the trial court's conclusion, based on the response it is reasonable to infer from the record that it received, that the equipment was worth \$1,500 is "clearly erroneous."

The plaintiff was given a choice: agree to return the equipment or pay its fair value. She ignored the trial court's attempt to get her to agree to return the equipment:

MS. MC CARTEN:--May I ask, Your Honor, why you believe them and not me?

THE COURT:I can't tell you that at all. We could sit here the rest of their lives.

MS. MC CARTEN:I object.

THE COURT:I do this for a living. Obviously you would object. If I were you, I would object also. If I ruled the other way, they would object also. Just hold it.

... The buck has stopped here, you know. If everybody--

MS. MC CARTEN:--Maybe it has, maybe it hasn't.

THE COURT:Well, just a minute. Just calm down. Just calm down. If you want to get too crazy, we can find you in contempt. I'll just tell you to keep your mouth shut. I'll tell you the case is over. I'm not going to answer to your cross-examination as to why I concluded. I told you I concluded for the best reasons I could come up with. I do this every day of the week. Everybody loses and they're unhappy. They just take it.

MS. MC CARTEN:This is about believing someone. I would like you to explain to me why you believe them and you don't believe me.

THE COURT:I'm asking you not to talk any more now. I'm telling you I've ruled. You have no basis for cross-examining me and asking me. I've done the best I could with it. That's the end of it.

If you want to cuss --I'm going to order you turn over that equipment. If you do not, I'm going to enter judgment for the extra \$1,500. Would that pay for the equipment? So it will be \$835 if she turns over the equipment. If she does not, it will be additional \$1,500 then, \$2,335. So you're here now, they're ready to pick up

their equipment, Ms. McCarten. Tell us what arrangements you can make for them to pick up their equipment.

MS. MC CARTEN:I'm going to contact a lawyer and see what I can do about this.

THE COURT:We will enter judgment for the \$2,335 rather than if you're not --

MS. MC CARTEN:--I would like an explanation of why you're penalizing me.

THE COURT:You're going to get an explanation in real clear tones in about a minute. You're going to get an explanation down in the County Jail. You can talk to the jailers. Maybe they'll explain to you.

I told you I made my decision. I don't have to sit here and be cross-examined by you. I've told you the best I could why I decided it. You get your explanation elsewhere? So you're telling me that you're not going to turn over the weight equipment then, I assume?

MS. MC CARTEN:I'm going to consult an attorney.

THE COURT:So I'm going to enter judgment for \$2,335 which compensates them for the weight equipment, and you now own the weight equipment, and that takes care of it then, okay? Judgment for \$2,335. She owns the weight equipment. Okay. Thank you.

The plaintiff cannot complain that the trial court took her refusal to respond as an indication that it should award to the defendants money damages for the equipment not returned. The assessment was not punishment; it was compensation.

*By the Court.* – Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.