

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 16, 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(1), 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. 96-0807-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**FIRST FEDERAL SAVINGS
BANK LA CROSSE – MADISON,**

Plaintiff-Respondent,

v.

PATRICIA A. VETTERKIND,

Defendant-Appellant,

TRACY L. VETTERKIND,

Defendant.

APPEAL from a judgment of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed in part; reversed in part, and cause remanded with directions.*

CANE, P.J. Patricia Vetterkind appeals a small claims court judgment granting First Federal Savings Bank La Crosse-Madison replevin of a car as well as interest on the amount due on the car loan.¹ Vetterkind argues that because the bank's action was one for recovery of collateral pursuant to §

¹ This is an expedited appeal under RULE 809.17, STATS.

425.205, STATS., the only relief the judgment can afford is replevin. This court agrees and, accordingly, remands the case to the small claims court with directions that it enter an amended judgment for replevin only.

Patricia and Tracy Vetterkind² financed the purchase of a new car through the bank. After they failed to make certain payments, the bank served them with a notice of right to cure the default pursuant to § 425.105, STATS. When the Vetterkinds failed to cure the default, the bank filed a complaint for replevin, seeking (1) a judgment of replevin; (2) the amounts due for principal, interest, late charges and costs and disbursements; (3) additional interest on the amount due; and (4) other relief.

Patricia filed a motion to dismiss the action, arguing that because the complaint sought both replevin and a deficiency judgment, it was not a proper proceeding under § 425.205, STATS. The small claims court denied the motion, concluding the complaint did not seek a money judgment. The small claims court stated: "So as far as I am concerned this action is solely for recovery of the collateral, and that is the only relief sought and is the only relief the court can grant, and therefore I believe that the motion to dismiss should be denied."

Patricia filed an amended brief with the small claims court, stating that she did not object to the court granting replevin, but renewing her objection to the proceedings if the bank expected the small claims court to declare the balance due on the loan and to offer any relief besides replevin and statutory costs. The bank moved for summary judgment. Patricia did not dispute her default or the bank's entitlement to replevin. However, she objected to the proposed judgment to the extent that it provided relief beyond replevin. After the parties argued the issue before the small claims court, it agreed with the bank's reasoning and signed the proposed judgment. Patricia now appeals.

Patricia raises two issues on appeal: (1) whether the bank's complaint sought relief beyond the recovery of collateral; and (2) if not, whether

² Tracy Vetterkind's participation in the small claims court proceedings is unclear. He has not participated in this appeal.

a small claims court may determine the total amount owed and the interest accruing thereon in a § 425.205, STATS., replevin action. Patricia asks this court to reverse the judgment and remand the case to the small claims court with instructions to dismiss the case, arguing the bank improperly used the small claims procedure to seek a determination of the balance due. Alternatively, she asks this court to remand the case to the small claims court with directions to modify the judgment by striking all determinations other than the bank's right to replevin the car.

Since Patricia clearly agreed at the small claims court to proceed with the replevin action after the court denied her motion to dismiss, this court concludes Patricia waived the right to argue on appeal that because the complaint improperly sought relief besides replevin, the entire case should be dismissed. Accordingly, this court declines to consider Patricia's first argument: that the complaint seeks relief beyond replevin.

The remaining issue is whether the judgment can provide the bank with any relief besides replevin where the action was brought pursuant to § 425.205, STATS. This case requires the interpretation of § 425.205, which presents a question of law this court reviews without deference to the trial court. See *Village of Shorewood v. Steinberg*, 174 Wis.2d 191, 201, 496 N.W.2d 57, 61 (1993). The purpose in interpreting a statute is to ascertain and give effect to the legislature's intent. *Id.* If the language of the statute is clear and unambiguous, this court gives the language its ordinary meaning and applies it to the facts of the case. *Id.* A statute is ambiguous if reasonable people could understand it in more than one way. *Id.*

Section 425.205, STATS., provides in relevant part:

Action to recover collateral. (1) Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease shall commence an action for replevin of the collateral or leased goods. Those actions shall be conducted in accordance with ch. 799, notwithstanding s. 799.01(1)(c) and the value of the collateral or leased goods sought to be recovered, except that:

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- (e) *Judgment in such action shall determine only the right to possession of the collateral or leased goods, but such judgment shall not bar any subsequent action for damages or deficiency to the extent permitted by this subchapter. (Emphasis added.)*

The bank argues that because § 425.205(3), STATS., requires it to conform with the requirements of § 425.109, STATS., and therefore include in its complaint such information as a specification of the facts constituting the alleged default and an estimate of the dollar amount the creditor alleges it is entitled to recover, the small claims court is logically supposed to make findings on those issues. Thus, the bank argues, the judgment is consistent with the statute and need not be amended. This court has no difficulty with the trial court determining whether there is a default and the approximate amount of the default. Here, the judgment, however, goes beyond determining whether there is a default and the right to possession of the car. It also awards the bank interest on the amount due.

Although § 425.205(3), STATS., requires that parties' complaints conform with the requirements of § 425.109, STATS., the small claims court is not authorized to make binding determinations as to amounts due or to order monetary relief. Instead, as Patricia notes, the small claims court need only determine: (1) whether there is a right to possession upon default; (2) whether there is a default; and (3) whether Consumer Act procedures were followed. Section 425.205, STATS., unambiguously directs the small claims court to determine solely the right to possession of the collateral. The unambiguous meaning of § 425.205(1)(e), STATS., is that the judgment in an action for recovery of collateral cannot provide relief other than replevin. Therefore, this court concludes that the judgment, to the extent it affords relief besides replevin, goes beyond the scope of § 425.205 and must be amended to comply with the statute.

In summary, where an action for recovery of collateral is brought pursuant to § 425.205, STATS., the judgment cannot order relief other than replevin. Accordingly, this court affirms in part, reverses in part and remands

the case to the small claims court with directions that the court modify the judgment to reflect that the sole relief granted is replevin.³

By the Court.—Judgment affirmed in part; reversed in part, and cause remanded with directions. No costs.

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

³ This court notes that pursuant to § 425.205(1)(e), STATS., the judgment may not bar the bank from pursuing a subsequent action for damages or deficiency to the extent permitted by subch. II of ch. 425.