

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 14, 1997

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. 96-1529-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

FEDERATED MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v.

PARTS DISTRIBUTING, INC.,

Defendant-Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
FRANK T. CRIVELLO, Judge.¹ *Reversed and cause remanded with directions.*

CURLEY, J. Federated Mutual Insurance Company appeals from an order dismissing its small claims action against Parts Distributing, Inc. In its suit, Federated Mutual sought \$3,140 in insurance premiums from Parts Distributing. On appeal, Federated Mutual asks this court to determine whether Parts Distributing was liable “for insurance coverage it provided at the

¹ The original hearing and oral decision was presided over and decided by Reserve Judge Frederick P. Kessler. The Hon. Frank T. Crivello entered the final written order memorializing the earlier ruling.

request” of Parts Distributing; and thus, whether the trial court erred in dismissing the action. Because the analysis and basis for the trial court's ruling is unclear from the appellate record, this court must reverse and remand the matter for clarification. On remand, the trial court shall make specific factual findings and clarify the legal basis for dismissing the action.²

I. BACKGROUND.

The parties agree on the following facts. Ronald Haidinger acquired Parts Distributing, Inc., on January 1, 1994. At that time, the previous owners had business, commercial, and umbrella insurance policies for Parts Distributing purchased from Federated Mutual, for which the previous owners paid the premiums through May 1, 1994. Federated Mutual notified Haidinger sometime during the first week in March 1994 that they had cancelled the original policies effective January 1, 1994. Haidinger then received a letter dated January 17, 1994, noting his receipt of refund checks effective March 9, 1994, for premiums paid to the old policy for the months of January, February and March. Gary Reynolds, Federated Mutual's agent, then presented new policies around the end of March with premiums approximately \$4,000 higher than the previous policies. Haidinger refused to pay, and this dispute followed.

At this point the parties' facts diverge. Federated Mutual claims it is customary to cancel old policies and issue new ones when a business entity changes hands. Reynolds gave conflicting testimony at the small claims hearing on whether he had informed Haidinger in early January that Federated Mutual was going to cancel the old policies and issue new ones. Further, Reynolds confirmed that Haidinger received invoices processed March 3, 1994, noting that Federated Mutual cancelled the old policies retroactively effective January 1, 1994. It appears that Federated Mutual sent no new policy information at that time. Federated Mutual claims this event occurred during the processing of the new policies for Parts Distributing. Federated Mutual claims that the increase in premiums was justified based on a risk analysis performed in all situations where an ownership of a company changes.

² This appeal is decided by one judge pursuant to § 752.31(2), STATS.

Parts Distributing presents a different picture. Haidinger claims he spoke with Reynolds twice in January of 1994, on the phone and in person, and that Reynolds never mentioned the cancellation of the old policies. Once he received the cancellation notices the first week of March, Haidinger testified that he believed from the invoice that he no longer had insurance for Parts Distributing, and in fact had not since January 1, 1994. About a week later, Reynolds came with the new policy covering the months of January, February and March, and Haidinger testified he expressed his dissatisfaction with it. Further, Parts Distributing argued that Federated Mutual did not follow the procedures for cancellations set forth in § 631.36, STATS.

Additionally, the record contains a document dated July 7, 1994, which notes the new policy issuance. The process date on this document is March 2, 1994, and the effective date is January 1, 1994. This seemingly indicates that Federated Mutual issued Parts Distributing's new policy retroactively as well. After a hearing on the issue, the trial court issued the following oral decision:

I will find that Mr. Haidinger bought Parts Distributors-- Distributing, Inc., on January 1, 1994. He bought it from another person with the understanding that the business had a paid insurance policy that included the months of January, February, and March of 1994. A new policy was brought to him in March that indicated it had commenced in January. The old policy had been cancelled in January. Mr. Haidinger was not told of the new premium, of the new increase, until March. I think it would be unjust to ask Mr. Haidinger to pay that increase in premium; and, therefore, I will grant judgment for the defendant.

A written order was entered dismissing Federated Mutual's complaint and granting judgment in favor of Parts Distributing. This appeal follows.

II. ANALYSIS.

“A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law.” *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981). Additionally, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination. *Id.* Further, because the exercise of discretion is not the equivalent of unfettered decision-making, the record must reflect the trial court’s “reasoned application of the appropriate legal standard to the relevant facts in the case.” *Hedtcke v. Sentry Ins.*, 109 Wis.2d 461, 471, 326 N.W.2d 727, 732 (1982).

This court acknowledges that a trial court sitting in a small claims action is not expected to explain every detail of its decision-making process. This case, however, requires a more detailed explanation than is currently available in the record. Here, the record is unclear as to what the trial court intended in relation to the parties when it issued its decision. From our interpretation, there may be one of three possibilities.

First, the trial court, in error, may have believed that Federated Mutual never refunded the premiums to the old policies and was applying them to the new owner's premium payments. This interpretation arises from the trial court's statement that “it would be unjust to ask Mr. Haidinger to pay that *increase in premium.*” (Emphasis added.) It follows that if this was the trial court's belief, Parts Distributing had insurance for January, February and March, and would owe premium payments for the amount refunded, as the record clearly shows that refunds were made. Therefore, under the trial court's erroneous conclusion, Parts Distributing would not owe Federated Mutual anything for the increase in premiums.

Second, the trial court may have considered the refund of the premiums in its analysis and believed that Federated Mutual issued Parts Distributing no new insurance after cancelling the previous policies. Therefore, it may have opined, Haidinger did not have to pay anything because there was no insurance to pay premiums on.

Third, the trial court may have noted the premium refund, and acknowledged that Federated Mutual issued new policies, but chose not to enforce Haidinger's premium payment because Federated Mutual did not follow the rule set out in § 631.36, STATS. The trial court could have concluded under equitable principles that because Federated Mutual did not send the cancellation notice ten days before cancellation, but two and a half months after, Parts Distributing was then no longer liable for any insurance it may have had during that time.

Because this court cannot properly review the trial court's reasoning until the trial court clarifies the basis for its decision, this court must reverse and remand for further clarification.

On remand, the trial court shall make specific findings of fact with respect to Parts Distributing's alleged liability for any insurance premiums. Based on these factors, the trial court shall then provide a reasoned legal conclusion on which any future appeal in this case could be reviewed.

By the Court.—Order reversed and cause remanded with directions.

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