

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

April 9, 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.

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

No. 96-2594

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

THOMAS NORMAN,

PLAINTIFF-RESPONDENT,

v.

RUBY FAULKNER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
BARBARA A. KLUKA, Judge. *Affirmed.*

SNYDER, P.J. Ruby Faulkner appeals from an order for restitution granted in favor of Thomas Norman. The action originated with an eviction complaint wherein Norman sought to evict Faulkner because of her failure to pay rent. Faulkner responded to the eviction complaint with various affirmative defenses, claiming, inter alia, that Norman was not the rightful owner of the property because his title was procured by illegal means, and that he

therefore was not entitled to possession. Faulkner contends that the trial court erred when it denied these challenges to Norman's action on the grounds that the claims by Faulkner did not arise out of the same transaction or occurrence that was the subject matter of the original action. *See* § 799.43, STATS. We hold that Faulkner's counterclaims to Norman's action were collateral and were properly dismissed by the trial court.

On March 1, 1996, Vivian Merriman, Faulkner's mother, executed a quitclaim deed for the disputed property to her grandson, Norman, while visiting him in Oklahoma. On March 3, 1996, Merriman died. Faulkner had resided with her mother for many years. Norman then notified Faulkner that beginning May 1, 1996, she would be required to pay monthly rent of \$450, as well as a \$400 security deposit. The complaint stated that prior to May 1, Faulkner had occupied the residence on an at-will basis and did not pay any rent. Faulkner did not make any payments to Norman. On June 21, 1996, Norman entered a small claims eviction action against Faulkner, which stated that he was the owner in fee simple of the property.

Faulkner initially appeared pro se and the court commissioner granted the order for restitution on behalf of Norman. Norman subsequently agreed to the vacation of that order "to enable the parties to more expeditiously and at the least expense, conclude this matter." A hearing was then scheduled in circuit court.

With the assistance of counsel, Faulkner filed an answer to Norman's complaint. In her answer, Faulkner alleged that Norman was not the rightful owner of the property, that he had no right to bring the action, and that the property was actually part of Merriman's estate. She also stated that Merriman

was not mentally competent to make legal decisions for herself at the time she signed the quitclaim deed and that the deed was therefore invalid. The circuit court denied Faulkner's attempt to place the validity of Norman's title at issue in the eviction proceedings and found that there were no other triable factual issues. Faulkner now appeals this determination, claiming that the court erred in dismissing her counterclaim and affirmative defenses relating to the validity of Norman's title and possession.

Whether the circuit court properly applied the statutory guidelines to the facts here presented relates to the construction and application of a statute. The application of a statute to a particular set of facts presents a question of law, and as such is reviewed de novo. *See Graziano v. Town of Long Lake*, 191 Wis.2d 812, 817, 530 N.W.2d 55, 57 (Ct. App. 1995).

Chapter 799, STATS., regulates small claims actions. We begin with § 799.02, STATS., which sets forth the standards for permissible counterclaims in eviction actions. This section provides:

(1) If a counterclaim or cross complaint is filed, which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim and which is beyond the limitations of s. 799.01 ... the entire matter shall be tried under [the rules of civil procedure], except that the counterclaim or cross complaint shall be deemed denied

(2) If a counterclaim or cross complaint is filed, which does not arise out of the same transaction or occurrence that is the subject matter of the plaintiff's claim and which is beyond the limitations of s. 799.01, the court shall dismiss same and proceed under this chapter.
[Emphasis added.]

Chapter 799 also provides, in language specific to eviction actions, that "[w]ithin the limitation of s. 799.02 the defendant may counterclaim provided that ... as

applied to eviction actions, any claim related to the rented property shall be considered as *arising out of the transaction or occurrence* which is the subject matter of the plaintiff's claim." See § 799.43, STATS. (emphasis added).

The dispositive question then is to determine whether Faulkner's claims which seek to invalidate Norman's title are "arising out of the transaction or occurrence" which is the subject matter of Norman's claim. We turn to relevant case law in deciding this issue.

The Wisconsin Supreme Court recognized that the statutes relating to permissible counterclaims in eviction proceedings have been "narrowly construed." See *Scalzo v. Anderson*, 87 Wis.2d 834, 848, 275 N.W.2d 894, 899 (1979). The court has held that only the following limited issues are allowed in an eviction action: (1) whether a landlord-tenant relationship exists between the parties; (2) whether the tenant is holding over; (3) whether the plaintiff gave proper notice; (4) whether the landlord has proper title to the premises; and (5) whether the landlord is attempting a retaliatory eviction. See *id.* (citing *Clark Oil & Refining Corp. v. Leistikow*, 69 Wis.2d 226, 234-35, 230 N.W.2d 736, 742 (1975)). These limitations ensure that the ultimate issue in an eviction proceeding is to determine who has the right to possession of the premises. See *Scalzo*, 87 Wis.2d at 848, 275 N.W.2d at 899.

Furthermore, under ch. 799, STATS., an eviction action is intended to be summary in nature and therefore may utilize a "speeded up" forum. See *Scalzo*, 87 Wis.2d at 847, 275 N.W.2d at 899 (quoted source omitted). The legislature also recognized that in these cases there is "seldom an issue for trial." See *id.* The *Scalzo* court reasoned that "counterclaims in an eviction action are not recognizable if they are based on matters extrinsic or collateral to the lease and not

arising from the same transaction or occurrence that is the subject matter of the plaintiff's eviction suit, namely, the lease and the holdover of possession." *See id.* at 848, 275 N.W.2d at 899. The court then concluded that counterclaims relating to oral agreements to pay increased rent, oral guarantees, unfair trade practices, and interference with quiet enjoyment of the premises were properly dismissed as extrinsic to the lease. *See id.* at 849-50, 275 N.W.2d at 900.

If, as the circuit court concluded, Faulkner's counterclaims are outside the scope of those permissible in an eviction action, she is not without redress. In *Rossov Oil Co., Inc. v. Heiman*, 72 Wis.2d 696, 706, 242 N.W.2d 176, 181-82 (1976), the supreme court noted that "any claims arising out of such collateral arrangements ... are clearly severable and are to be treated in separate non-summary proceedings."

In the instant case, Faulkner asserted as an affirmative defense that "[Norman] is not the rightful owner of [the] property." Norman responded to this defense by submitting the quitclaim deed executed March 1, 1996. The remaining defenses and counterclaims all relate to Faulkner's allegations that the quitclaim deed was an invalid conveyance and are extrinsic to the eviction proceeding. We conclude that those claims are "co-existent [and] collateral to the lease" and may be litigated in separate, nonsummary proceedings. *See id.*

As further support for this conclusion, we note that the issue of title is not contested as between Faulkner and Norman, but rather requires a determination of whether title is rightfully held by Norman *or by Merriman's estate*. When Norman produced the quitclaim deed, he refuted Faulkner's attack on his right to possession. The summary nature of eviction proceedings precludes the consideration of issues beyond the right to possession. *See Burmeister v.*

Vondrachek, 86 Wis.2d 650, 662, 273 N.W.2d 242, 247 (1979). Based on the facts here presented and the summary nature of an eviction action, we conclude that the circuit court was correct in dismissing Faulkner’s claims as collateral to the eviction proceeding.¹

Faulkner also claims that she does not have a landlord-tenant relationship with Norman. She attempts to argue that this allegation now allows her to challenge Norman’s deed in this action. However, Faulkner’s legal relationship to Norman in the eviction action is predicated on the fact that she was a “tenant at will” while Merriman was alive. According to § 704.01(5), STATS., any tenant “holding with the permission of the tenant’s landlord without a valid lease and under circumstances not involving periodic payment of rent” is a tenant at will. The law then provides that “[t]he remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.” Section 704.09(4), STATS. Merriman was the original landlord and could have charged Faulkner rent or evicted her had she so desired. These remedies are preserved through the quitclaim deed transaction and are now available to Norman.

In sum, we affirm the order of the circuit court, concluding that Faulkner’s affirmative defenses and counterclaims were properly dismissed as collateral to the eviction proceeding.

By the Court.—Order affirmed.

¹ Additionally, Faulkner’s counterclaims and affirmative defenses all relate to events which surround the conveyance of the quitclaim deed, not to the issue of whether Norman, as owner of the subject property, has the legal right to evict her for nonpayment of rent.

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

