COURT OF APPEALS
DECISION
DATED AND FILED

November 24, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0046

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

JEANNETTE I. HADDIX,

PLAINTIFF-RESPONDENT,

V.

ELOISE LUCKETT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Judge. *Affirmed.*

FINE, J. Eloise Luckett appeals from the trial court's refusal to grant her relief under § 806.07, STATS., from a judgment entered October 9, 1996, for a new trial, and for frivolous-action fees under § 814.025, STATS. The case began as a simple replevin action brought by Jeannette Haddix to, as recounted by the trial court in the course of its oral decision denying Luckett's post-judgment motions, "get her [deceased] sister's property out of [that] deceased sister's

home." Luckett had gained possession of the property after the death of Haddix's sister. Luckett apparently never appealed from the October 9, 1996, judgment in favor of Haddix.

In support of her motion for relief under § 806.07, STATS., Luckett argued that there was "no evidence that [Haddix] ha[d] any relationship to the deceased," and that Haddix allegedly told police officers that she was the sister-in-law of the man with whom her sister had been living. In denying Luckett's motion, the trial court noted that Haddix testified without contradiction that she was the deceased woman's sister, and that what Haddix may or may not have told the police was not relevant to the replevin action. Accordingly, the trial court denied Luckett's § 806.07 motion, her motion for a new trial, as well as her motion for frivolous-action fees.

Although Luckett filed a forty-nine page brief in chief and a thirteen-page brief in reply to a two-page *pro se* brief submitted by Haddix, Luckett's submissions to this court argue matters that are either irrelevant or were presented or should have been presented to the trial court at the replevin trial. As to those matters that were not presented at replevin trial, Luckett has not explained why they were not.

A trial court's decision to grant or deny relief under § 806.07, STATS., is vested in that court's discretion—that is, the trial court's decision will not be set aside unless it is based on an erroneous view of the law or an unreasonable view of the facts. ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis.2d 536, 541–542, 363 N.W.2d 419, 422 (1985). Luckett has not demonstrated that the trial court erroneously exercised its discretion. Whether a party has done something that requires the imposition of frivolous-action fees under § 814.025, STATS., is a

matter that we review *de novo*. ***Stern v. Thompson & Coates, Ltd.***, 185 Wis.2d 220, 236, 517 N.W.2d 658, 664 (1994). Luckett's argument that she is entitled to fees under § 814.025 is wholly without merit; if anything, as the trial court cogently recognized, Luckett, not Haddix, has advanced largely irrelevant and vexatious arguments. On our independent review, we agree with the trial court that Luckett is not entitled to fees under § 814.025.[1]

By the Court.—Order affirmed.

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

[1] Haddix did not ask the trial court to award her fees under § 814.025, STATS. Moreover, Haddix has not asked us to award her frivolous-appeal costs under RULE 809.25(3), STATS.