

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 98-2954

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

THOMAS DICKMAN AND ROBIN DICKMAN,

PLAINTIFFS-RESPONDENTS,

V.

DALE W. JOHNSON AND PATRICIA E. JOHNSON,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for St. Croix County:
CONRAD A. RICHARDS, Judge. *Appeal dismissed.*

CANE, C.J. Dale and Patricia Johnson appeal pro se from a small claims default judgment entered in favor of Thomas and Robin Dickman. On September 24, 1998, the Dickmans filed a small claims summons and complaint against the Johnsons. The pleadings scheduled the return date for October 6, 1998, at 1 p.m. and required the Johnsons' appearance. The pleadings also notified them that if they failed to appear, a judgment may be entered in favor of the

Dickmans. Before the return date, the Johnsons filed an answer and counterclaim. Essentially, the Johnsons denied the Dickmans' allegations and contended the complaint was frivolous. When the Johnsons failed to appear on the return date, the circuit court granted a default judgment for \$5,000 plus costs in the Dickmans' favor and dismissed the counterclaim.

Notably, the Johnsons did not move the circuit court to reopen the default judgment. Instead, they filed an appeal to this court arguing that the default judgment should not have been granted, in addition to arguing the merits of the action. Section 799.29(1), STATS., however, bars an appeal from a small claims default judgment. This section provides, "There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown." Within six months after entry of judgment, the Johnsons must first file a motion with the circuit court to reopen the default judgment. Section 799.29(1)(c), STATS. The only permitted appeal is then from a court's order granting or denying a motion to reopen a default judgment. *General Tele. Co. v. A Corp.*, 147 Wis.2d 461, 465-66, 433 N.W.2d 264, 265 (Ct. App. 1988). Because this court has no jurisdiction to review a small claims default judgment, the appeal must be dismissed. *See id.*

By the Court.—Appeal dismissed.

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

