COURT OF APPEALS
DECISION
DATED AND FILED

October 12, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP515-FT **Cir. Ct. No. 2015CV42**

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

GRETCHEN PAAPE AND RICHARD PAAPE,

PLAINTIFFS-RESPONDENTS,

V.

AL GREFSHEIM AND LINDA GREFSHEIM, D/B/A BAY VIEW RESORT,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Rusk County: STEVEN P. ANDERSON, Judge. *Reversed and cause remanded with directions*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Al and Linda Grefsheim, d/b/a Bay View Resort, appeal that part of a judgment awarding Gretchen and Richard Paape $9,365.23 in

attorney fees.[1] The Grefsheims argue the circuit court erred by awarding reasonable attorney fees under WIS. STAT. § 814.045, rather than the limited fees available under WIS. STAT. § 814.04(1). We agree. Therefore, we reverse that part of the judgment and remand the matter to the circuit court with directions to award $300 in attorney fees consistent with § 814.04(1).

BACKGROUND

¶2 The Grefsheims own Bay View Resort, a mobile home park in Rusk County. In May 2014, the Paapes leased a lot from the Grefsheims, concurrent with the Paapes' purchase of a mobile home that was on the lot. The one-year lease described Bay View Resort as a "seasonal mobile home park, used for recreational purposes." The lease required the mobile homes to be "well maintained, clean, safe and free of debris," and further noted that "[w]ater is turned off for the season on October 15th."

¶3 During the course of the lease, the Grefsheims objected to the Paapes' placement of a plastic storage cabinet and a swing set on their lot. The Grefsheims also objected to the Paapes' burn pit, insisting that all burn pits be portable. In a January 2015 letter, the Grefsheims notified the Paapes that the lease would not be renewed because the resort did "not meet your expectations" and the Paapes "expect[ed] more than what we offer."

¶4 The Paapes filed the underlying suit requesting injunctive relief to enjoin the Grefsheims from refusing to renew the lease or from otherwise cutting

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

off electricity to the mobile home during the off-season months. The Paapes also moved for an award of actual attorney fees. After a trial to the court, the circuit court enjoined the Grefsheims from refusing to renew the annual lease unless the Grefsheims could prove one of the conditions for eviction or nonrenewal delineated in WIS. STAT. § 710.15, which governs manufactured and mobile home community regulations. The circuit court further enjoined the Grefsheims from including an amendment in the renewal lease allowing electricity to be turned off for any period of time, that "substantially effects the ability to use the mobile home" unless the mobile home owners specifically agree to that restriction. The court also awarded the Paapes $9,365.23 in reasonable attorney fees under WIS. STAT. § 814.045. This appeal follows.

DISCUSSION

¶5 On appeal, the Grefsheims challenge only the attorney fee award; therefore, we do not review that part of the judgment granting injunctive relief. Wisconsin follows the "American Rule," under which parties to litigation are generally responsible for their own attorney fees incurred with respect to the litigation. ***Kremers-Urban Co. v. American Emp'rs Ins. Co.***, 119 Wis. 2d 722, 744, 351 N.W.2d 156 (1984). "Attorney fees are generally not awarded to the prevailing party in the absence of a statute or enforceable contract providing therefor." ***Elliott v. Donahue***, 169 Wis. 2d 310, 323, 485 N.W.2d 403 (1992). Here, the parties do not dispute that attorney fees were available pursuant to statute. Rather, they dispute whether attorney fees should have been awarded under WIS. STAT. § 814.04(1) or WIS. STAT. § 814.045.

¶6 Interpretation and application of a statute to undisputed facts presents a question of law we review de novo. ***McNeil v. Hansen***, 2007 WI 56,

¶7, 300 Wis. 2d 358, 731 N.W.2d 273. Statutory interpretation begins with the statute's language. ***Id.***, ¶9. If the meaning of the statute is plain, we ordinarily stop the inquiry. ***Id.*** Statutes must be interpreted in context, and reasonably, to avoid absurd results. ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. Further, a court must seek to avoid surplusage by giving effect to every word in the statute. ***Id.*** Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history. ***Id.***

¶7 The Grefsheims argue the Paapes were limited to the attorney fees available under WIS. STAT. § 814.04, which provides, in relevant part:

> **Items of costs**. Except as provided in ss. 93.20, 100.195 (5m) (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:
>
> (1) ATTORNEY FEES. (a) When the amount recovered or the value of the property involved is greater than the maximum amount specified in s. 799.01 (1) (d), attorney fees shall be $500; when it is equal to or less than the maximum amount specified in s. 799.01 (1) (d), but is $1,000 or more, attorney fees shall be $300; when it is less than $1,000, attorney fees shall be $100. *In all other cases in which there is no amount recovered or that do not involve property, attorney fees shall be $300.*

(Emphasis added.) Thus, under the plain language of the statute, except where costs are otherwise governed under the delineated statutes, § 814.04 gives the court discretion to award "costs" to a successful party. These "costs" include only limited attorney fees, depending, in part, on the amount of the underlying claims. WIS. STAT. § 814.04(1). As emphasized above, "[i]n all other cases in which there

is no amount recovered or that do not involve property, attorney fees shall be $300." ***Id.***

¶8 The Paapes, however, contend they are entitled to reasonable attorney fees under WIS. STAT. § 814.045, entitled "Attorney fees; reasonableness." As relevant, that statute provides:

> (1) Subject to sub. (2), *in any action involving the award of attorney fees that are not governed by s. 814.04 (1)* or involving a dispute over the reasonableness of attorney fees, the court shall, in determining whether to award attorney fees and in determining whether the attorney fees are reasonable, consider all of the following [fifteen factors].

(Emphasis added.) In turn, WIS. STAT. § 814.045(2) provides:

> (a) In any action in which compensatory damages are awarded, the court shall presume that reasonable attorney fees do not exceed 3 times the amount of the compensatory damages awarded but this presumption may be overcome if the court determines, after considering the factors set forth in sub. (1), that a greater amount is reasonable.
>
> (b) In any action in which compensatory damages are not awarded but injunctive or declaratory relief, rescission or modification, or specific performance is ordered, reasonable attorney fees shall be determined according to the factors set forth in sub. (1).

¶9 The Paapes contend that the "Subject to sub (2)" language of WIS. STAT. § 814.045(1) creates a blanket exception to the limited fees available under WIS. STAT. § 814.04(1) where, as here, only injunctive or declaratory relief is ordered. We are not persuaded, as this ignores the language exempting from § 814.045 "*any action involving the award of attorney fees that are not governed by s. 814.04 (1)*." (Emphasis added.) Here, the action was governed by § 814.04(1) because the attorney fees did not fall under any of the delineated statutory exceptions. The Paapes asserted below that under the Grefsheims'

interpretation of the statutes, "you would never get reasonable attorneys fees for an injunction or a declaratory relief," thus rendering § 814.045(2) surplusage. At least two of the delineated statutes exempted from § 814.04(1), however, specifically permit reasonable attorney fees where injunctive or declaratory relief is sought. *See* WIS. STAT. § 100.30(5m) (governing private causes of action for injury or threat of injury as a result of the sale or purchase of motor vehicle fuel under the unfair sales act) and WIS. STAT. §106.50(6m)(a) (governing civil actions for fair housing law violations).

¶10 The Paapes nevertheless contend we may affirm the circuit court on alternative grounds. Specifically, the Paapes contend that the Grefsheims' intent to cut off electricity to the mobile home constituted a constructive eviction in retaliation for the Paapes' stated intention to use the premises throughout the winter months, thus entitling the Paapes to reasonable attorney fees under WIS. ADMIN. CODE § ATCP 134.09(5). We disagree.

¶11 That chapter of the administrative code governs residential rental practices, and the introductory note of WIS. ADMIN. CODE § ATCP 134 provides that a "person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under [WIS. STAT. § 100.20(5)], and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees." WISCONSIN ADMIN. CODE § ATCP 134.09(5), entitled "Retaliatory Eviction," provides:

> No landlord shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the *dwelling unit*, in retaliation against a tenant because the tenant has:

> (a) Reported a violation of this chapter or a building or housing code to any governmental authority, or filed suit alleging such violation; or
>
> (b) Joined or attempted to organize a tenant's union or association; or
>
> (c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.

(Emphasis added.)

¶12 A dwelling unit, as that term is used in WIS. ADMIN. CODE § ATCP 134.09, is defined as "a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a manufactured home as defined in s. ATCP 125.01(1s) or site as defined in s. ATCP 125.01(7)." WIS. ADMIN. CODE § ATCP 134.02(2). Here, the Paapes leased the manufactured home site, but owned the manufactured home. "Manufactured home site" under the code "means any plot of land that is rented or offered for rental for the accommodation of a manufactured home used for residential purposes. It does not include a plot of land rented for the accommodation of a manufactured home that is … [o]ccupied on a strictly seasonal basis." WIS. ADMIN. CODE § ATCP 125.01(7). Since the Paapes' lease was for the site, and the site was seasonal, it does not constitute a "dwelling unit" under WIS. ADMIN. CODE § ATCP 134.09(5).

¶13 Even were we to assume the code applied, the circuit court determined that the attempted non-renewal of the lease was not in retaliation for any lawful act allowed by the statutes but, rather, was a reflection of the Grefsheims being "very particular landlords" with "very particular expectations about the use of the resort." The Paapes argue the circuit court failed to determine whether the Grefsheims' threat to turn off electricity during the winter months was retaliatory in nature. While the circuit court concluded that turning off the electricity in the winter would constitute a constructive eviction, the court noted

that the Grefsheims did not want people staying at the resort when they were not present and found that rather than being retaliatory, the Grefsheims actions were based upon their "realization that Mr. Paape [intended] to use his property during that period of time." Thus, whether the attempted constructive eviction was by non-renewal of the lease or by shutting off the electricity, the record does not support the Paapes' claim that the Grefsheims' actions were retaliatory.

¶14 Because the Paapes' action is governed by WIS. STAT. § 814.04(1), we will reverse that part of the judgment awarding reasonable attorney fees under § 814.045 and remand the matter to the circuit court with directions to award $300 attorney fees consistent with § 814.04(1).

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

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.