

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 22, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1359

Cir. Ct. No. 2015SC4367

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

MILWAUKEE CITY HOUSING AUTHORITY,

PLAINTIFF-RESPONDENT,

V.

VA'NA BARKI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Va'Na Barki, *pro se*, appeals a judgment of the circuit court dismissing her counterclaim against the Milwaukee City Housing Authority. We affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

BACKGROUND

¶2 On February 18, 2015, the Milwaukee City Housing Authority (MCHA) commenced an eviction action against Barki alleging that Barki was delinquent in her payment of rent. The complaint alleged that Barki owed \$890.00 in delinquent rent payments for the year 2014. Barki counterclaimed, alleging that the MCHA failed to timely calculate her rent adjustments, denied her the opportunity to have a grievance hearing, and caused emotional distress. Barki also requested that the small claims court enter judgment against the MCHA “in an amount to be determined for December 2012 rent credit.”

¶3 The small claims court held multiple hearings on the matter. During those hearings, Barki presented emails and other documentation indicating that she attempted to schedule grievance hearings regarding her rent adjustment rates and sent numerous emails to MCHA representatives to resolve her rent issue. Ultimately, the small claims court found that the MCHA made multiple calculation errors over the ten-month period in which the disputed amount accrued, failed to provide Barki with the appropriate rental adjustment notices, returned payments that Barki actually made, and failed to address the inaccuracies and grievances with Barki. The small claims court dismissed MCHA’s eviction action against Barki.

¶4 The small claims court also dismissed Barki’s counterclaim, stating that the MCHA’s eviction action stemmed from delinquent payments accrued over a ten-month period in 2014. Thus, Barki’s rental credit from December 2012 was not at issue. The court also noted that Barki did not specify an amount of damages in her counterclaim, did not provide the court with any evidence as to what she felt

was appropriate, and was not entitled to emotional damages stemming from an eviction action. This appeal follows.

DISCUSSION

¶5 A small claims court’s decision to dismiss an action is discretionary and will not be disturbed absent an erroneous exercise of discretion. *See Haselow v. Gauthier*, 212 Wis. 2d 580, 590-91, 569 N.W.2d 97 (Ct. App. 1997). We will sustain a discretionary act if the small claims court examined the relevant facts, applied the proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *See Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶6 Barki raises multiple issues as to her counterclaim. She contends: (1) the small claims court should have granted her counterclaim requesting damages from emotional distress; (2) she is entitled to punitive damages; and (3) she had a constitutional due process right to a pre-eviction hearing.

¶7 As to Barki’s claims for damages, we agree with the small claims court that Barki has not proved that she is entitled to any form of monetary damages. A “plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff.” WIS. STAT. § 895.043(3) (2013-14).

[A] person acts in an intentional disregard of the rights of the plaintiff if the person acts with a purpose to disregard the plaintiff’s rights, or is aware that his or her acts are substantially certain to result in the plaintiff’s rights being disregarded. This will require that an act or course of conduct be deliberate. Additionally, the act or conduct must actually disregard the rights of the plaintiff, whether it be a right to safety, health or life, a property right, or some

other right. Finally, the act or conduct must be sufficiently aggravated to warrant punishment by punitive damages.

Strenke v. Hogner, 2005 WI 25, ¶38, 279 Wis. 2d 52, 694 N.W.2d 296. A plaintiff must prove by clear and convincing evidence that the defendant was aware that his conduct was substantially certain to result in the plaintiff's rights being disregarded. See *Wischer v. Mitsubishi Heavy Indus. Am., Inc.*, 2005 WI 26, ¶¶8, 34, 279 Wis. 2d 4, 694 N.W.2d 320. Whether there is sufficient evidence to support an award of punitive damages is a question of law we review *de novo*. See *id.*, ¶¶31-32.

¶8 To the extent Barki argues she is entitled to damages due to emotional distress, we interpret Barki's argument as a claim for intentional infliction of emotional distress. Such a claim requires a showing of four elements: (1) the defendant intended to cause emotional distress by his or her conduct; (2) that the conduct was extreme and outrageous; (3) that the "conduct was a cause-in-fact of the plaintiff's emotional distress; and (4) that the plaintiff suffered an extreme disabling response to the defendant's conduct." *Rabideau v. City of Racine*, 2001 WI 57, ¶33, 243 Wis. 2d 486, 627 N.W.2d 795.

¶9 The record does not support Barki's claim for either punitive damages or compensatory damages stemming from intentional infliction of emotional distress. There is no evidence in the record that the MCHA intended to cause any sort of harm to Barki, but rather, as the small claims court noted, simply acted incompetently. Barki has not presented any evidence to the contrary, nor has Barki suggested an amount that she feels would satisfactorily compensate her. Moreover, the record demonstrates a dispute between the parties as to whether Barki waived her right to a grievance hearing when she was represented by a Legal Aid attorney. Accordingly, the small claims court properly considered the

evidence—or lack thereof—and appropriately exercised its discretion in denying any form of monetary damages to Barki.

¶10 We do not address Barki’s argument that she had a constitutional due process right to a grievance hearing. Barki raises the constitutional issue for the first time on appeal. Generally, “issues not raised or considered in the [small claims] court will not be considered for the first time on appeal.” *See Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980).

¶11 For the foregoing reasons, we affirm the small claims court.

By the Court.—Judgment affirmed.

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

