

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 25, 2005**

Cornelia G. Clark  
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. 2004AP3030**

**Cir. Ct. No. 2004SC672**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**VERLIN ANDERSON,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CURT FORDE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Grant County:  
GEORGE S. CURRY, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.<sup>1</sup> Curt Forde appeals a money judgment of the circuit court in favor of Verlin Anderson. Forde argues that Anderson's small

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

claims action is barred by the six-year statute of limitations found in WIS. STAT. § 893.43 because it was filed six years and one day after the action accrued. We conclude that Anderson's small claims action was timely filed. We therefore affirm the circuit court's judgment.<sup>2</sup>

### ***Background***

¶2 Verlin Anderson was in the business of doing custom baling. He had been in that business for twenty-five years. Sometime in early August 1998, Curt Forde entered into a verbal contract with Anderson for Anderson to bale hay on property Forde rented. There is some dispute as to when exactly the baling was done, but, according to Anderson, he baled the hay on August 14 and 16, 1998. Forde believed the baling was completed on either August 9 or August 16. Anderson also had earlier contracted with Forde to bale straw on someone else's property. That baling had been completed on July 21, 1998.

¶3 Anderson testified that it was his practice to keep notes on his baling every day and that he billed his customers monthly, usually at the end of the month. Exhibit 1, introduced at the motion hearing, contains two documents. The first is a ledger sheet kept by Anderson showing the dates he baled, the number of bales, and the amount owed by Forde; the other is a statement to Curt Forde showing the dates of service, the number of bales and cost per bale, and the amounts due for both the straw baling and the hay baling. Forde testified he

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<sup>2</sup> In his statement of the issues, Forde also claims that Anderson's case should have been dismissed because Anderson failed to appear at the first return date of the action and that the circuit court misstated the facts in rendering a decision. Forde has failed to develop either of these arguments, and we will not address them. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

recalled receiving bills from Anderson, but that he did not recall when. On questioning by the court, Forde said “[g]uessing, I would say a month or two” after the baling was completed. Anderson sent several bills to Forde, the first bill being sent shortly after completion of the hay-baling job. Forde did admit that Anderson made more than one demand for payment. Anderson said he couldn’t recall exactly how long he had billed Forde, but testified that “it was quite a few years.” Anderson also testified that he had no idea when they actually stopped billing Forde, but that “after a while, ... you have to quit.” Anderson testified that he even had a conversation with Forde about when Forde was going to pay because Forde “owed us a lot of money.” Forde testified he told Anderson he was unable to pay him. Payment was never made.

¶4 Anderson filed a small claims action in circuit court on August 17, 2004. At the return date on this action, Anderson did not appear. Forde appeared and moved to dismiss on the ground that the action was filed one day after the six-year statute of limitations in WIS. STAT. § 893.43 had run. The court scheduled a hearing on that motion.

¶5 At the motion hearing, the court heard testimony from both Anderson and Forde. The court found that the cause of action did not accrue, as Forde suggested, when the baling was completed on August 16. Rather, the court found the cause of action accrued when Forde did not make payment, which the court figured would have been probably thirty to sixty days after the August 16 date. The court therefore found that the statute of limitations had not run at the time the action was filed and denied Forde’s motion to dismiss. The matter was then scheduled for trial.

¶6 Trial was held. Much the same evidence was presented at the trial as was presented at the motion hearing. At the conclusion of trial, the court found that Forde had contracted with Anderson on two occasions, once to bale the straw and then to bale the hay; that Anderson performed the services that were contracted for; that there was one bill sent out, for both the straw and hay baling, after the hay baling was done on August 16, 1998; that the cause of action accrued when Anderson billed Forde for the services Anderson performed which would have been after the work was completed on August 16; and that Forde never paid Anderson. The court awarded judgment in favor of Anderson. Forde appealed.

### *Discussion*

¶7 Forde argues that Anderson's small claims action was filed after the statute of limitations had expired. There is no dispute between the parties that the statute of limitations applicable here is WIS. STAT. § 893.43. That statute provides:

An action upon any contract, obligation or liability, express or implied, including an action to recover fees for professional services, except those mentioned in s. 893.40, shall be commenced within 6 years *after the cause of action accrues* or be barred.

(Emphasis added.)

¶8 The first question that must be answered, then, is when the cause of action accrued. In Wisconsin, longstanding precedent holds that, in an action for breach of contract, “the cause of action accrues and the statute of limitations begins to run *from the moment the breach occurs.*” *CLL Assocs. Ltd. P’ship v. Arrowhead Pac. Corp.*, 174 Wis. 2d 604, 609, 497 N.W.2d 115 (1993) (citations omitted; emphasis added).

¶9 The question then becomes when the actual breach of the contract occurred. Forde claims the breach occurred on August 16, 1998, because, as he argues in his brief, “[t]he baling of hay creates an obligation or cause of action not the sending out of the bill at some later date” and that the contract was executed “upon completion of the baling work.” Under Forde’s interpretation, this would have meant that Anderson would have had to have driven to Forde’s farm to deliver bills three separate times, once on July 21 when he baled the straw, once on August 14 when he baled part of the hay crop, and again on August 16 when he finished baling, to collect the money owed him. This is not the way a normal business operates. According to Anderson, his normal practice was to bill his customers at the end of the month, which could have been no earlier than August 30, 1998.

¶10 The circuit court found that the contract was breached when Anderson billed Forde and Forde failed to make payment on the bill, which would have been no earlier than August 30, 1998. On questioning by the court, Forde admitted that the first bill he received from Anderson would have been “a month or two” after the baling was completed. Forde also acknowledged that he had received several bills from Anderson.

¶11 We agree with the circuit court that the contract was breached when Anderson billed Forde and Forde failed to make payment. Anderson completed his end of the contract when he finished the baling. Anderson then billed Forde for the services that Anderson rendered. Forde breached the contract when he failed to make payment on the bill, which would have been no earlier than August 30, 1998. Anderson’s small claims action, filed on August 17, 2004, was filed before the six-year statute of limitations had run. We therefore affirm the circuit court’s judgment.

*By the Court.*—Judgment affirmed.

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

