

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 10, 2006**

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. 2005AP2955**

**Cir. Ct. No. 2005CV84**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**DARREN EDINGER,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ROBERT E. HAZELQUIST,**

**DEFENDANT-APPELLANT,**

**DOROTHEA C. CLOUGH,**

**DEFENDANT.**

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APPEAL from a judgment of the circuit court for Oneida County:  
ROBERT E. KINNEY, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 CANE, C.J. Robert Hazelquist appeals a summary judgment holding the transfer of his house to his niece was a fraudulent transfer. Hazelquist

argues there are material facts in dispute that make summary judgment inappropriate. We agree, and therefore, the judgment is reversed and cause remanded.

### **BACKGROUND**

¶2 Darren Edinger filed a civil lawsuit in North Dakota against Hazelquist for damages stemming from a 1983 sexual assault in North Dakota. Hazelquist failed to answer the complaint and, as a result, on August 16, 2004, the North Dakota court entered a default judgment against him. On December 9, 2004, the court entered a judgment of \$100,000 against Hazelquist.

¶3 On March 4, 2005, Edinger filed an action in Wisconsin to enforce his judgment against Hazelquist. However, on July 22, 2004, before the default judgment in North Dakota, Hazelquist transferred a portion of his most valuable asset, his house, to his niece Dorothea Clough through a quit claim deed. Hazelquist and Clough both swore in affidavits that the property was transferred in consideration for the services Clough provided Hazelquist over the last forty years. Edinger moved for summary judgment, arguing the transfer was fraudulent. The court granted Edinger's motion for summary judgment holding the transfer was fraudulent because Edinger's claim arose before the transfer was made, the transfer was undertaken without receiving a reasonably equivalent value in exchange for the transfer, and Hazelquist became insolvent as a result of the transfer.

### **DISCUSSION**

¶4 The grant or denial of a motion for summary judgment is a matter of law this court reviews de novo. *Torgerson v. Journal/Sentinel Inc.*, 210 Wis. 2d

524, 536, 563 N.W.2d 472 (1997). We review summary judgment without deference to the trial court, but benefiting from its analyses. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Summary judgment is appropriate if “the depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2).<sup>1</sup> “An issue of fact is genuine if a reasonable jury could find for the non-moving party. A material fact is such fact that would influence the outcome of the controversy.” *Marine Bank v. Taz’s Trucking, Inc.*, 2005 WI 65, ¶12, 281 Wis. 2d 275, 697 N.W.2d 90.

¶5 WISCONSIN STAT. § 242.05(1) governs fraudulent transfers and has three requirements. First, the creditor’s claim must arise before the alleged fraudulent transfer occurred. *Id.* Second, the value received is not reasonably equivalent to the value of the property transferred. *Id.* Third, the debtor becomes insolvent as a result of the transfer. *Id.* Without meeting these three requirements, the transfer is not fraudulent.

¶6 Hazelquist argues there are two genuine issues of material fact under WIS. STAT. § 242.05(1). Specifically, he asserts the two issues are whether the value of Clough’s services is reasonably equivalent to the value of the property transferred, and whether Hazelquist remained solvent after the transfer of the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

property.<sup>2</sup> We agree there are genuine issues of material fact as to these two issues.

¶7 A material fact is in dispute because both Hazelquist and Clough swore in affidavits the value of services Clough provided is reasonably equivalent to the value of the property Hazelquist transferred. Edinger argues *Badger State Bank v. Taylor*, 2004 WI 128, 276 Wis. 2d 312, 688 N.W.2d 439, is dispositive on this issue. However, *Badger State* is distinguishable from the present case. In *Badger State*, a bank established a fraudulent transfer occurred where the debtor received no direct benefit from forgiving accounts receivable, which were collateral for the bank's business loans. Instead of the debtor receiving the benefit of forgiving the accounts receivable, a third party received those benefits. Here, Hazelquist, the debtor, claims he received a direct benefit from Clough in exchange for the transfer. Regardless of whose perspective this transaction is viewed from, whether Hazelquist received a benefit for the transfer and the value of Clough's services are questions of fact that influence the outcome of this case. Therefore, there are material facts in dispute.

¶8 Additionally, the affidavits also create a disputed material fact as to whether Hazelquist became insolvent as a result of the transfer. Hazelquist claims he still has \$1,800 a month in income and is therefore not insolvent.<sup>3</sup> Whether

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<sup>2</sup> WISCONSIN STAT. § 242.05(1) also requires that Edinger's claim must have arisen before the transfer of the property. Hazelquist does not argue he transferred the property before the North Dakota court entered judgment against him. Therefore, this is not an issue before us and we will not address whether this requirement has been met.

<sup>3</sup> Edinger asserts his judgment "looming" in North Dakota is a debt for the purposes of determining insolvency under WIS. STAT. § 242.02(2). However, Edinger cites no authority for this assertion that a "looming" judgment is a debt under WIS. STAT. § 242.02(2).

Hazelquist is insolvent is another question of fact that influences the outcome of this case. Because there are two material facts in dispute, summary judgment was inappropriate. Therefore, the judgment of the circuit court is reversed and remanded.

*By the Court.*—Judgment reversed and cause remanded.

Not recommended for publication in the official reports.

