

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 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. 2005AP2047

Cir. Ct. No. 2005CV103

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

FIDELIS OMEGBU,

PLAINTIFF-APPELLANT,

v.

**HAROLD TURNER,
HATS, INC. AND
CONTINENTAL CASUALTY COMPANY,**

DEFENDANTS-RESPONDENTS,

**TRINITY MISSIONARY BAPTIST CHURCH,
STATE FARM FIRE AND CASUALTY COMPANIES,
AND AMERICAN HOME ASSURANCE COMPANY,**

DEFENDANTS.

APPEAL from orders of the circuit court for Milwaukee County:
MICHAEL D. GUOLEE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 CURLEY, J. Fidelis Omegbu appeals the dismissal of Pastor Harold Turner, HATS, Inc., and Continental Casualty Insurance Company (Continental), in his suit seeking damages for a variety of claims. This case had its genesis in an eviction action started by Omegbu's former landlord for office space rented to Omegbu and another. Omegbu named Turner, HATS, Inc., and Continental, along with Trinity Missionary Baptist Church (Trinity), State Farm Fire & Casualty Company (State Farm), and American Home Assurance Company (American Home), as third-party defendants in the eviction action. After all of the third-party defendants were dismissed in the eviction action, Omegbu brought a separate suit against Turner, Trinity, HATS, Inc., State Farm, Continental, and American Home. Like his original third-party complaint, Omegbu alleged various causes of action against the parties. The trial court granted Turner, HATS, Inc., Continental and American Home's dismissal motions.¹ Although Omegbu argues a great many issues, essentially his arguments can be condensed into one—that the trial court should not have dismissed Turner, HATS, Inc., and Continental because a complete copy of his deposition testimony, which he argues contains statements that he believes contradict the contentions of the dismissed defendants, was not admitted into evidence as only excerpts of it were presented to the court.² He argues that this practice is illegal.

¶2 Because the issue of the admissibility of the deposition testimony was never raised before the trial court, we decline to address it here. Issues not

¹ Two causes of action remain against Trinity Missionary Baptist Church and its insurer, State Farm Fire & Casualty Company.

² American Home Assurance Company is not a party to this appeal because Omegbu failed to file a timely notice of appeal.

raised or considered in the trial court will not be considered for the first time on appeal. *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980). Consequently, we affirm.

I. BACKGROUND.

¶3 In early February 2003, Formula Four started a small claims eviction action against Omegbu for a commercial office rented to Omegbu and Teri Campbell, a State Farm Insurance agent.³ Eventually, the trial court granted the eviction and issued a writ of restitution. This resulted in Omegbu's property being removed and placed in storage. However, because Omegbu had filed an answer, the case remained active, and after Omegbu filed a seventeen-page "supplemental answer and counterclaim," in which he added Pastor Turner, HATS, Inc., Trinity, Continental, American Home, and State Farm, the matter was transferred to the large claims court.

¶4 Omegbu's complaint suggests that the reasons for his suit against Pastor Turner, HATS, Inc. (Turner's business), Trinity and State Farm was due to Omegbu's contracting with Turner to build a new church for Trinity and, according to Omegbu, Turner suggested that Omegbu relocate closer to Turner's office. Consequently, Omegbu leased office space from Formula Four, across the hall from an office that Turner leased for HATS, Inc. Additionally, Omegbu contended that State Farm was sued both because it insured Trinity and because State Farm had a duty to inform him that his co-tenant, Campbell, would be closing down her office. Turner, as Trinity's representative, was sued not only

³ Campbell was not named in the eviction action brought against Omegbu.

because of his initial suggestion that Omegbu relocate, but also because he later elected to proceed with the building of a new church with another company. All of the new parties filed an answer.

¶5 As noted, Omegbu commenced this separate suit suing the named parties and several insurance companies. In May 2005, after answers were filed and various motions were heard by the trial court, the trial court dismissed Continental and American Home from the suit, and found Omegbu's suit against American Home to be frivolous and awarded costs. Turner, HATS, Inc. and Trinity filed a summary judgment motion, along with a motion seeking costs because the action was frivolous. At about the same time, State Farm filed a motion entitled declaratory judgment/summary judgment with respect to insurance coverage and later filed a motion seeking the dismissal of a bad faith claim. Omegbu, in response, filed his own summary judgment motion against Turner, HATS, Inc. and Trinity. He also filed a motion seeking sanctions against them and a contempt motion against their attorney. On July 11, 2005, the trial court dismissed Turner and HATS, Inc. from the lawsuit and dismissed most of the claims against Trinity. All of Omegbu's summary judgment/declaratory judgment motions were denied. Omegbu's motions seeking sanctions against the parties and their attorneys were also denied. Trinity remained in the case, as did State Farm as the insurer of Trinity, but the bad faith claims against State Farm were dismissed. The trial court also stated that at the conclusion of the suit, the parties could petition for sanctions against Omegbu under WIS. STAT. §§ 802.05 or 814.025.

¶6 After the trial court signed orders consistent with its earlier oral decisions dismissing Turner and HATS, Inc., and later Continental and American Home, Omegbu filed a notice of appeal. An order from this court dismissed

American Home from Omegbu's appeal because it was not appealed within the ninety-day framework.

¶7 The only parties left in the lawsuit are Trinity and State Farm, and those claims are quite limited. Omegbu appeals the dismissal of Turner, HATS, Inc. and Continental.

II. ANALYSIS.

¶8 Despite Omegbu's rambling briefs, numerous complaints, motions, and orders, all of which occupy a large box, it appears Omegbu seeks to overturn the trial court's dismissal decisions based only on the fact that Omegbu's deposition testimony was not admitted into evidence in its entirety, and instead, the opposing parties chose to submit excerpts of Omegbu's deposition transcript. Omegbu claims this practice is illegal. This challenge was never raised in the trial court. As noted, issues not raised or considered in the trial court will not be considered for the first time on appeal. *Wirth*, 93 Wis. 2d at 443-44. Thus, we decline to address Omegbu's argument. For the reasons stated, we affirm.

By the Court.—Orders affirmed.

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