

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2007

A. John Voelker
Acting 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. 2006AP608

Cir. Ct. No. 2005CV72

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

MARK STEFFES AND BRENDA STEFFES,

PLAINTIFFS-RESPONDENTS,

V.

JOHN STEFFES AND PEGGY STEFFES,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Iowa County:
WILLIAM D. DYKE, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. John Steffes and Peggy Steffes appeal from a money judgment entered by the circuit court in accordance with an arbitration decision. We affirm.

¶2 This action began with a complaint by Mark Steffes and Brenda Steffes against their former farmland tenants, the appellants. They alleged several claims seeking money damages. The lease included an arbitration provision, and the case went to arbitration. The arbitrators' decision, as it concerns this appeal, ordered the defendants to remove from the premises "all of their personal property" by September 15, 2005. The decision ordered the defendants to pay \$100 per day for each day afterward that this provision was not complied with.

¶3 On December 16, 2005, the plaintiffs filed a "motion for separate money judgments." The motion alleged that the defendants had failed to remove all of their property, and sought payment of \$100 per day in accord with the arbitration decision. The defendants moved to dismiss the action, and asserted that all property had been removed, and that the plaintiffs had not provided them with "timely notice" to the contrary. The circuit court held an evidentiary hearing, after which it determined that the defendants had not removed all of their property. It issued the requested judgment for 123 days at \$100 per day.

¶4 The appellants first argue that we should remand this case to the arbitrators for clarification of an alleged ambiguity in their decision. The alleged ambiguity is that the decision fails to specify the items of personal property that must be removed, and therefore the appellants were unable to determine if they had complied with it.

¶5 We reject the argument for two reasons. First, we do not agree that the decision is ambiguous. It said to remove all of their property. While that language creates the potential for a factual dispute to arise later about whether a particular item was theirs, that potential does not make the original decision ambiguous. It is not capable of more than one reasonable interpretation. Second,

there is no indication that the appellants ever asked the circuit court for a remand to the arbitrators, or otherwise raised any issue about the alleged ambiguity of their decision. We usually do not address issues that are raised for the first time on appeal, *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), and we see no reason to do that in this case.

¶6 The appellants next argue that the court’s monetary judgment was an excessive sanction, in light of their substantial compliance with the order to remove the property. This argument fails for several reasons. First, there is again no indication that the appellants argued in circuit court that substantial compliance was sufficient to meet the obligation imposed by the arbitrators. *See id.*

¶7 Furthermore, the foundation of the argument is that sanctions for non-compliance with an arbitration decision should be subject to the same restrictions as remedial sanctions for contempt of court, because the arbitration decision stands in place of a court order. The appellants cite no authority for this proposition. As relevant to this context, “contempt” means disobedience of an order “of a court.” WIS. STAT. § 785.01(1)(b).¹ In this case, it was an arbitrator’s decision, not a court order, that the appellants were found to have disobeyed. In addition, the appellants mischaracterize the court’s decision in this case. The court did not exercise its own judgment to determine what sanction should be imposed. It was the arbitrators who determined the sanction, and the court simply determined whether there had been compliance, and then applied the previously determined sanction.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶8 Finally, the appellants argue that they did not receive proper notice from the plaintiffs that they were believed to be in violation of the arbitration decision. They appear to concede that there is nothing in the decision itself that requires such notice. The argument that they are entitled to notice is again founded in part on the analogy with contempt proceedings, which we have already rejected. The appellants argue that imposing the per-day sanction without notice that they were not complying was a violation of their right to due process. However, they do not develop the due process argument sufficiently to warrant consideration. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Judgment affirmed.

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

