

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 24, 2007**

David R. Schanker  
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. 2007AP12  
STATE OF WISCONSIN**

Cir. Ct. No. 2006SC7931

**IN COURT OF APPEALS  
DISTRICT IV**

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**UNIVERSITY OF WISCONSIN MEDICAL FOUNDATION, INC. D/B/A UW  
HEALTH PHYSICIANS,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JOSHUA B. TURNER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
SARAH B. O'BRIEN, Judge. *Affirmed.*

¶1 VERGERONT, J.<sup>1</sup> In this small claims action, Joshua Turner appeals the judgment entered against him in favor of the University of Wisconsin

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Medical Foundation, Inc. (UW Health) for \$452.57 plus costs and interest for a total of \$644.57. Turner contends that: (1) UW Health failed to prove that the medical bills it sought to collect were reasonable and necessary; (2) UW Health failed to follow the Fair Debt Collection Practices Act and the Wisconsin Consumer Protection Act; and (3) the circuit court did not protect his rights as a person appearing pro se. For the reasons we explain below, we reject each of these contentions and affirm.

¶2 UW Health filed a complaint seeking \$630.13 for medical services allegedly rendered to Turner through September 27, 2005. After the court commissioner determined that Turner owed \$490.78 to UW Health plus costs, Turner demanded a trial de novo before the circuit court.

¶3 At the trial before the circuit court, UW Health presented the testimony of its patient accounts manager. The accounts manager explained an exhibit showing the date and description of services, the provider, the charges, and the adjustments for insurance payments, contractual adjustments with the insurance company, and the amount remaining that was Turner's responsibility. The dates on the exhibit show that the services were rendered in June, July, August, September, and December of 2004 and September of 2005. This exhibit was admitted into evidence as Exhibit 1.

¶4 The accounts manager testified as follows. Exhibit 1 showed that the amounts owed by Turner that had not been paid added up to \$452.57. Monthly statements were generated and sent to Turner showing what was owed at the time of each statement. In addition, because the amounts due remained unpaid, letters were sent notifying Turner that the balance was past due and asking for payment in full. Turner did contact the accounting office regarding the outstanding bills

and as a result of the calls, a payment plan was set up with Turner on June 6, 2006, whereby he was to pay \$30 a month. However, that payment plan was for the existing charges that were still currently in the billing system; it was not for the \$452.57 shown in the exhibit, which had already been written off as a bad debt and turned over to a third-party collection agency. Turner did not make an agreement with respect to paying off that balance.

¶5 Turner testified as follows. He had been trying to resolve his account for quite some time and found the statements very confusing. His general practice is to pay the co-pays, co-insurance, and balances whenever they are presented to him. He was not ignoring the statements of what he owed; rather he had thought he had paid off the balance or he thought the insurance was being resubmitted. When he received a letter in May of 2006 stating that he owed \$600, the letter did not itemize the services for which that payment was requested. He then made an effort to attempt to come to an agreement with the attorney for UW Health, but that was not successful. Turner submitted telephone bills to show his telephone calls to the UW Health accounting office and this was admitted into evidence. Turner questioned whether some of the services itemized in Exhibit 1 were actually performed at all or were necessary, but his testimony on the specific dates and specific charges he was questioning was not clear.

¶6 The circuit court found that UW Health had presented testimony showing the amount owed by Turner and that his defense was essentially confusion, which was not a legally cognizable defense to a debt. The court also found that, although Turner testified he did not receive some of the services, his recollection on that topic was vague. The court noted that he had access to the medical records if he wanted to establish that he did not receive the itemized services on the dates listed. The court determined that his testimony did not

provide a basis for doubting the regularity of Exhibit 1 and found that he owed \$452.57 for medical services.

¶7 We first address Turner's contention that UW Health did not prove that the \$452.57 was for medical services that were reasonable and necessary. This is a challenge to the court's findings of fact. When we review the findings of fact made by a court sitting as trier of fact, we accept those findings unless they are clearly erroneous. WIS. STAT. § 805.17(2). The credibility of witnesses and weight of the evidence, as well as the inferences to be drawn from the evidence, are for the circuit court to make, not this court. *Rivera v. Eisenberg*, 95 Wis. 2d 384, 388, 290 N.W.2d 539 (Ct. App. 1980). We affirm the circuit court's determination if, accepting the reasonable inferences from the evidence that are drawn by the fact-finder, a reasonable fact-finder could have come to the same conclusion. *Id.*

¶8 The circuit court's findings here were based on the testimony of the patient accounts manager and Exhibit 1. Based on this evidence, a reasonable fact-finder could infer that the medical procedures described were performed and that the procedures were reasonable and necessary. The circuit court could reasonably decide that Turner's generalized and somewhat inconsistent statements and his inability to remember the procedures did not constitute evidence that the medical services were not performed or that they were not reasonable and necessary. Thus, the court could reasonably decide that his testimony was not sufficient to overcome the reasonable inference of regularity that it drew from the account manager's testimony and the exhibit.

¶9 Turner also argues that the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (2000),<sup>2</sup> and the Wisconsin Consumer Protection Act, WIS. STAT. ch. 425, were violated by the confusing statements and bills and lack of explanation and by the failure to communicate with him and answer his questions. In the circuit court, Turner did not mention the Wisconsin Consumer Protection Act in any pleading or in his testimony or arguments to the court. We generally do not consider arguments not presented first in the trial court and therefore we do not address Turner's argument concerning the Wisconsin Consumer Credit Act. *Bank One, Appleton, NA v. Reynolds*, 176 Wis. 2d 218, 222, 500 N.W.2d 337 (Ct. App. 1993).

¶10 With respect to the federal Fair Debt Collection Practices Act, Turner argued in the circuit court that this act was violated because the letter sent to him in May 2006, from the attorney telling him that he had an outstanding bill in May 2006, did not itemize the services.<sup>3</sup> His argument both in the circuit court and on appeal is general and brief, with no explanation of how a specific provision of the act was violated. The respondent asserts that the Fair Debt Collection Practices Act applies only to third-party debt collectors who collect debts owed to another and does not apply to UW Health in collecting its own debts, citing 15

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<sup>2</sup> All references to the United States Code are to the 2000 version unless otherwise noted.

<sup>3</sup> The May 2006 letter to Turner was titled "Important Notice" in bold typeface. It stated that the undersigned attorney had been authorized to start a lawsuit against Turner to collect a debt, that the debt was owed to University of Wisconsin Medical Foundation, Inc., d/b/a UW Health Physicians, and the amount of the debt was \$623.71. The letter then advised Turner that if he notified the office in writing within thirty days from receiving the notice that he disputed the validity of the debt or any portion of it, the office would obtain verification of the debt or obtain a copy of the judgment and mail him a copy of the judgment or verification; if Turner did not notify the office that he disputed the validity of the debt or any portion thereof within thirty days after receiving the notice, the office would assume the debt was valid.

U.S.C. § 1692a(6) and (6)(A). Turner does not refute this argument in his reply brief. Therefore we take that as an implicit concession that the respondent is correct and do not address it further. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶11 Finally, Turner contends that the circuit court did not protect his rights as a pro se defendant because it did not give sufficient deference to him as the party that did not have an attorney; it did not place the opening statements on the record when he did not know that his statement were not being recorded; it cut off his presentation of the case; and it did not “fairly hear all sides of the argument.”

¶12 The legislature has recognized that parties in small claims actions are frequently unrepresented by counsel and has therefore given the circuit court more latitude than in large claims actions and has relaxed the procedural rules. Thus, the proceedings are to be conducted informally, WIS. STAT. § 799.209(1); they are not governed by the rules of evidence, with certain exceptions, § 799.209(2); and the court is “to ensure that the claims or defenses of all parties are fairly presented.” Section 799.209(3). In addition, the court has the authority to “establish the order of trial.” Section 799.209(4).

¶13 With respect to Turner’s objection to the court’s handling of opening statements, the record shows that at the beginning of the trial the court stated that it had had a chance to talk to the parties “a bit off the record” and so did not “think opening statements [were] necessary.” The court asked counsel for UW Health if that was all right with him and he answered yes. The court asked Turner and Turner stated “I mean – I guess some – I am going to reiterate a lot of what I said.” The court responded “Right. So let’s get right to the evidence, okay?” Turner

does not explain what was unfair to him about this procedure or what he wanted to have recorded on the record that was not recorded.

¶14 With respect to Turner's contention that the court cut off his presentation of the case, the record does not support that contention. The record does show that during Turner's cross-examination of the patient accounts manager, the court stated on a couple of occasions that Turner's questions were not appropriate to ask the patient accounts manager, but that he himself could testify on those points. These are not instances of the court preventing Turner from presenting his case, but are instances of the court properly distinguishing for Turner between appropriate cross-examination and his own testimony. The court also sustained a couple of objections to Turner's questions on the grounds of relevancy. However, these rulings were a proper exercise of the circuit court's discretion, and the court also overruled objections by UW Health's counsel. When Turner took the stand, the court began by asking him what he wanted to "tell us about this"; and when Turner was done with his initial statement, the court asked him numerous questions in an effort to draw out his testimony. The court overruled the objection to admission of Turner's cell phone records to show his calls to UW Health and admitted it into evidence. When Turner stated that he wanted to talk about the Fair Debt Collection Act, the court listened to what he had to say. If Turner interprets the court's statement to him, "You can step down, Mr. Turner ..." as cutting off further comments about the Fair Debt Collection Act, the record does not show that he told the court that he had more to say, and on appeal he does not explain what he was prevented from saying.

¶15 While it is understandable that Turner may have felt at some disadvantage in representing himself given that UW Health was represented by an attorney, it is not the court's role in such a situation to compensate for the lack of

counsel; the court must remain a neutral decision maker. There is nothing in the record that indicates the court was not an impartial decision maker and did not listen to both parties. In addition, the record shows that the court did appropriately facilitate Turner's presentation of his defense and did take proper steps to make sure that he had an opportunity to fairly present his defense. In short, we conclude the circuit court properly and fairly fulfilled its duties in the conduct of this trial.

*By the Court.*—Judgment affirmed.

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



