

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2008

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. 2007AP1490

Cir. Ct. No. 2007SC868

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

VLADIMIR SUBBOTIN,

PLAINTIFF-APPELLANT,

V.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY AND RENU SEAL

COATING,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, P.J.¹ Vladimir Subbotin appeals pro se a judgment denying him attorney fees and other expenses. Because attorney fees are available only when a party appears by an attorney and Subbotin appeared pro se, we conclude the circuit court properly exercised its discretion in denying the other requested expenses, and therefore affirm.

¶2 An insured of American Family Mutual Insurance Company hit and damaged Subbotin's parked vehicle with a snowplow. After American Family denied Subbotin's claim, Subbotin brought a small claims action against American Family. A trial de novo was held to the circuit court, which found in favor of Subbotin. The circuit court ordered American Family to pay Subbotin \$937.14 in damages and \$221.62 in statutory costs, for a total award of \$1,158.76. Subbotin sought an additional \$4,975.63 in non-statutory costs, including clothing and a fee of \$75 per hour to prepare his own case. The circuit court denied these costs. Subbotin appeals.

¶3 Subbotin's brief is difficult to follow and is devoid of citation to any legal authorities. See *Waushara County v. Graf*, 166 Wis. 2d 442, 451-53, 480 N.W.2d 16 (1992) (“[N]either a trial court nor a reviewing court has a duty ... to point [pro se litigants] to the proper substantive law.”). However, it is apparent that Subbotin seeks certain costs that were denied by the circuit court.² An award of costs is a matter of circuit court discretion. WIS. STAT. § 814.07. We will

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

² Subbotin makes other arguments, such as the circuit court violated his right to cross-examine witnesses. We do not address these arguments. Subbotin prevailed on the merits before the circuit court; thus, arguments relating to the merits of the case are moot because Subbotin has not been grieved.

affirm a circuit court's exercise of discretion if it is "based upon the facts appearing in the record and in reliance on the appropriate and applicable law." *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶4 Subbotin contends that the circuit court should have awarded him costs he incurred in pursuit of the action, including clothing and labor at a rate of seventy-five dollars per hour for fifty-two hours. WISCONSIN STAT. § 814.04(1)(c) states no attorney fees may be taxed on behalf of any party unless the party appears by an attorney other than himself. Subbotin represented himself pro se throughout the litigation, and the cost of clothing is not mandated by statute. Thus, while we appreciate the significant time and financial expense Subbotin invested in his case, he is not entitled to the expenses he seeks, which are either prohibited by statute (attorney fees) or not mandated by statute (clothing). Because the circuit court's award of costs represented a proper exercise of its discretion, we affirm.

By the Court.—Judgment and order affirmed.

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

