

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 3, 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. 2007AP430

Cir. Ct. No. 2005CV1476

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

HERR WELL DRILLING, INC.,

PLAINTIFF-APPELLANT,

V.

ZONG VANG AND LAO YANG,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.*

Before Vergeront, Lundsten and Bridge, JJ.

¶1 PER CURIAM. Herr Well Drilling, Inc., appeals the circuit court's order dismissing this action. The issue is whether the circuit court properly dismissed Herr Well Drilling's breach of contract claim against Zong Vang and his wife Lao Yang. We affirm.

¶2 Herr Well Drilling's brief is difficult to follow. Herr Well Drilling appears to challenge the circuit court's conclusion that James Vang was not the agent of his brother Zong Vang. Herr Well Drilling's breach of contract claim against Zong Vang and his wife is premised in part on its argument that James Vang had been acting as an agent for Zong Vang when conducting business with Herr Well Drilling. Whether an agency relationship exists is a question of fact that turns on the circumstances of the relationship between the parties. *See Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983). Whether undisputed facts fulfill a particular legal standard, however, is a question of law that we review *de novo*. *Id. v. LIRC*, 224 Wis. 2d 159, 166, 589 N.W.2d 363 (1999).

¶3 The circuit court addressed the agency issue in a non-final order, entered prior to the final disposition of this case, in which the court granted Zong Vang's motion for dismissal of Herr Well Drilling's construction lien claim. The court found that James Vang was working with Mang Affordable Construction, the contractor hired by his brother Zong Vang, because James wanted to get experience as a prime contractor. The court found that James was not an employee of his brother, that James did not function as an employee of his brother, and that James did not get paid by his brother. These facts are not disputed. Because James was working with Mang Construction, albeit on his brother's project, but was not working directly for his brother, the circuit court properly concluded that James was not an agent for his brother. Since there was no contractual relationship between Herr Well Drilling and the defendants Zong Vang and his wife Lao Yang, either directly or by virtue of an agency relationship with James, Herr Well Drilling's action for breach of contract against them was properly dismissed.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2005-06).

