

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 4, 2009

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. 2008AP1538-FT

Cir. Ct. No. 2008SC2135

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CARTLEIN INVESTMENTS, LLC c/o B.G. LEIN MANAGEMENT CORP.,

PLAINTIFF-RESPONDENT,

V.

BRANDON BOYD AND JENNIFER MOSBY,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Appeal Dismissed.*

¶1 SNYDER, J.¹ Jennifer Mosby and Brandon Boyd (tenants) appeal from a judgment of eviction and writ of restitution (judgment) entered in favor of Cartlein Investments, LLC (landlord). The judgment was entered on May 19, 2008, after trial to the court in a proceeding governed by WIS. STAT. § 799.01(1)(a) and WIS. STAT. ch. 799.² The tenants contend that the landlord failed to comply “with the requirements of WIS. STAT. § 704.17(2)(b) or with the specificity requirements of the [tenant’s] subsidized housing lease,” and that the trial court wrongly vacated a WIS. STAT. § 799.45 undertaking that the court had previously approved. Because the tenants failed to timely appeal, we dismiss.

¶2 The procedural chronology is extensive but undisputed:

May 19, 2008: Eviction Judgment and Writ of Restitution entered. Writ is to issue May 26, 2008, if tenants have not vacated landlord premises.

May 29, 2008: Restitution writ extension hearing held at request of tenants. Writ of Restitution extended to June 7, 2008, because of minor children attending local schools.

June 5, 2008: Tenants file motion for reconsideration of eviction judgment and a stay of proceedings pending a hearing.

¹ This is a one-judge case pursuant to WIS. STAT. § 752.31(2)(a) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise stated.

² The landlord points to a record dispute as to whether the judgment and writ were entered on May 16, 2008, as referenced by the transcript or on May 19, 2008, the date in the circuit court docket. Tenants concede the date of the judgment was May 19, 2008. We will use May 19, 2008, as the date of the judgment of eviction and writ of restitution.

June 17, 2008: Tenants file notice of appeal and undertaking.

June 18, 2008: Tenants file motion for relief pending appeal.

June 19, 2008: Motion for relief pending appeal denied, but circuit court signs the undertaking and stays the eviction until June 23.

June 26, 2008: Small claims court vacates undertaking order.

June 27, 2008: Tenants file emergency motion for relief pending appeal in court of appeals; court of appeals stays eviction order and restitution writ temporarily and orders landlord to respond.

July 3, 2008: Court of appeals stays order vacating undertaking, parties ordered to address the validity of the June 26, 2008 order vacating the undertaking.

¶3 In spite of the extensive and convoluted chronology presented above, this is a small claims action for eviction; therefore, the relevant facts in this case are the date of entry of the judgment of eviction and the date on which the notice of appeal was filed. *See Highland Manor Assocs. v. Bast*, 2003 WI 152, ¶4, 268 Wis. 2d 1, 672 N.W.2d 709. Whether the tenants acted in a timely manner concerning the above chronology is a question requiring interpretation of the applicable statutes in WIS. STAT. ch. 799. Statutory interpretation presents a question of law that we decide independently while benefiting from circuit court's analysis. *Highland Manor*, 268 Wis. 2d 1, ¶8.

¶4 An appeal from a judgment of eviction must be filed within a fifteen-day time period. WIS. STAT. § 799.445. The judgment of eviction was entered on May 19, 2008. Tenants, therefore, had until June 3, 2008, to file an

appeal. Tenants filed their notice of appeal on June 17, 2008, twenty-nine days after entry of the judgment.

¶5 Prior to June 3, 2008, tenants filed a motion to stay the writ of restitution to allow their children to finish school. WISCONSIN STAT. § 799.44(3) provides for such a stay of execution triggered “[a]t the time of ordering judgment” and that the trial court “may, in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed 30 days from the date of the order for judgment.” The trial court granted tenants a stay of the writ until June 7, 2008, within the thirty days allowed. While a hardship stay under § 799.44(3) is triggered by the entry of the judgment and contains a time limit related to the judgment, it does not stay the judgment.

¶6 The tenants filed a motion for reconsideration of the judgment on June 5, 2008, more than fifteen days after the judgment date. While WIS. STAT. § 805.17(3) reconsideration motions are authorized in eviction matters, “[u]nder WIS. STAT. § 799.445, a tenant must appeal from a judgment of eviction within 15 days of judgment, and WIS. STAT. § 805.17(3) does not extend the time for initiating an appeal from an eviction judgment.” *Highland Manor*, 268 Wis. 2d 1, ¶¶4, 25.

¶7 Our supreme court has acknowledged that “the legislature intended eviction proceedings to be as summary as possible because there is seldom an issue for trial.” *Id.*, ¶16. Contrary to the tenant’s arguments, we must conclude that their failure to appeal from the May 19, 2008 judgment of eviction within the statutory fifteen-day period forfeited their right to appeal from the eviction judgment.

By the Court.—Appeal dismissed.

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

