

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 8, 2001

Cornelia G. Clark
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.

No. 01-0861

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

GRAND CHUTE AUTO SALES, INC.,

PLAINTIFF-APPELLANT,

V.

DAVID W. LEHMAN,

DEFENDANT,

JOHN LONG D/B/A

JOHN'S TOWING & RECOVERY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Winnebago County: ROBERT A. HAASE, Judge. *Reversed and cause remanded.*

¶1 NETTESHEIM, P.J.¹ The circuit court awarded Grand Chute Auto Sales, Inc. (Grand Chute) a replevin judgment against John Long, d/b/a John's Towing & Recovery (Long). However, as a condition of the judgment, the court ordered Grand Chute to pay Long for Long's storage of the motor vehicle in question. The storage fee was computed at Long's usual rate of \$15 per day for eighteen days of storage. Grand Chute appeals, contending that the proper rate under WIS. STAT. § 779.415(1) is \$7 per day. We agree and reverse this portion of the judgment.

FACTS

¶2 We are at a disadvantage on this appeal because Long, who appeared pro se in the trial court, has failed to file a respondent's brief. In addition, the trial court record on this issue is very limited.

¶3 The controlling facts are not in dispute. On October 13, 2000, David W. Lehman purchased the vehicle in question from Grand Chute under an installment contract conferring a lien in favor of Grand Chute. On December 29, 2000, Lehman was arrested in Outagamie county for operating a motor vehicle while intoxicated. The Outagamie County Sheriff's Department contacted Long to tow Lehman's vehicle. Long did so and stored the vehicle on his property. Lehman never reclaimed the vehicle and, in the meantime, he defaulted on his payments to Grand Chute under his installment contract.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

¶4 Although the record does not reveal the date, Long sent a notice to Grand Chute advising that he had possession of the vehicle. In response, on January 16, 2001, Grand Chute sent a fax to Long indicating it would tender payment to him for the towing charge (\$65) plus a storage charge of \$7 per day. Long, however, did not release the vehicle because he was under the impression that a writ of replevin or a “voluntary surrender” was required before he could surrender possession of the vehicle to Grand Chute.²

¶5 As a result, Grand Chute commenced the instant replevin action against Lehman and Long. Lehman did not appear on the return date and a default judgment was entered against him. Long appeared pro se and the matter was scheduled for trial on March 1, 2001. The transcript of the trial is but eight pages and no testimony was taken. Grand Chute’s counsel indicated, “[s]o what we’d be asking for is that writ of replevin and then a determination made as to how much [Long] is owed as far as his storage....” Counsel noted Grand Chute’s fax to Long offering to pay storage at the \$7 per day rate set out in WIS. STAT. § 779.415(1). Long acknowledged the statutory rate, but stated, “normally we charge \$15 a day for storage.”

¶6 The trial court ruled that Long was entitled to his usual storage rate of \$15 per day and awarded Long \$270 for the eighteen days of storage plus Long’s towing fee. Grand Chute appeals.

² By “voluntary surrender,” we assume Long meant that Lehman had to consent to Long’s surrender of the vehicle to Grand Chute.

DISCUSSION

¶7 WISCONSIN STAT. § 779.415(1) confers a lien in favor of a motor carrier holding a permit to perform vehicle-towing services. The lien applies when the carrier performs storage and towing services at the direction of a law enforcement agency. The statute provides, in part, that the carrier “shall, if the vehicle is not claimed as provided herein, have a lien on the motor vehicle for reasonable towing and storage charges, and may retain possession of the vehicle until such charges are paid.” *Id.* However, if a third party already has a perfected security interest in the vehicle under WIS. STAT. ch. 342, *see* §§ 342.19, 342.20, the carrier’s storage lien is given priority but is capped at “\$7 per day but for a total amount of not more than \$420 for a motor vehicle [under a stated size] and \$20 per day but for a total of not more than \$1200 for a motor vehicle [over that stated size],” § 779.415(1)(a).

¶8 WISCONSIN STAT. § 779.415(1m) provides that within thirty days of taking possession of the vehicle, the carrier must provide notice to the owner and the senior lien holder of the vehicle that they must take steps to obtain release of the vehicle. The statute further provides: “To reclaim the vehicle, the owner or the senior lienholder must pay all towing and storage charges that have a priority under sub. (1)(a) and all reasonable storage charges that have accrued after 60 days from the date on which possession of the motor vehicle was taken.” Sec. 779.415(1m).

¶9 We now apply the facts of this case to the statutory scheme of WIS. STAT. § 779.415. Since Long towed and stored the vehicle pursuant to the directive of a law enforcement agency, he clearly had a lien on the vehicle. Ordinarily, this lien would be in the amount of Long’s “reasonable towing and

storage charges.” However, because the vehicle was already subject to a perfected lien in favor of Grand Chute under WIS. STAT. ch. 342, Long’s lien took priority, but it was capped by the prescribed daily rates and the total amounts depending on the size of the vehicle as set out in WIS. STAT. § 779.415(1). Under the facts of this case, the applicable rate was \$7 per day and the capped total was \$420. Sec. 779.415(1)(a).

¶10 Here, Long provided the statutory notice to Grand Chute pursuant to WIS. STAT. § 779.415(1m). Therefore, when Grand Chute sought to reclaim the vehicle under § 779.415(1m), it was obligated to pay Long’s priority lien under § 779.415(1)(a). If Long had stored the vehicle beyond sixty days from his initial possession, he was not bound by the statutory caps for that additional period of storage. Rather, he would have been entitled to the “reasonable storage charges” that accrued after that sixty-day time period. Sec. 779.415(1m). However, it does not appear from the limited record in this case that Long made any claim for storage beyond sixty days from the date he took possession of the vehicle.

¶11 Since Long’s claim was only for storage within the initial sixty-day period from the date he took possession and since the vehicle was subject to a prior lien in favor of Grand Chute, Long was entitled to a priority lien in the amount of \$7 per day for the eighteen days of storage. We therefore reverse this portion of the judgment and remand with directions to compute the amount of Long’s storage award at the rate of \$7 per day. In all other respects, the judgment stands.

By the Court.—Judgment reversed and cause remanded.

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

