

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 30, 2002

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.

**Appeal No. 01-2918
STATE OF WISCONSIN**

Cir. Ct. No. 01-SC-135

**IN COURT OF APPEALS
DISTRICT III**

LAND TRUST MANAGEMENT,

PLAINTIFF-APPELLANT,

v.

RON WILLIAMS AND CHRISTINE WILLIAMS,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Burnett County:
JAMES H. TAYLOR, Judge. *Reversed and cause remanded with directions.*

¶1 CANE, C.J.¹ Land Trust Management appeals from the trial court's order dismissing its eviction action because its trustee, who is not a lawyer, could not commence or prosecute an action on its behalf in small claims court. The

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

respondents, Ron and Christine Williams, have failed to file a brief. The trust argues that its full-time authorized employee can commence and prosecute or defend a small claims action on its behalf. This court agrees and therefore reverses the order and remands the action with directions.

¶2 The facts are undisputed. Land Trust Management, by its trustee, Patrick Coughlin, filed an eviction action in small claims court against the Williamses. Coughlin contended that he was a full-time employee of the trust and authorized to represent it. The trial court concluded, however, that because Coughlin is not a lawyer, he could not appear on behalf of or perform legal services for the trust. The court reasoned that WIS. STAT. § 799.06(2)² permits only a full-time employee of a corporation to appear and represent the corporation in small claims court. It therefore dismissed the complaint.

¶3 This court makes two observations. First, the purpose of small claims procedures is to provide parties an inexpensive and speedy method of resolving disputes where the amount in controversy is not great. *Portage County*

² WISCONSIN STAT. § 799.06(2) provides:

Actions; how commenced, pleadings, appearances.

....

(2) A person may commence and prosecute or defend an action or proceeding under this chapter and may appear in his, her or its own proper person or by an attorney regularly authorized to practice in the courts of this state. Under this subsection, a person is considered to be acting in his, her or its own proper person if the appearance is by a full-time authorized employee of the person. An assignee of any cause of action under this chapter shall not appear by a full-time authorized employee, unless the employee is an attorney regularly authorized to practice in the courts of this state.

v. Steinpreis, 104 Wis. 2d 466, 479-80, 312 N.W.2d 731 (1981). WISCONSIN STAT. § 799.06(2) permits individuals to prosecute and defend small claims actions pro se. *Holz v. Busy Bees Contracting, Inc.*, 223 Wis. 2d 598, 605, 589 N.W.2d 633 (Ct. App. 1998).

¶4 Second, the primary purpose of laws controlling the unauthorized practice of law is to protect the public. *Hopper v. City of Madison*, 79 Wis. 2d 120, 133-34, 256 N.W.2d 139 (1977). Statutes and rules that control the unauthorized practice of law assure that the public is not harmed by inadequate or unethical representation. See *Littleton v. Littleton*, 37 Wis. 2d 360, 364, 155 N.W.2d 150 (1967).

¶5 WISCONSIN STAT. § 757.30(1) describes the penalty for practicing law without a license. Subsection (2) of § 757.30 describes the practice of law for purposes of this section. The practice of law includes appearing on behalf of some other person or entity in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state. WIS. STAT. § 757.30(2). The practice of law also includes the giving of professional legal advice not incidental to that person's usual or ordinary business, and the rendering of any legal service for any other person, or firm, partnership, association or corporation. *Id.* Individuals may forego legal representation by an attorney and represent themselves in court proceedings. WIS. CONST. art. I, § 21.

¶6 With this background in mind, the supreme court in *Jadair, Inc. v. U.S. Fire Ins. Co.*, 209 Wis. 2d 187, 202, 562 N.W.2d 401 (1997), held that under the plain language of the rules and statutes pertaining to controlling the unauthorized practice of law, only lawyers can appear on behalf of, or perform legal service for, corporations in legal proceedings before Wisconsin courts. It

observed that the only exception the legislature has made to the unauthorized practice of law statute is the exception contained in WIS. STAT. § 799.06(2) for actions filed in small claims court. *Jadair*, 209 Wis. 2d at 202.

¶7 There is no dispute that the trust could commence and prosecute the eviction action, as the trial court properly recognized. The trial court held, however, that only corporations could be represented by one of its full-time employees in small claims proceedings. Because the trust was not a corporation, the court reasoned that it did not fall within the exception set forth in WIS. STAT. § 799.06(2).

¶8 Therefore, the issue is whether the small claims procedure as set forth in WIS. STAT. § 799.06(2) permits a full-time authorized employee of a trust to represent it in the small claims action. Importantly, we note that this statute speaks in terms of a “person” entitled to commence and prosecute or defend an action in small claims court. The term “person” is no longer referred to as a “natural person.” Nor does the statute speak in terms of corporations. Rather, it uses the term “person” in a broad sense so as to include not only natural persons, but also legal entities that have full-time employees. A trust is a legal entity created by a grantor for the benefit of designated beneficiaries under the laws of a particular state and the valid trust instrument. *See* BLACK’S LAW DICTIONARY 1508 (6th ed. 1990). Like a corporation, a trust is a legally recognized entity in Wisconsin. *See* WIS. STAT. ch. 701. Therefore, if Land Management Trust is a current legally created entity and if Coughlin is employed full time as its trustee, or is a full-time authorized employee of the trust, he may commence and prosecute or defend an action in small claims court.

¶9 Consequently, this court reverses and remands the matter to the circuit court to determine whether Land Management Trust is in fact a current legally created trust and, if so, whether Coughlin is a full-time authorized employee of the trust. If the court finds in the affirmative to each of these questions, then it must permit Coughlin to represent the trust in the small claims action.

By the Court.—Order reversed and cause remanded with directions.

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

