

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 29, 2003

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. 03-0144
STATE OF WISCONSIN**

Cir. Ct. No. 02SC019106

**IN COURT OF APPEALS
DISTRICT I**

MICHELLE HARLEY,

PLAINTIFF-RESPONDENT,

v.

CHRISTINE SMITH JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL A. NOONAN, Judge. *Affirmed and cause remanded with directions.*

¶1 CURLEY, J.¹ Christine Jackson appeals the trial court's order denying her motion to reopen the small claims judgment entered against her in this landlord-tenant dispute. Because Jackson has not shown that the trial court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

erroneously exercised its discretion in refusing to reopen the judgment, this court affirms.

I. BACKGROUND.

¶2 In July 2002, Michelle Harley filed a small claims suit against Jackson, the owner of a rental property that Harley briefly rented, alleging that Jackson violated the twenty-one-day limit for an accounting and return of Harley's security deposit contrary to WIS. ADMIN. CODE § ATCP 134.06(2). As a result, Harley sought both a doubling of her security deposit as permitted by the administrative code, and her actual attorney fees as permitted under WIS. STAT. § 100.20(5).² A court commissioner ruled in Harley's favor and Jackson sought a trial in front of a circuit judge. *See* WIS. STAT. § 799.207(2)(b) ("Either party may file a demand for trial within 10 days from the date of an oral decision [by the court commissioner] or 15 days from the date of mailing of a written decision [of the court commissioner] to prevent the entry of the judgment."). Consequently, a trial date was scheduled in front of Judge Daniel Noonan. On the trial day, December 16, 2002, the parties appeared with their attorneys. After the attorneys discussed the matter with the trial court in chambers and discussed a settlement with the clients, a written stipulation, signed by both the parties and their attorneys and approved by the judge, was filed and the matter was dismissed. The stipulation called for Jackson to pay \$5,646 in \$300-per-month installments to Harley for her violation of the rule concerning the return of Harley's security deposit. The stipulation also contained a clause permitting entry of judgment in

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Harley's favor for \$6,446, less credit for any payments made, if Jackson defaulted in making the monthly payments.

¶3 On December 23, 2002, Jackson filed a motion seeking to reopen the small claims settlement. Jackson checked the boxes marked "mistake," "inadvertence" and "excusable neglect" in the preprinted form she filed asking for the matter to be reopened. She also wrote in response to a line on the form asking for reasons why she would prevail in her matter: "I would be able to show how misleading everything was. Calculated to be misunderstood."

¶4 On January 6, 2003, the date set to hear Jackson's motion to reopen the matter, the court heard the arguments of both parties, refused to reopen the judgment, and assessed \$100 in costs against Jackson. Implicit in the trial court's decision was the court's disbelief of Jackson's version of the events surrounding the entry of the stipulation in which she claimed that she was confused, thinking that she was signing an agreement ordering Harley pay to her \$592.62, and that she made this mistake because she had a "major headache."

¶5 Several weeks later, on January 24, Harley's attorney filed a motion seeking to dismiss Jackson's counterclaim, apparently filed but not received by Harley's attorney until after the January 6th hearing. Also, the attorney sought a judgment for \$6,446 based on the clause in the stipulation that allowed entry of judgment for the entire amount if Jackson failed to pay an installment. The affidavit claimed Jackson had defaulted on the first payment. At the hearing held on February 17, 2003, Jackson failed to appear or to call the court. Harley's attorney advised the court that Jackson had been notified of the date. The trial court proceeded to grant Harley's motion dismissing Jackson's counterclaim and to grant Harley's request for a judgment. By doing so, the trial court also

implicitly denied Jackson's post-stipulation attempt to substitute the judge that is referred to below.

¶6 On February 19, 2003, Jackson filed a new motion to reopen the small claims action. On the form she indicated that: "I filed for substitution of Judge on February 3, 2003. At that time I was told that the case was in appeal [sic] that nothing would or could take place that they were trying to get [Harley's attorney] on the phone to no avail. I never heard back from [sic] the court again. My baby was very sick with a fever on 2-17-02 [sic]. I had no one to care for her. I wanted to ask for a stay into [sic] the court of appeal [sic] answers." This motion was to be heard on March 5, 2003. Harley's attorney wrote to the court and advised that he was unavailable on March 5th. He also stated in his letter, a copy of which was mailed to both Harley and Jackson, that he was never contacted and asked to adjourn the matter on the date Jackson claimed she could not attend because of a sick child, and that she never filed a motion requesting a stay of the judgment. Harley's lawyer suggested that if the court was going to entertain Jackson's motion, that the court order her to pay \$150 in costs before the motion could be heard.

¶7 On March 19th, Jackson's second motion to reopen was heard. The trial court both denied the request to reopen the judgment, finding that the motion to reopen had no merit, and refused to stay the judgment after Jackson indicated her unwillingness to post a bond. The trial court also assessed additional costs against Jackson of \$100. Jackson filed her notice of appeal with the clerk of the court of appeals on April 2, 2003.

II. ANALYSIS.

¶8 Whether to reopen a default judgment is a decision that lies within the sound discretion of the circuit court. *See Dugenske v. Dugenske*, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). We will not overturn a discretionary determination if the court considered the relevant facts, applied the proper standard of law, and, using a demonstrative rational process, reached a conclusion that a reasonable judge could reach. *See Rodak v. Rodak*, 150 Wis. 2d 624, 631, 442 N.W.2d 489 (Ct. App. 1989).

¶9 Jackson makes several claims. First, she argues that the trial court erred in finding that she entered into a valid stipulation. Second, she submits that the trial court failed to give her an opportunity to present her case. Because of these errors, she claims she is entitled to have the judgment reopened. This court disagrees.

¶10 Jackson fails to grasp both the procedural position in which she finds herself and the appropriate standard of review to be applied here. She is appealing the trial court's denial of her second motion to reopen the judgment heard on March 19, 2003. In order to succeed on her motion, Jackson has the burden of proving one of the reasons permitting relief set forth in WIS. STAT. § 806.07(1).³

³ WISCONSIN STAT. § 806.07 provides:

Relief from judgment or order. (1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(continued)

She has not done so. For this court to overturn the trial court's finding on the merit of the motion requires us to determine that the finding is clearly erroneous. *See* Wis. Stat. § 805.17(2).

¶11 At the second hearing, the trial court concluded that:

THE COURT: Your characterization of the facts – And I won't be interrupted again – your characterization of the facts of what happened in this courtroom when that document was signed is not true. This is drafted by Attorney Giese; correct?

MR. GIESE: Yes, Your Honor.

THE COURT: Did you draft it before she signed it?

MR. GIESE: It was completely drafted before anybody signed it. It was then sent to her client, Miss Jackson, and my client.

THE COURT: In other words, it was signed by all the parties after being drafted?

MR. GIESE: Yes, Your Honor.

¶12 Clearly, the trial court, after hearing Jackson's explanation of the earlier events, determined that Jackson was not being truthful. The record supports that finding. At the time the stipulation was reached, the parties spent a

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- (a) Mistake, inadvertence, surprise, or excusable neglect;
 - (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);
 - (c) Fraud, misrepresentation, or other misconduct of an adverse party;
 - (d) The judgment is void;
 - (e) The judgment has been satisfied, released or discharged;
 - (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
 - (g) It is no longer equitable that the judgment should have prospective application; or
 - (h) Any other reasons justifying relief from the operation of the judgment.

great deal of time working out the specifics. Jackson was represented by a lawyer who consulted with her for over an hour about the contents of the stipulation. The opposing attorney stated that the stipulation was completely filled out when Jackson signed it. Jackson's claim that she believed the stipulation required Harley to pay her a figure several thousand dollars less than the stated amount is preposterous. Accordingly, the trial court's finding that Jackson was untruthful with regard to the circumstances surrounding the signing of the stipulation is reasonable. Moreover, Jackson did not raise this argument until she brought her second motion to reopen the judgment.

¶13 Additionally, Jackson's excuse for her non-appearance on February 17, 2003, does not ring true. Jackson knew the date of the motion hearing during which the trial court granted Harley's request for a money judgment, but she failed to appear. The trial court found her excuse, that she had a sick child, less than compelling as no doctor could verify the child's condition and Jackson failed to either call the court or opposing counsel to explain her situation.

¶14 Jackson's second contention, that she was not permitted to present her case, reveals that she is unaware of the procedural status of her case. She gave up the right to present her case when she signed the stipulation. The purpose of the motion at the base of this appeal was not to resolve the original dispute, but to determine whether the judgment should be reopened. Because Jackson did not prevail, she had no right to a trial. Accordingly, this court finds that the trial court properly exercised its discretion when it refused to reopen the small claims judgment, and, therefore, this court affirms.

¶15 Further, WIS. STAT. § 100.20(5) provides for the recovery of reasonable attorney fees. In *Shands v. Castrovinci*, 115 Wis. 2d 352, 358, 340 N.W.2d 506 (1983), the supreme court stated that, among other things, “the recovery of double damages and attorney fees encourages injured tenants to bring legal actions to enforce their rights under the administrative regulations.”

A tenant action brought under sec. 100.20(5), Stats., is not successful until he or she has actually recovered damages and attorney fees. The trial court’s decision may have to be defended, or an adverse decision protested, in an appellate forum. The same purposes and policy interests ... for the original action attach to the appeals process.

Id. at 359. Accordingly, this court remands the case to the trial court for a determination of the amount of reasonable attorney fees incurred on appeal to be awarded to Harley as provided for by *Shands*, 115 Wis. 2d at 359 (“[W]e hold that a tenant who has suffered pecuniary loss because of a violation of Wis. Adm. Code Ch. Ag 134 shall recover reasonable attorney fees for appellate review undertaken to attack or defend a trial court’s decision in the suit.”).

By the Court.—Judgment affirmed and cause remanded with directions.

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

