

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 15, 2011

A. John Voelker
Acting 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. 2010AP2618

Cir. Ct. No. 2009SC375

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CURTIS BURT AND AUDREY BURT,

PLAINTIFFS-RESPONDENTS,

V.

ROBERT STAEHEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
EDWARD F. VLACK III, Judge. *Affirmed and cause remanded with directions.*

¶1 HOOVER, P.J.¹ Robert Staeheli appeals a small claims judgment in favor of Curtis Burt and Audrey Burt. Staeheli challenges the circuit court's

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

partial grant of summary judgment, determination of damages, and denial of a jury trial. We reject Staeheli's arguments and affirm. We also agree with the Burts that under WIS. STAT. § 100.20(5), they are entitled to costs and reasonable attorney fees associated with defending this appeal; therefore, we remand for a determination of costs and attorney fees.

BACKGROUND

¶2 The Burts rented an apartment from Staeheli between January 1, 2007 and December 31, 2008. They paid a \$1,400 security deposit. In November 2008, the Burts gave Staeheli proper notice that they were vacating the property and provided Staeheli with their forwarding address. The Burts vacated the property on December 31, 2008.

¶3 The Burts contend they never received an accounting or reimbursement of their security deposit. Staeheli, however, argues that within the mandated twenty-one-day time period, he returned \$700 of the security deposit along with an accounting that detailed the remaining deposit would be applied to damages. However, once outside the twenty-one-day period, Staeheli issued a stop payment on the check and retained the full amount of the security deposit.

¶4 The Burts brought a small claims action against Staeheli to recover their security deposit and sought double damages and attorney fees. Staeheli appealed the court commissioner's decision and requested a jury trial in the circuit court.

¶5 The Burts moved for summary judgment, asserting they were entitled to double damages and attorney fees because Staeheli had violated the administrative code. Specifically, the Burts alleged Staeheli violated the code by

issuing a lease that contained an attorney fees provision, in violation of WIS. ADMIN. CODE § ATCP 134.08(3),² and by improperly withholding their security deposit, in violation of WIS. ADMIN. CODE § ATCP 134.06.

¶6 The circuit court granted summary judgment in part, reasoning Staeheli was liable for double damages and attorney fees because the lease contained an attorney fees provision. However, the court denied summary judgment for damages, reasoning there was a question of fact concerning any offset to which Staeheli was entitled.

¶7 The court held a hearing to determine damages and concluded Staeheli was entitled to an offset. The court doubled the amount of the wrongfully withheld security deposit less the offset and awarded the Burts costs and attorney fees under WIS. STAT. § 100.20(5).³

DISCUSSION

¶8 Staeheli raises three arguments on appeal. First, he asserts the circuit court erred when it granted partial summary judgment. Second, Staeheli argues the circuit court erred when calculating damages. Third, he contends the circuit court erred by failing to have a jury decide the factual issues. The Burts argue they are entitled to attorney fees and costs associated with defending this appeal.

² All references to the Wisconsin Administrative Code are to the November 2006 version.

³ WISCONSIN STAT. § 100.20(5) provides: “Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney’s fee.”

I. Summary Judgment

¶9 When reviewing a grant of summary judgment, we apply the same methodology as the circuit court and independently determine whether summary judgment was appropriate. *Turner v. Taylor*, 2003 WI App 256, ¶7, 268 Wis. 2d 628, 673 N.W.2d 716. Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶10 Staeheli first asserts the circuit court erred in granting summary judgment because it improperly relied on *Baierl v. McTaggart*, 2001 WI 107, 245 Wis. 2d 632, 629 N.W.2d 277, to impose liability. *Baierl* involved a situation where tenants vacated the property prior to the expiration of their lease. *Id.*, ¶5. The landlord withheld their security deposit and applied it, in part, to rent for future months, for which the tenants remained responsible under the lease. *Id.*, ¶6. The court held the lease was unenforceable against the tenants because it contained an attorney fees provision, contrary to WIS. ADMIN. CODE § ATCP 134.08(3). *Id.*, ¶40. The court concluded the landlord wrongfully withheld the portion of the security deposit for future rent because the landlord had no enforceable lease against the tenants. *See id.*, ¶¶8, 40. A wrongful withholding of the security deposit violates WIS. ADMIN. CODE § ATCP 134.06. Because the tenants had suffered a pecuniary loss as a result of the wrongfully withheld security deposit, the landlord was liable for double damages, costs, and attorney fees pursuant to WIS. STAT. § 100.20(5). *See id.*

¶11 In this case, the circuit court determined that Staeheli's inclusion of the attorney fees provision in the Burts' lease made Staeheli automatically liable for double damages, costs, and attorney fees. However, to be liable for double

damages, costs, and attorney fees, the circuit court must determine whether the tenants suffered a pecuniary loss as a result of the landlord's violation of the administrative code. *See* WIS. STAT. § 100.20(5). Here, the circuit court erred when it determined the Burts suffered a pecuniary loss merely because of an unenforceable lease. Consequently, we agree with Staeheli that the circuit court improperly determined that he was liable for double damages, costs, and attorney fees because his lease violated the administrative code.

¶12 However, we may nevertheless affirm if the circuit court reached the right result for the wrong reason. *State v. Amrine*, 157 Wis. 2d 778, 783, 460 N.W.2d 826 (Ct. App. 1990). Here, the Burts did suffer a pecuniary loss because of Staeheli's other violation of the administrative code—his wrongful withholding of the Burts' security deposit.

¶13 Staeheli argues that summary judgment is improper because there is a genuine issue of material fact as to whether Staeheli complied with the administrative code. We reject Staeheli's argument and affirm the circuit court's grant of summary judgment. Assuming Staeheli did send an accounting and partial reimbursement to the Burts within the mandated twenty-one-day time period, it is undisputed that once outside the twenty-one-day time period, Staeheli put a stop payment on the alleged reimbursement check and retained the full \$1,400. Such conduct constitutes improper withholding of the security deposit and is in direct violation of the administrative code. *See* WIS. ADMIN. CODE § ATCP 134.06. The Burts suffered a pecuniary loss as a result of Staeheli's wrongful withholding of their security deposit. Consequently, Staeheli is liable for double damages, costs, and attorney fees.

II. Damages

¶14 Staeheli next argues the circuit court erred when calculating damages and attorney fees. Staeheli offers no legal authority or citation to the record in support of his contention. We need not address undeveloped arguments. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Therefore, we affirm the circuit court's award.

III. Jury Trial

¶15 Staeheli argues the circuit court erred by not granting him a jury trial. However, it is undisputed that Staeheli retained the entire security deposit in violation of the administrative code. Because the facts are undisputed, the determination that Staeheli violated the administrative code is a matter of law, not a question of fact.

¶16 Although the circuit court did engage in fact-finding concerning any offset to which Staeheli would be entitled, Staeheli has not provided us with a transcript of that proceeding.⁴ Consequently, we cannot ascertain from the record why the court itself engaged in the fact-finding regarding damages. "When an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling." *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). We do so here, and, on that ground, affirm.

⁴ The only transcript included in the record is the first pretrial conference held in August 2009. The record does not include transcripts from the multiple hearings that occurred between August 2009 and the June 2010 damages hearing.

IV. Appellate Costs and Attorney Fees

¶17 The Burts request appellate costs and attorney fees pursuant to WIS. STAT. § 100.20(5). We determine the Burts are entitled to those costs and fees because Staeheli violated the administrative code in regard to the Burts' security deposit. In *Shands v. Castrovinci*, 115 Wis. 2d 352, 359, 340 N.W.2d 506 (1983), our supreme court interpreted § 100.20(5) to include appellate costs and attorney fees and held "a tenant who has suffered pecuniary loss because of a violation of WIS. ADM. CODE Ch. [ATCP] 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.

