

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 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. 03-1007
STATE OF WISCONSIN**

Cir. Ct. No. 02SC001519

**IN COURT OF APPEALS
DISTRICT II**

AMJAD TUFAIL,

PLAINTIFF-APPELLANT,

v.

**THE FURNITURE CLEARANCE CENTER (DIVISION OF
PORTER FURNITURE CENTER) AND SHAMROCK
DISTRIBUTORS, INC.,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Waukesha County:
LEE S. DREYFUS, Judge. *Affirmed.*

¶1 NETTESHEIM, J.¹ WISCONSIN STAT. § 799.207(2)(b) provides that, in a small claims action, the circuit court commissioner's oral decision shall

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version.

become a judgment eleven days after rendering, except that “[e]ither party may file a demand for trial within 10 days from the date of an oral decision ... to prevent the entry of the judgment.”

¶2 Amjad Tufail appeals from a circuit court order dismissing as untimely his request for a de novo hearing of his small claims action pursuant to WIS. STAT. § 799.207. Tufail argues that his request for a trial following an adverse decision by the court commissioner was timely. He relies on WIS. STAT. § 801.15(1)(a) and (b), which excludes all Saturdays, Sundays and holidays from the time computation when “the period of time prescribed or allowed is less than 11 days.” We disagree that § 801.15 applies to this proceeding. We affirm the order dismissing Tufail’s action.

¶3 The facts are brief and undisputed. Tufail filed a small claims complaint against The Furniture Clearance Center and Shamrock Distributors, Inc. on March 19, 2002. Pursuant to WIS. STAT. § 799.207, a circuit court commissioner conducted a hearing on August 29, 2002. At the conclusion of the hearing, the court commissioner dismissed Tufail’s action. On September 13, 2002, Tufail filed a Demand for Trial before a circuit court judge pursuant to § 799.207(2)(b). On February 25, 2003, the circuit court filed an order dismissing with prejudice Tufail’s action, simply stating that the de novo request was “untimely filed.” The order did not refer to any statute, nor did it address any possible application of WIS. STAT. § 801.15. Tufail appeals.

¶4 Tufail argues that WIS. STAT. § 801.15(1)(a) and (b) apply to the ten-day time limit set forth in WIS. STAT. § 799.207(2)(b). Section 801.15(1), which governs time limits in civil actions, provides:

(1)(a) In this subsection, “holiday” means any day which is a holiday provided in s. 230.35(4)(a) or a statewide legal holiday provided in s. 895.20 or both, and a full day on Good Friday.

(b) Notwithstanding ss. 985.09 and 990.001(4), in computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed. *When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.* (Emphasis added.)

Tufail contends that under § 801.15(1)(b), his demand for a trial was timely due to the intervening weekends and the Labor Day holiday, which fell on Monday, September 2, 2002.

¶5 The issue in this case is one of statutory interpretation which we review de novo. *State v. Setagord*, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). The purpose of statutory interpretation is to ascertain and give effect to the legislature’s intent. *Id.* at 406. We first look to the language of the statute itself. *Id.* If the meaning of the statute is clear on its face, we apply it as written. *Id.* The court’s primary purpose in reviewing a statute is to achieve a reasonable construction that will effectuate the statutory purpose. *Barnett v. LIRC*, 131 Wis. 2d 416, 420, 388 N.W.2d 652 (Ct. App. 1986).

¶6 When construing a statute, we look to the entire statutory section and related sections; we do not read statutes out of context. *State v. Barnes*, 127 Wis. 2d 34, 37, 377 N.W.2d 624 (Ct. App. 1985). Statutes relating to the same subject matter are to be construed together and harmonized. *State v. Burkman*, 96 Wis. 2d 630, 642, 292 N.W.2d 641 (1980).

¶7 WISCONSIN STAT. ch. 799 governs procedure in small claims actions and, pursuant to WIS. STAT. § 799.01(1)(d)1,

(1) Except as provided in ss. 799.02(1) and 799.21(4) and except as provided under sub. (2), the procedure in this chapter *is the exclusive procedure to be used in circuit court in the following actions:*

....

... civil actions where the amount claimed is \$5,000 or less, if the actions or proceedings are:

1. For money judgments only (Emphasis added.)

None of the exceptions recited in § 799.01(1)(d)1 apply to this case.² Thus, ch. 799 provides the exclusive procedure in Tufail’s action against the defendants for a money judgment not to exceed \$5000.

¶8 WISCONSIN STAT. § 799.207 governs proceedings before court commissioners. Pursuant to § 799.207(2)(b), the circuit court commissioner’s oral decision in a small claims matter shall become a judgment eleven days after rendering except that either party may file a demand for trial within ten days from the date of an oral decision.

¶9 There is no indication in the language of WIS. STAT. § 799.207(2)(b) that the time computation provisions of WIS. STAT. § 801.15(1)(b) apply to its time limits. Indeed, pursuant to WIS. STAT. § 801.01(2), “Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings ... except where different procedure is prescribed by statute or

² The exceptions are as follows: (1) WIS. STAT. § 799.02(1) addresses the counterclaim procedure in small claims proceedings; (2) WIS. STAT. § 799.21(4) addresses jury procedure in small claims proceedings; and (3) WIS. STAT. § 799.01(2) addresses the use of small claims procedure by a taxing authority.

rule.” Here, WIS. STAT. § 799.01(1)(d)1 clearly provides for procedures which are to be exclusively applied to claims for money judgments where the amount claimed is less than \$5000. Based on the plain language of the statutes in question, we are satisfied that the legislature did not intend the time computation provisions of § 801.15(1)(b) to apply to the time limits set forth under § 799.207(2)(b).

¶10 Our decision is further supported by the legislature’s express provision for the application of WIS. STAT. § 805.15 to a motion for a new trial following a small claims trial in the circuit court, while making no such provision following an initial hearing before a small claims court commissioner. WISCONSIN STAT. § 799.28 provides that the twenty-day time limit for a motion for new trial in the “trial court” is governed by WIS. STAT. § 801.15. However, WIS. STAT. § 799.207(2) and (3), which prescribe the time limit for seeking a new trial in the circuit court following the proceeding before a small claims court commissioner, do not similarly invoke § 801.15. The legislature’s reference to § 801.15 in the context of § 799.28 but not in § 799.207 supports our conclusion that the legislature did not intend § 801.15 to apply in ch. 799. *Gottlieb v. City of Milwaukee*, 90 Wis. 2d 86, 95, 279 N.W.2d 479 (Ct. App. 1979) (where a statute lists items included in its purview, omission of an item is evidence that the legislature intended to exclude it).

¶11 We conclude that Tufail’s demand for a trial was untimely made pursuant to WIS. STAT. § 799.207(2)(b). We therefore affirm the trial court’s order for dismissal.

By the Court.—Order affirmed.

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

