

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 21, 2004**

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. 03-1169  
STATE OF WISCONSIN**

**Cir. Ct. No. 02SC002348**

**IN COURT OF APPEALS  
DISTRICT III**

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**MARY SCHEUERMANN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**KAREN CIGAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed and cause remanded with directions.*

¶1 CANE, C.J.<sup>1</sup> This appeal stems from a landlord tenant dispute. Karen Cigan appeals from a judgment awarding Mary Scheuermann (a) double damages and attorney fees and costs for Cigan's failure to return Scheuermann's

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

security deposit, and (b) personal injuries Scheuermann sustained from flea bites. Cigan argues (1) the trial court erred as a matter of law by finding a sum of money paid to Cigan constituted a security deposit, and (2) the trial court erred when it awarded Scheuermann personal damages for flea bite injuries she sustained because there was no evidence that the apartment in fact contained fleas. We affirm the judgment.

### BACKGROUND

¶2 Scheuermann leased an apartment from Cigan for \$450 a month. Scheuermann was also required to pay \$475 for a security deposit. Prior to moving in, Scheuermann paid Cigan \$475.

¶3 The conditions in the apartment were terrible. In addition to the several problems later identified by the Eau Claire County Health Department, the apartment was also apparently infested with fleas. As a result, Scheuermann suffered countless flea bites the first day she resided in the apartment. She reported the flea infestation to Cigan, and Cigan offered her a can of Raid. Scheuermann vacated the apartment the next day and moved to a homeless shelter. Cigan did not return Scheuermann's security deposit, nor did she provide Scheuermann a written statement accounting for withholding the security deposit. *See* WIS. ADMIN. CODE § ATCP 134.06(4)(a).<sup>2</sup> Scheuermann sued Cigan.

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<sup>2</sup> WISCONSIN ADMIN. CODE § ATCP 134.06(4)(a) states:

(continued)

¶4 After a trial to the court, the court found that the \$475 Scheuermann paid Cigan constituted a security deposit and, contrary to what Cigan asserted, was not rent. Because Cigan did not comply with WIS. ADMIN. CODE § ATCP 134.06 regarding returning security deposits, the court ordered Cigan to pay double the amount of the security deposit, \$950, in addition to attorney fees and costs totaling \$987.26. *See* WIS. STAT. § 100.20(5) (allowing double damages and recovery of attorney fees and costs). The court also awarded Scheuermann \$1,500 in personal injuries resulting from the flea bites. Cigan appeals.

### DISCUSSION

¶5 Cigan first argues the trial court erred when it concluded the \$475 Scheuermann paid Cigan was a security deposit as opposed to rent. She claims that the lease indicates the \$475 was for rent and was not a security deposit. Accordingly, she contends the trial court erred by awarding Scheuermann double damages and attorney fees for her failure to return a security deposit because a security deposit was never paid. We disagree.

¶6 On appeal, we will not set aside a trial court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). The dispute as to what the \$475 was actually paid for was the key contested factual question for the trial court, as fact finder, to resolve. The trial court concluded Scheuermann's

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If any portion of a security deposit is withheld by a landlord, the landlord shall, within the time period and in the manner specified under sub. (2), deliver or mail to the tenant a written statement accounting for all amounts withheld. The statement shall describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation for each item or claim.

testimony that the \$475 was a security deposit was more believable than Cigan's testimony that it was for rent. The trier of fact assesses witnesses' credibility. *Gauthier v. State*, 28 Wis. 2d 412, 416, 137 N.W.2d 101 (1965). The trier of fact also resolves evidentiary conflicts. *State v. Curiel*, 227 Wis. 2d 389, 420, 597 N.W.2d 697 (1999). Based on the record, the court's finding that the \$475 was a security deposit was not clearly erroneous.

¶7 Consequently, given Cigan's failure to return the security deposit, or provide a written statement accounting for all amounts withheld, Scheuermann was entitled to double damages as well as reasonable attorney fees and costs. *See* WIS. STAT. § 100.20(5).

¶8 Cigan next argues the trial court erred when it awarded Scheuermann damages for personal injuries she sustained for countless flea bites. Cigan claims there was no evidence presented that showed there were, in fact, fleas in the apartment. She argues the greater weight of the credible evidence indicates that Scheuermann's injuries originated from some other source. We disagree.

¶9 While Cigan presented evidence that Scheuermann's injuries may have originated from some other source, namely Scheuermann's dog, the trial court was not persuaded. It found Scheuermann's account that the fleas originated in the apartment more credible. Again, the trier of fact assesses witnesses' credibility, *Gauthier*, 28 Wis. 2d at 416, and it resolves conflicts in the evidence. *Curiel*, 227 Wis. 2d at 420. As a result, the trial court's finding that Scheuermann suffered personal damages as a result of a multitude of flea bites within the apartment is not clearly erroneous.

¶10 Pursuant to WIS. STAT. § 100.20(5), Scheuermann is entitled to additional reasonable attorney fees incurred as a result of this appeal; therefore, we remand to the circuit court for a finding in this regard. Scheuermann also asks for fees and costs she will incur in collecting the judgment from Cigan, but this request is premature.

*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.

