

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 1, 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. 2010AP1519

Cir. Ct. No. 2008SC16629

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

LUIS CERVANDO ENCISO-LOPEZ,

PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

v.

VIRGILO MONTEAGUDO, NEISY MONTEAGUDO AND LA GORDOLA, INC.,

DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Reversed and cause remanded for further proceedings consistent with this opinion.*¹

¶1 KESSLER, J.² Luis Cervando Enciso-Lopez appeals a small claims court judgment in which the court found that he lacked standing to sue

¹ Virgilio and Neisy Monteagudo and La Gordola, Inc. also cross-appealed an order denying their motions for sanctions. We conclude that a review of this order is not necessary at this time for reasons explained further in this opinion.

Virgilio and Neisy Monteagudo and La Gordola, Inc. (collectively, “the Monteagudos”). Enciso³ contends that the small claims court⁴ erred when it held that he did not have standing to sue because his oral contract with the Monteagudos was unenforceable based on his wife’s illegal immigration status. Because we conclude that Enciso did have standing to bring his claims against the Monteagudos, we reverse the judgment and remand for further proceeding.

BACKGROUND

¶2 Enciso is a legal permanent resident of the United States. According to Enciso’s complaint, in the fall of 2004, Enciso and his wife, Alicia, who was in the United States illegally and had previously been deported, visited the Monteagudos, as “notarios publicos,”⁵ to have the Monteagudos translate a letter they received from the United States Citizenship and Immigration Services (USCIS) regarding obtaining citizenship for Alicia. The Monteagudos informed the couple that Alicia’s priority date was not current, and advised them to come back after three years, at which time Alicia’s application for citizenship would be timely. In 2007, Enciso and Alicia visited the Monteagudos’s office four times for consultations on Alicia’s immigration status. Enciso and Alicia then paid the Monteagudos to fill out two applications with the USCIS and paid for the

² This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10).

³ Because the appellant’s briefs refer to him as “Enciso,” we will do the same.

⁴ This matter started out in small claims court, but because of a recusal and substitution, the case was transferred to the Honorable Thomas R. Cooper, who presided as “small claims court.”

⁵ Enciso contends that “[n]atives of Latin America associate the term ‘Notarios Publicos’ with highly trained attorneys.” The Monteagudos denied representing themselves as attorneys in their answer to Enciso’s Third Amended Complaint.

application fees, processing fees, as well as for medical examinations required by the USCIS.

¶3 In November 2007, Alicia was interviewed by the USCIS and was subsequently deported. Enciso then drove his three children to Mexico to live with their mother.

¶4 Enciso brought a small claims action against the Monteagudos claiming that Alicia was deported as a result of the Monteagudos's faulty advice, and that Enciso was therefore entitled to recover all of the expenses he incurred with regard to consultation fees, filing and processing fees, medical examination fees and travel expenses. Specifically, Enciso's complaint alleged: (1) unjust enrichment; (2) breach of contract/breach of an implied duty of good faith; (3) negligent misrepresentation; (4) intentional misrepresentation; (5) unfair trade practices; (6) notary misconduct; and (7) negligent provision of services.

¶5 After various filings and motions from both parties in small claims court, the Monteagudos ultimately moved for summary judgment, arguing that Enciso's claims were derivative of his wife, who was not a party to the action, and he therefore lacked standing to sue. The Monteagudos also filed motions for sanctions alleging discovery violations, and that (1) many of Enciso's claims were time-barred; (2) Enciso's claim was presented for an improper purpose; and (3) Enciso failed to plead his fraud-based claims with specificity. Although the small claims court did not agree that Enciso's claims were derivative, it granted summary judgment for the Monteagudos, stating "there is no standing and [Alicia] was here illegally by her own choice. Therefore it's an unenforceable contract." In its written order granting summary judgment, the small claims court also denied the Monteagudos's motions for sanctions. Enciso now appeals the final judgment.

DISCUSSION

¶6 Enciso argues that the small claims court erred when it found that he did not have standing to sue because his wife was in the United States illegally by her own choice, making their contract with the Monteagudos unenforceable. We agree.

¶7 “In order to have standing to sue, a party must have a personal stake in the outcome ... and must be directly affected by the issues in controversy.” *Village of Slinger v. City of Hartford*, 2002 WI App 187, ¶9, 256 Wis. 2d 859, 650 N.W.2d 81 (internal citation omitted). “Wisconsin liberally interprets the concept of standing, and parties who are aggrieved are generally thought to have standing to sue.” *Tensfeldt v. Haberman*, 2009 WI 77, ¶77 n.27, 319 Wis. 2d 329, 768 N.W.2d 641. Whether a party has standing is a question of law, which we review *de novo*. *Chenequa Land Conservancy, Inc. v. Village of Hartland*, 2004 WI App 144, ¶12, 275 Wis. 2d 533, 685 N.W.2d 573.

¶8 We agree with the small claims court that Enciso’s claims were not derivative of his wife’s, however we disagree that Enciso lacked standing to sue. Although we cannot speculate about the emotional effects Alicia’s deportation may have had on Enciso, it is clear that Enciso sustained a monetary loss by paying various fees in an effort to keep his wife in the country and to keep his family together. He also incurred expenses when he took his children to be with his wife in Mexico. Enciso clearly had a personal stake and interest in keeping his wife in the country and therefore was a part of whatever oral agreements may have been made with the Monteagudos regarding their work to help Alicia obtain citizenship. Enciso had standing to sue the Monteagudos for his monetary losses resulting from what he can prove was negligent advice or action.

¶9 Because we conclude that Enciso did have standing to sue the Monteagudos, we need not address the various constitutional arguments Enciso put forth. See *State v. Hale*, 2005 WI 7, ¶42, 277 Wis. 2d 593, 691 N.W.2d 637 (“Normally this court will not address a constitutional issue if the case can be disposed of on other grounds.”).

¶10 With regard to the Monteagudos’s cross-appeal, we conclude that a review of the small claims court’s order on sanctions is not necessary at this time because Enciso has standing to bring his claims. If necessary, the small claims court can address the discovery issues raised by the Monteagudos’s motions in the context of Enciso’s trial.

By the Court.—Judgment reversed and cause remanded for further proceedings consistent with this opinion.

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

