

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 23, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

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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. 2010AP1299**

**Cir. Ct. No. 2006CV1001**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**DANIEL OLDENBURG,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RJT ASSOCIATES, INC.,**

**DEFENDANT,**

**ROBERT KREHL,**

**APPELLANT.**

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APPEAL from an order of the circuit court for Rock County:  
JAMES WELKER, Judge. *Affirmed in part and reversed in part.*

Before Higginbotham, Sherman, and Blanchard, JJ.

¶1 BLANCHARD, J. In this action for an accounting and a money judgment, Daniel Oldenburg obtained a default judgment in the amount of \$366,814.83 against RJT Associates, Inc. After the money judgment was issued, a supplementary proceeding in aid of its execution was held. As part of the supplementary proceeding, Oldenburg sought and obtained from the circuit court an order allowing Oldenburg to satisfy the judgment by permitting a receiver, acting on Oldenburg's behalf, to seize personal assets of Robert Krehl to satisfy the judgment.

¶2 Krehl now challenges this order on the grounds that he is not named in the default judgment, nor did he have an opportunity to defend his interest in his personal property in a separate action filed by the receiver. Krehl maintains that, because the judgment was not against him, the receiver needed to file a separate action pursuant to WIS. STAT. § 816.08 (2009-10),<sup>1</sup> before the receiver could seek to adjudicate Krehl's rights to his assets. Under § 816.08, if a receiver in a supplementary proceeding seeks to collect property in the possession of a non-party property holder such as Krehl, the receiver must first bring a separate action against the property holder, in order to provide the property holder with the procedural and substantive protections available to all defendants in civil actions.

¶3 Oldenburg contends that it was not necessary for the judgment to be against Krehl, nor for the receiver to name him in a separately filed action, because the circuit court made the factual finding in the supplementary proceeding

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

that RJT is an alter ego of Krehl, and therefore assets of Krehl are assets of RJT for purposes of satisfying RJT's judgment debt.

¶4 We conclude that the circuit court's order is in error to the extent that it grants the receiver authority to collect and take possession of Krehl's personal assets to satisfy RJT's judgment debt under the plain terms of WIS. STAT. § 816.08, and as the statute has been interpreted by the supreme court. The receiver seeking to apply Krehl's assets to satisfy the judgment against the judgment debtor, RJT, must bring a separate action against Krehl to adjudicate the parties' interests in Krehl's assets. Accordingly, we reverse on this issue, but affirm the circuit court's order appointing Oldenburg's attorney as a receiver, and do not address Krehl's remaining arguments on appeal.

### **BACKGROUND**

¶5 The relevant facts are not in dispute and may be stated briefly. At least during the relevant period, RJT was an employment agency. It contracted with companies affiliated with RJT to provide the companies with RJT employees to do their work. RJT obligated itself to collect from the affiliated companies, and then pass along to its employees, the money that the companies owed to the employees for the work they performed for the affiliated companies.

¶6 On behalf of RJT, Krehl hired Oldenburg under an employment contract that provided for a base salary plus commissions. Oldenburg was subsequently terminated from employment at RJT and its affiliated companies.

¶7 Oldenburg filed a civil lawsuit against RJT for an accounting and money judgment, on the grounds that RJT owed him commission payments under the terms of his employment contract. The summons and complaint, which was

never amended, named only one defendant, RJT, and it was served only on RJT. Krehl was not mentioned by name in the complaint. The circuit court entered a default judgment against RJT on Oldenburg's claims.

¶8 After obtaining the default judgment against RJT, Oldenburg subpoenaed Krehl to a supplemental examination in aid of execution before a court commissioner to determine what assets of RJT were available to satisfy the judgment. RJT did not produce Krehl, but did produce a different person who identified herself as the president of RJT. RJT also produced financial records, such as tax returns, payroll reports, and banking records. Following a dispute between RJT and Oldenburg over the scope of relevant questioning and other issues not relevant to this appeal, the circuit court ordered both the RJT president and Krehl to be examined before the circuit court. Both the RJT president and Krehl appeared and testified at the supplementary proceeding regarding RJT's assets.

¶9 Oldenburg then moved the court for an order appointing Oldenburg's counsel as a receiver and for a "turnover" order for Krehl's personal assets and the assets of RJT's client companies to satisfy RJT's judgment. Through his attorney, Krehl objected to Oldenburg's claim that Krehl could be held personally liable for RJT's judgment debt, because Krehl was not a party to Oldenburg's action against RJT, and had not been given the opportunity in a separate civil action to defend his property from application to the judgment.

¶10 The court granted Oldenburg’s requests in part and denied them in part.<sup>2</sup> Granted was the request that the court appoint Oldenburg’s counsel to act as a receiver, acting without need to post a bond, and authorized “to marshal the assets of Robert Krehl to satisfy the judgment entered in the above-captioned cause.”

¶11 In support of its order that the receiver could pursue personal property of Krehl, the court made a set of findings to the effect that RJT and its client companies were alter egos of Krehl, which the court found Krehl had “created and exist for the specific purpose of avoiding financial obligations owed to Daniel Oldenburg and others.” The court also found the following:

I think Mr. Krehl has been a party to this action from the beginning. RJT is simply his alter ego. He’s paying counsel to be here to argue this case.... [It] is not as though we’re bringing in some other party. Mr. Krehl has been a party to this action through RJT from the very beginning.

Because the court found that Krehl held assets of RJT, as its alter ego, the court concluded that the receiver should be permitted to seize Krehl’s individual assets to satisfy Oldenburg’s judgment against RJT.

¶12 Krehl asks this court to reverse the entire order appointing Oldenburg’s attorney as the receiver with authority to collect Krehl’s personal property.

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<sup>2</sup> The court denied Oldenburg’s request that the court grant the receiver authority to collect assets of the affiliated companies. However, Oldenburg does not now challenge the decision of the court to deny this motion. Therefore, we do not address this decision.

## DISCUSSION

¶13 On appeal, Krehl does not object to the court conducting the supplementary proceeding in aid of execution of the judgment against RJT. Krehl also provides no reason to upset the court's decision, as part of the supplementary proceeding, to appoint Oldenburg's attorney as a receiver who is authorized, in the words of one supreme court opinion, "to collect those assets revealed by the examination of the debtor, take possession of them, apply them to the satisfaction of the judgment, and return the excess to the judgment debtor." *See Candee v. Egan*, 84 Wis. 2d 348, 361, 267 N.W.2d 890 (1978). Instead, Krehl challenges only the court's order, made as part of the supplementary proceeding, that the receiver may apply Krehl's assets to the judgment against RJT.<sup>3</sup>

¶14 This presents an issue that involves application of WIS. STAT. § 816.08 to undisputed facts, and therefore is a question of law that we review de novo. *See LaCount v. General Cas. Co.*, 2006 WI 14, ¶20, 288 Wis. 2d 358, 709 N.W.2d 418.

¶15 We conclude, based on the plain language of WIS. STAT. § 816.03, consistent with interpretations of the supreme court, that the circuit court was without authority to issue an order as part of the supplementary proceeding permitting the receiver to collect personal assets of Krehl. Therefore, we reverse that particular order.

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<sup>3</sup> It is a peculiarity of Krehl's brief on appeal that he requests this court to reverse the entire Findings of Fact, Conclusions of Law and Order entered by the circuit court as part of the supplemental proceeding, yet provides no reason for us to reverse the following orders contained therein: (1) that Oldenburg is entitled to have a receiver represent him in collecting on the judgment against RJT; (2) that this receiver is Oldenburg's attorney; and (3) that the receiver may act without posting a bond. Therefore, we affirm these orders.

¶16 “Supplementary proceedings are actions initiated by unsatisfied judgment creditors to identify a debtor’s property, other than real property, on which the creditor can execute his or her judgment.” *Mann v. Bankruptcy Estate of Badger Lines, Inc.*, 224 Wis. 2d 646, 653, 590 N.W.2d 270 (1999). Such proceedings are a postjudgment discovery procedure in which the judgment-debtor is compelled to provide information about its own property, so that it can be determined what assets are available to the debtor to satisfy a judgment. WIS. STAT. § 816.03. The proceedings are a continuation of and a part of the original action against a judgment debtor, not an independent action or proceeding. *Department of Revenue v. Milwaukee Mack Sales, Inc.*, 91 Wis. 2d 1, 8, 280 N.W.2d 274 (1979). A judge may appoint a receiver during or following the supplementary proceeding to assist the judgment creditor in locating and securing the debtor’s property. § 816.04. Once appointed, the receiver may seek to recover all non-exempt assets in the debtor’s possession available to the judgment creditor. *Id.*

¶17 Property may be applied to the judgment at a supplementary proceeding under the procedures outlined in WIS. STAT. § 816.08, which provides:

The court or judge may order any property of the judgment debtor or due to the judgment debtor, not exempt from execution, to be applied toward the satisfaction of the judgment; *but if it appear that any person, [who is] alleged to have property of the judgment debtor or to be indebted to the judgment debtor[,] claims an adverse interest in the property or denies the debt, such interest or debt shall be recoverable only in an action against such person by the receiver; and a transfer or other disposition of such property or interest may be restrained till a sufficient opportunity be given to the receiver to commence the action and prosecute the same to judgment and execution or until security therefor shall be given as ordered.*

(Emphasis added).

¶18 Under the plain language of this statute, the contested interest of a property holder who is not a judgment debtor (“any person”) “shall be recoverable only in an action against such person by the receiver,” and it is for the receiver to commence this action. See *Milwaukee Mack Sales*, 91 Wis. 2d at 8; *Paradise v. Ridenour*, 211 Wis. 42, 45-46, 247 N.W. 472 (1933).<sup>4</sup>

¶19 As the supreme court has explained, this legislative approach is logical because the supplemental examination itself is both (1) an adversarial proceeding *against the debtor*, not against any other parties, and (2) a proceeding that is merely summary in nature. *Milwaukee Mack Sales*, 91 Wis. 2d at 8-10. A contrary rule, allowing courts to adjudicate the respective rights of receivers and non-party property holders in supplementary proceedings, would deprive the property holders of the due process “protections afforded by an adversary proceeding with summons, pleadings, pre-trial procedures, trial, judgment and execution on the judgment.” *Id.* at 10 (citing *Paradise*, 211 Wis. 42 at 46). In supplementary proceedings “the title to property may not be adjudicated where there is a substantial dispute, but the parties are limited to the remedy of suit by the receiver to determine the title.... This procedure is necessary in order to afford the parties due process of law.” *Paradise*, 211 Wis. 42 at 46. In cases in which “there is a genuine dispute between the receiver and a third party as to their rights in the property, the dispute must be adjudicated in a suit by the receiver” in a separate action. *Milwaukee Mack Sales*, 91 Wis. 2d at 8.

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<sup>4</sup> *Paradise v. Ridenour*, 211 Wis. 42, 247 N.W. 472 interprets WIS. STAT. § 273.08 (1931), a predecessor to WIS. STAT. § 816.08. The changes from the earlier version of the statute are not significant for purposes of this appeal.



¶20 For this reason, the order issued in the supplemental examination in this case granting the receiver the right to seize Krehl’s assets to satisfy RJT’s judgment debt is contrary to WIS. STAT. § 816.08. A separate action, filed by the receiver, is necessary. The court was without authority in the supplementary proceeding to entertain the argument that Krehl is an alter ego of RJT for the purpose of permitting collection against Krehl in what amounted to a summary “trial” of the claims of Oldenburg, RJT, and Krehl to Krehl’s assets. *See Milwaukee Mack Sales*, 91 Wis. 2d at 11.<sup>5</sup>

¶21 In his brief on appeal, Oldenburg does not analyze the relevant terms of WIS. STAT. § 816.80 on this issue, nor does he attempt to explain how they mean anything different from the way we read them, and as analogous prior versions of the statute have been interpreted by the supreme court in *Milwaukee Mack Sales* and *Paradise*. We take Oldenburg impliedly to offer as his argument that this reading produces an absurd result that could not have been intended by the legislature.<sup>6</sup> The purportedly absurd result is that requiring Oldenburg or the

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<sup>5</sup> We take no position on the set of issues argued by the parties that involve whether Krehl, RJT, and the client companies established among themselves relationships that should be analyzed under doctrines such as agency, alter ego, “reverse” alter ego, or piercing the corporate veil for purposes of Oldenburg’s collection efforts on the judgment, either in this action or in any other potential action filed by him or a receiver. “An appellate court should decide cases on the narrowest possible grounds.” *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

<sup>6</sup> Ordinarily, our analysis ends with a conclusion that the words of a statute provide a plain meaning, which we have concluded is the case here, as confirmed by supreme court precedent. However, we address this implied argument because courts may consider an argument that even an apparently plain meaning of a statute produces a result so absurd that it could not have been intended by the legislature. *See Teschendorf v. State Farm Ins. Cos.*, 2006 WI 89, ¶15, 293 Wis. 2d 123, 717 N.W.2d 258 (resort to legislative history permissible in this circumstance “to verify that the legislature did not intend these unreasonable or unthinkable results”). However, as the supreme court noted in *Teschendorf*, “Because our purpose in these situations is grounded in open disbelief of what a statute appears to require, we are bound to limit our off-statute investigations to obvious aberrations.” *Id.*

receiver to bring a separate action against Krehl to collect the judgment against RJT leaves a person who is in Krehl's position free to "create a whole new set of entities to use as conduits to conceal assets," thus unnecessarily thwarting lawful collection.

¶22 This implied argument is wholly without merit. There is no aberration whatsoever, much less an obvious one, between the requirement at issue here and the goals of the legislature in creating the statutory scheme of remedies supplementary to execution found in WIS. STAT. ch. 816. In fact, as seen in the language of WIS. STAT. § 816.08, which we quote above, the legislature explicitly addressed the concern raised by Oldenburg by including within § 816.08 the option of a restraining order issued as part of the supplementary proceeding.

¶23 WISCONSIN STAT. § 816.08 provides that "[t]he court or judge" has authority in a supplementary proceeding to review the claims of a receiver and a non-party in Krehl's position to determine whether a restraining order against transfer or other disposition of property should be issued to give the receiver "a sufficient opportunity" "to commence the action and prosecute the same to judgment and execution or until security therefor shall be given as ordered." The availability of this option to preserve the status quo, while a receiver pursues a new action against a non-party property holder, confirms that the legislature explicitly and consciously struck a balance, in requiring receivers to file new actions, between efficiency of collection and due process for property owners.<sup>7</sup>

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<sup>7</sup> We make this observation about the availability of a restraining order under WIS. STAT. § 816.08 in the context of evaluating the legislature's intent on the question of whether a separate action is mandatory. We further note that, so far as the record in this case reveals, Oldenburg did not attempt to invoke this restraining order protection. Oldenburg's motion requesting the circuit court to appoint a receiver to collect Krehl's assets and for a "turnover" order for the assets is not

(continued)

## CONCLUSION

¶24 For these reasons, Krehl is a non-party property holder to this action who claimed an adverse interest in his assets, which were sought to satisfy RJT's judgment debt in a supplementary proceeding, and therefore the receiver is required to file a separate action against Krehl to adjudicate the parties' interests in Krehl's personal assets under WIS. STAT. § 816.08. Accordingly, we affirm the court's orders appointing Oldenburg's attorney as a receiver and allowing him to act without a bond, and reverse the order granting the receiver authority to marshal Krehl's personal assets to satisfy RJT's judgment debt.

*By the Court.*—Order affirmed in part and reversed in part.

Not recommended for publication in the official reports.

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remotely the equivalent of a motion requesting the court to enter an order restraining transfer or disposition of Krehl's assets pending the filing of a separate action by the receiver. Oldenburg asked only for the first remedy, not the second. The first remedy was precluded by the terms of WIS. STAT. § 816.08, as discussed above. So far as the record reveals, Oldenburg did not present the circuit court with the opportunity to consider the second.

