

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 17, 2012

Diane M. Fremgen
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. 2011AP1711

Cir. Ct. No. 2009SC42970

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JASMAIL SINGH,

PLAINTIFF-RESPONDENT,

V.

JOE SANFELIPPO CAB, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Joe Sanfelippo Cab, Inc. (“Sanfelippo Cab”) appeals a small claims judgment awarding \$1466.00 to Jasmal Singh for funds

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10).

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

withheld from Singh's salary. Sanfelippo Cab contends that it was denied its due process right to a jury trial because the small claims court conducted a bench trial, though Sanfelippo Cab was anticipating a jury trial. Because Sanfelippo Cab never requested a jury trial, and did not object to the bench trial before it began, we conclude that Sanfelippo Cab forfeited its right to a jury trial. We affirm.

BACKGROUND

¶2 Singh worked as a taxi driver for Sanfelippo Cab and leased a taxicab from the company. After the taxi was damaged in an accident in which Singh was driving, Singh and Sanfelippo Cab disputed the cost of repairs. Sanfelippo Cab withheld Singh's security deposit, salary and rent to pay for the damages.

¶3 Singh filed a small claims action, alleging that Sanfelippo Cab wrongfully withheld the funds and that Sanfelippo Cab wrongfully withheld receipts for the costs of repair to the taxi. Following an evidentiary hearing, the small claims court commissioner found in favor of Sanfelippo Cab and dismissed the case.

¶4 Singh appealed to the circuit court and filed a demand for a jury trial, however, the circuit court conducted a bench trial. Neither party objected to the bench trial. Singh, *pro se*, testified with an interpreter and also called his girlfriend to testify. Sanfelippo Cab, represented by a "lay advocate," cross-examined both witnesses, but declined to call its own witnesses. The circuit court ruled in favor of Singh, finding that Sanfelippo Cab did not present evidence to contradict Singh's testimony. This appeal follows.

DISCUSSION

¶5 Sanfelippo Cab contends that it was denied its due process right to a jury trial because it was not given notice that the circuit court would conduct a bench trial. Because Sanfelippo Cab did not object to the bench trial on the record before the trial, we conclude that Sanfelippo Cab forfeited its opportunity to demand a jury trial.

¶6 Under WIS. STAT. § 799.21(3), “any party” to a small claims action may, upon payment of fees, demand a jury trial. *See id.* At the bench trial, both Singh and his girlfriend testified and presented multiple exhibits. Sanfelippo Cab’s lay advocate cross-examined both witnesses. Sanfelippo Cab declined to call its witness, stating it “didn’t think we would be this far along today,” and that calling its intended witness was not necessary at that point.

¶7 Sanfelippo Cab now argues that it was not prepared to call its witness because it anticipated voir dire, rather than a bench trial. This claim should have been made as an objection to the circuit court when the situation could have been remedied, rather than after Sanfelippo Cab completed its trial and lost. A litigant who proceeds with a bench trial without objection cannot later claim that his or her right to a jury trial was violated. *See Dunn v. Dunn*, 258 Wis. 188, 193, 45 N.W.2d 727 (1951) (Proceeding to trial without a jury is conduct that manifests a party’s consent.). Sanfelippo Cab effectively forfeited its right to a jury trial in this matter.

¶8 For all the foregoing reasons, we affirm the circuit court.

By the Court.—Judgment affirmed.

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

