

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 19, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0562

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

OLSTEN CORPORATION,

Plaintiff-Respondent,

v.

PATRICIA G. HASS,

Defendant-Appellant.

APPEAL from an order of the circuit court for La Crosse County:
MICHAEL J. MULROY, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Patricia Hass appeals from a circuit court order entering a judgment against her in favor of Olsten Corporation in the amount of \$345,000 for breach of contract and punitive damages. She argues that the circuit court erred: (1) by failing to notify her that her trial was set as the primary trial for October 31, 1994, leaving her without time to hire counsel; (2) by failing to grant a continuance; and (3) by failing to inform her that evidence

introduced at trial had to be offered and accepted before it could be considered by the jury. She asks for a new trial in the interest of justice because the real controversy was not fully tried. For the reasons set forth below, we affirm.

BACKGROUND

In 1985, Patricia Hass (Hass) signed a contract with Olsten Corporation (Olsten) to become an Olsten licensee in La Crosse, Wisconsin, providing temporary workers to area businesses under the Olsten name. In conducting that business over the next several years, Olsten built relationships with area employers. In 1989, in derogation of her contract, Hass changed the name under which she did business to "Olympic." She also converted to her own use several large checks from area employers which were intended for Olsten.

In addition to pressing criminal charges against Hass, in 1990 Olsten brought the civil suit underlying this appeal. Olsten sought restitution and punitive damages. At the request of first one party, then another, the civil case was set over for trial several times, among other reasons, because Hass was imprisoned on criminal convictions and because she sought additional time to hire an attorney. The case was tried in October 1994, and resulted in a restitution and punitive damages verdict of \$345,000 in Olsten's favor. Postconviction motions followed, then this appeal.

OCTOBER TRIAL DATE/HIRING AN ATTORNEY

Hass argues that the circuit court erred in failing to timely notify her that her trial was set as the primary trial for October 31, 1994. Hass relied on the court's practice during previous set-overs whereby the court sent her written notification by mail of the new trial date. Hass claims that she did not receive notification until five days before the trial date, and then only by accident when the attorney of an acquaintance informed her that he had seen her case posted as primary. Hass then attempted to hire an attorney, but was unable to obtain one on such short notice. Hass also argues that the circuit court erred in denying her motion for continuance.

The record contains a pretrial order dated October 21, 1993, informing Hass that her case was set as a back-up case for October 31, 1994. More importantly, however, the pretrial order also set an August 1, 1994 date for naming expert witnesses, an October 1, 1994 date for conducting discovery, and an October 15, 1994 date for filing motions capable of being determined before trial. A reasonable person desiring to hire an attorney would have done so before the deadlines in the pretrial order ran, regardless of the trial date.

Hass attempts to parlay into circuit court error her self-serving statement that she planned to hire an attorney after discovery closed, no experts could be named and no motions could be brought. Her assertion is unsupported by common sense or the record. Hass concedes that she made no effort to hire an attorney until a few days before the October 31, 1994 trial date, at which time all the pretrial deadlines had already run.

The decision to grant or deny a continuance is within the discretion of the circuit court. *Robertson-Ryan & Associates, Inc. v. Pohlhammer*, 112 Wis.2d 583, 586-87, 334 N.W.2d 246, 249 (1983). In light of the unreasonable delay in hiring an attorney before the pretrial order dates, the circuit court did not erroneously exercise its discretion in maintaining the October 31, 1994 trial date. Further, the history of this case shows a three-and-one-half-year period of delay, during which Hass requested, and was granted, a set-over to hire an attorney. Her failure to do so when granted a previous continuance bolsters the circuit court's decision.

EVIDENCE

At trial, Hass had her exhibits marked, and she cross-examined Olsten's witnesses regarding her exhibits.¹ However, she did not offer her exhibits into evidence. When she tried to argue from her exhibits in closing argument, the circuit court precluded her from doing so because her exhibits were not evidence. Hass argues that the circuit court erred in failing to advise her that her exhibits had to be offered and accepted before they could become evidence from which she could make a closing argument, or before the jury could consider her exhibits.

A circuit court has the duty to protect the rights of litigants who appear in court. *Village of Big Bend v. Anderson*, 103 Wis.2d 403, 407, 308 N.W.2d 887, 890 (Ct. App. 1981). However, a court cannot serve as both advocate and judge. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992). The right to self-representation is not a license not to comply with relevant rules of procedural and substantive law. *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975); *Waushara County v. Graf*, 166 Wis.2d 442, 452, 480 N.W.2d 16, 20 (1992). Hass knew that she was disadvantaged in appearing without an attorney, but did not inform herself of elemental rules of evidence. It was not the court's responsibility to act as her advocate and inform her of shortcomings in her case or her presentation of it.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ Hass never put in a case-in-chief. She confined her presentation to cross-examining Olsten's witnesses.