COURT OF APPEALS
DECISION
DATED AND RELEASED

October 11, 1995

NOTICE

No. 95-1138

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

ARTHUR D. DYER and
GEORGE J. JENICH,

Plaintiffs-Respondents,

v.

ROSEMARIE ANNONSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Racine County: DENNIS J. FLYNN, Judge. *Affirmed.*

BROWN, J. Rosemarie Annonson, arguing pro se, appeals a small claims judgment of eviction and restitution in favor of her landlords, Arthur D. Dyer and George J. Jenich. We affirm.

Annonson and her landlords entered into a written month-to-month lease on a rental unit in Caledonia on February 1, 1994. Various disputes

arose between the parties. Annonson made complaints concerning the condition of the premises, the safety of drinking water on the property and the electrical wiring of the landlords' rental units. The landlords objected to Annonson's keeping of numerous pets, her improper use of a garage and her burning of brush on the property. At any rate, on December 30, 1994, the landlords notified Annonson that they would not renew the lease. Annonson refused to move and the landlords brought an eviction action. After a three-day trial, the trial court found for the landlords. Annonson appeals.

Annonson maintains that the trial court neglected its duty under § 885.10, STATS., to waive witness fees and to direct the subpoena of witnesses in light of her indigence. She further argues that the trial court erred both in its rulings regarding the admissibility of certain documentary evidence and in its conclusion that the landlords' termination of her lease was not a retaliatory eviction.

We find no merit in Annonson's contention that under § 885.10, STATS., a trial court is required in a small claims proceeding to waive witness fees for an indigent defendant or to direct the subpoena of witnesses. The statute Annonson relies upon reads, in relevant part:

> the judge or court commissioner, *in any paternity proceeding or criminal action or proceeding, or in any other case in which the respondent or defendant is represented by the state public defender or by assigned counsel* … may direct the witnesses to be subpoenaed ….

Section 885.10 (emphasis added). The civil small claims proceeding which resulted in this judgment is neither a paternity proceeding nor a criminal

proceeding, nor was Annonson represented by the public defender or by assigned counsel. The statute, then, is inapplicable to this case and the trial court's ruling on this matter is correct.

As to Annonson's remaining claims, this court is prevented from adequately addressing them because of her decision not to include a copy of the trial transcript on appeal. In her reply brief, Annonson writes, "A transcript of the circuit court proceeding in this case … is not necessary as the arguments raised do not [rely] on facts presented in testimony. Sufficient evidence is discernable in the record." She is mistaken, and the mistake seems to stem from her misunderstanding of the role of an appellate court.

It is not the function of an appellate court to retry the facts of the case, simply giving the parties a new opportunity to prevail with a different court. Where there are disputed questions of fact on appeal, an appellate court must give deference to the factual findings of the trial court unless they are clearly erroneous. *See* ***State v. Turner***, 136 Wis.2d 333, 343-44, 401 N.W.2d 827, 832 (1987). Questions of law, however, require independent appellate review of the trial court's findings. ***State v. Lee***, 122 Wis.2d 266, 274, 362 N.W.2d 149, 152 (1985).

Annonson has argued that the trial court erred in its rulings on the admissibility of certain documentary evidence. The question on appeal, however, is whether the trial court exercised its discretion in accordance with accepted legal standards and the *facts of record*. *See* ***State v. Pharr***, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983). It is therefore necessary for this court to

examine the trial court's reasoning. Without a trial transcript, we are unable to determine if its decision, based upon facts of record, was faulty. We may not rely upon Annonson's account of the trial court's ruling. Indeed, without the trial transcript we are unable to even determine whether any evidence was in fact excluded. In the absence of a trial transcript, an appellate court therefore assumes that every fact essential to sustaining the trial judge's exercise of discretion is supported by the record. ***Austin v. Ford Motor Co.***, 86 Wis.2d 628, 641, 273 N.W.2d 233, 239 (1979). For that reason, we must affirm.

We now address Annonson's assertion that the landlords' election not to renew her lease was a retaliatory eviction and that the trial court erred by finding otherwise. Section 704.45(1), STATS., states that a landlord may not refuse to renew a lease "if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant" for asserting various legal rights. There was a dispute between the parties in this case as to whether the landlords' election not to renew the lease would have occurred but for Annonson's repeated complaints to the landlords and to various municipal and state agencies. This is a dispute of fact, and we must therefore apply the "clearly erroneous standard." *See* ***Turner***, 136 Wis.2d at 343-44, 401 N.W.2d at 832. The trial court, having heard all the testimony, apparently determined that the landlords had sufficient reason aside from Annonson's complaints not to renew her lease. If Annonson wished to demonstrate to this court that the trial court's finding was clearly erroneous and that she had met the burden of proof at trial, she needed to support her contention by supplying this court with the trial transcript. In the absence of the

transcript, this court is unable to determine whether the trial court's finding was erroneous.

By the Court.—Judgment affirmed.

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