

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 9, 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. 95-1256

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

GENERAL CASUALTY COMPANY OF WISCONSIN,

Plaintiff-Respondent,

v.

CAMERON GILBERT,

Defendant,

**EISENBERG, WEIGEL, CARLSON,
BLAU, REITZ & CLEMENS, S.C.,**

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN J. DiMOTTO, Judge. *Reversed.*

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Cameron Gilbert and his employer, the law firm Eisenberg, Weigel, Carlson, Blau, Reitz, and Clemens, S.C., appeal from an

order of the circuit court awarding frivolous action costs under § 814.025, STATS., for the bringing of a motion for summary judgment. The law firm raises two issues on appeal. It claims that: (1) the trial court had no power to award § 814.025 costs for bringing a motion for summary judgment; and (2) the trial court misused its discretion in finding the motion frivolous. We reverse, concluding that the trial court erroneously applied § 814.025. We therefore do not address the second issue.

This matter arises out of an automobile accident between Gilbert and Sam Minessale. The law firm sought to handle the accident without referring the matter to its insurance carrier. The matter was not resolved and Minessale's insurance carrier paid Minessale's claim under his uninsured motorist provision, after failing to receive any information as to the identity of the law firm's insurance carrier. Thereafter, Minessale's insurance carrier commenced this lawsuit, seeking reimbursement for the money it paid to Minessale under his policy. The law firm brought a motion for summary judgment, arguing that it was insured and, therefore, not liable for any amounts paid to Minessale through his uninsured motorist policy. The trial court denied the motion and granted costs in the amount of \$1500 under § 814.025, STATS.

Section 814.025, STATS., provides as follows:

Costs upon frivolous claims and counterclaims. (1) If an action or special proceeding commenced or continued by a plaintiff or a counterclaim, defense or cross complaint commenced, used or continued by a defendant is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs determined under s. 814.04 and reasonable attorney fees.

(2) The costs and fees awarded under sub. (1) may be assessed fully against either the party bringing the action, special proceeding, cross complaint, defense

or counterclaim or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(3) In order to find an action, special proceeding, counterclaim, defense or cross complaint to be frivolous under sub. (1), the court must find one or more of the following:

(a) The action, special proceeding, counterclaim, defense or cross complaint was commenced, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The party or the party's attorney knew, or should have known, that the action, special proceeding, counterclaim, defense or cross complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

(4) To the extent s. 802.05 is applicable and differs from this section, s. 802.05 applies.

Based upon its plain language, we have held that § 814.025, STATS., “refers to an action, special proceeding, counterclaim, defense or cross-complaint, but not to a motion.” *Wengerd v. Rinehart*, 114 Wis.2d 575, 581-582, 338 N.W.2d 861, 865-866 (Ct. App. 1983). The clear language of § 814.025, therefore, precludes the trial court from awarding frivolous-action costs for a motion for summary judgment.

By the Court. — Order reversed.

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