

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

OCTOBER 10, 1995

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. 95-1370

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**ROGER D. ERDMAN,**

**Plaintiff-Respondent,**

**v.**

**GENE ROETS,**

**Defendant-Appellant,**

**ARNOLD LANGE and ARNOLD  
LANGE AUCTION SERVICE,**

**Garnishee-Defendant.**

APPEAL from an order of the circuit court for Marathon County:  
RAYMOND F. THUMS, Judge. *Affirmed.*

LaROCQUE, J. Gene Roets appeals a garnishment order dated May 1, 1995, directing Arnold Lange of Arnold Lange Auction Service to pay Roger Erdman the sum of \$1,326.98 from the auction of property owned by Roets. Roets claims that § 806.15, STATS., bars a garnishment action brought

more than ten years after the docketing of the underlying judgment, entered in May 1980.<sup>1</sup> This argument is rejected, and the order is affirmed.

Roets relies upon § 806.15, STATS., for his contention that Erdman had to commence his garnishment within ten years of the entry of judgment. The statute on its face merely provides a lien upon the judgment debtor's real property. This court agrees with Erdman's contention, to which Roets does not reply, that the governing statute of limitations is § 893.40, STATS.<sup>2</sup> As the Judicial Council's Committee Note indicates, this statute was adopted by ch. 323, Laws of 1979. It has an effective date of July 1, 1980. It extended the former statute of limitations on an action upon a judgment from ten to twenty years. A judgment is entered when it is filed in the office of the clerk of court. Section 806.06(1)(b), STATS. The underlying judgment in this case was entered on May 6, 1980.

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<sup>1</sup> Section 806.15(1), STATS., provides:

Lien of judgment; priority; statute may be suspended. (1) Every judgment properly docketed showing the judgment debtor's place of residence shall, for 10 years from the date of entry, be a lien on the real property, except the homestead mentioned in s. 815.20, in the county where docketed, of every person against whom it is rendered and docketed, which the person has at the time of docketing or which the person acquires thereafter within the 10-year period.

<sup>2</sup> Section 893.40, STATS., provides: "Action on judgment or decree; court of record. An action upon a judgment or decree of a court of record of any state or of the United States shall be commenced within 20 years after the judgment or decree is entered or be barred."

Judicial Council Committee's Note, 1979 provides:

This section has been created to combine the provisions of repealed ss. 893.16 (1) and 893.18 (1). A substantive change from prior law results as the time period for an action upon a judgment of a court of record sitting without this state is increased from 10 years to 20 years and runs from the time of entry of a judgment. The separate statute of limitations for an action upon a sealed instrument is repealed as unnecessary. [Bill 326-A]

For the following reasons, this court declines to hold that the former ten-year statute of limitations controls the garnishment action in this case, even though the judgment entry preceded the effective date of § 893.40, STATS. First, although Roets raised the question in the trial court, he has not raised it on appeal. An issue raised but not briefed or argued is deemed abandoned. *Reiman Assocs. v. R/A Adver.*, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981). Second, even if the trial court argument were to be reviewed on appeal, Roets has never addressed the fundamental issue: whether the lengthened statute of limitations relating to an action upon a judgment is a procedural or a substantive statute. Statutes are generally to be construed as relating to future and not to past acts, but if a statute is procedural or remedial rather than substantive, the statute is generally given retroactive application, provided that the retroactive application does not disturb contracts or vested rights. *Gutter v. Seamandel*, 103 Wis.2d 1, 17, 308 N.W.2d 403, 411 (1981). Absent any authority to the contrary, this court concludes that the statute *lengthening* the time for bringing an action on a judgment is procedural or remedial and should be given retroactive application because it did not disturb a contract or vested right.

Roets summarily raises for the first time arguments concerning the alleged absence of service of certain forms relating to garnishment exemptions that are to accompany the commencement of a garnishment action, pursuant to § 812.35, STATS. This court need not consider issues raised for the first time on appeal. *Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). The purpose of this rule is to avoid the necessity of an appeal when the matter could have been raised and resolved in the circuit court. Because the matter was not raised there, it is not considered here.

*By the Court.* – Order affirmed.

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