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**DISTRICT IV**

March 19, 2018

To:

Hon. Valerie Bailey-Rihn  
Circuit Court Judge  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2226

Tiffany Burke v. Deborah Burke (L.C. # 2015CV2132)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Tiffany Burke appeals the circuit court's judgment dismissing her tort claims after a bench trial.<sup>1</sup> Tiffany argues that she was denied her constitutional right to a jury trial when the circuit court struck her demand for a jury trial after she did not timely pay the jury fee. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate

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<sup>1</sup> For ease of reference, we will refer to plaintiff-appellant as Tiffany and defendant-respondent as Deborah.

for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>2</sup> We reject Tiffany’s arguments and affirm.

Tiffany Burke filed various tort claims against Deborah Burke based on an alleged altercation. The circuit court’s scheduling order set a deadline for Tiffany to pay the jury fee. Tiffany paid the fee one week after this deadline. Deborah moved to strike Tiffany’s jury request due to the failure to timely pay the fee. The circuit court granted the motion. After a trial to the court, the circuit court entered judgment for Deborah and dismissed Tiffany’s claims. Tiffany now appeals, arguing that her constitutional right to a jury trial was violated.

We need not detail Tiffany’s arguments regarding her right to a jury trial because Tiffany acknowledges that we are likely bound by controlling precedent and informs us that she is merely attempting to preserve these arguments for further appeal. We agree that we must affirm the circuit court’s decision under controlling precedent, including our supreme court’s decision in *Phelps v. Physicians Insurance Co. of Wisconsin, Inc.*, 2005 WI 85, ¶30, 282 Wis. 2d 69, 698 N.W.2d 643 (“[I]t is evident that the failure to pay a jury fee is a basis for finding waiver of the right to trial by jury.”). In *Phelps*, the supreme court explained that WIS. STAT. § 814.61(4)<sup>3</sup> requires a plaintiff to pay the jury fee within the time permitted to demand a jury trial. *See Phelps*, 282 Wis. 2d 69, ¶¶30-32. The statute also states: “If the jury fee is not paid, no jury may be called in the action, and the action may be tried to the court without a jury.” WIS. STAT.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>3</sup> The *Phelps* court was addressing the 1997-98 version of WIS. STAT. § 814.61(4). *See Phelps v. Physicians Ins. Co. of Wis., Inc.*, 2005 WI 85, ¶¶2 n.2, 29, 282 Wis. 2d 69, 698 N.W.2d 643. The 2015-16 version, which applies to this case, is identical.

§ 814.61(4). The supreme court concluded that the plaintiff had waived the right to a jury trial by failing to pay the jury fee on time. *Phelps*, 282 Wis. 2d 69, ¶32.

In her reply brief, Tiffany attempts to distinguish *Phelps* on the ground that the plaintiff in that case received explicit notice through the scheduling order and a local rule that the failure to pay the jury fee constituted a waiver of the right to a jury trial. But this argument ignores the fact that the jury fee statute itself puts a party on notice regarding the timely payment of jury fees. See WIS. STAT. § 814.61(4). We see no indication in *Phelps* that the additional warnings that the plaintiff received were necessary to the court's holding. To the contrary, the *Phelps* court relied in part on a prior decision in which our supreme court upheld the waiver of a jury trial for a party who paid a statutory jury fee one day late. See *Phelps*, 282 Wis. 2d 69, ¶32 (citing *State ex rel. Prentice v. County Court of Milwaukee Cty.*, 70 Wis. 2d 230, 240, 234 N.W.2d 283 (1975)). The decision in *Prentice* was based on the language of the relevant statute requiring timely payment of jury fees, and nothing in that earlier decision suggests that there was any additional warning regarding the effect of untimely payment. Accordingly, we reject Tiffany's effort to distinguish her case from this controlling precedent.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
Clerk of Court of Appeals