



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 15, 2023

To:

Hon. Jerilyn M. Dietz
Circuit Court Judge
Electronic Notice

Ashley M. Nelson
Electronic Notice

April Higgins
Clerk of Circuit Court
Manitowoc County Courthouse
Electronic Notice

Corey Swinick
Electronic Notice

Mark Ziegler
Electronic Notice

David J. Hanus
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2022AP712

UHG I, LLC v. Mark Ziegler (L.C. #2020CV379)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Mark Ziegler appeals pro se from a money judgment in favor of UHG I, LLC, which also denied his motion to compel arbitration.¹ Based upon our review of the briefs and Record, we

¹ In this appeal, Ziegler focuses only on the trial court's denial of his motion to compel arbitration, and we therefore discuss only that issue herein.

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² We affirm.

Ziegler entered into a loan contract that contained an optional arbitration clause. When he defaulted on his payments, the lender³ filed suit in November 2020. In December 2020, Ziegler filed an Answer pointing out that the contract “contains a private arbitration clause which [he] intends to exercise” and further stated that if the court did not assign a hearing date within two weeks of the Answer’s filing date, he would file a “Motion to Compel Arbitration.”

In July 2021—eight months after UHG filed suit and seven months after Ziegler filed his Answer—Ziegler filed his motion to compel arbitration. Rather than rule on his motion at that time, however, the circuit court stayed this matter to wait for the outcome of a pending appeal involving Ziegler that also involved a similar arbitration issue. We issued a decision in the related case in December 2021.⁴

Trial in the present case was set for March 2022. Ziegler did not mention his arbitration motion until after the lender presented its evidence. Specifically, when Ziegler attempted to cross-examine UHG’s witness about whether “arbitration [should] be granted” in this matter, the court informed Ziegler the witness could not answer because the question sought “a legal conclusion,” and the court further informed Ziegler that it had “already rendered a decision on” his motion. When Ziegler indicated he was “unaware” the court had previously rendered a

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

³ UHG I, LLC purchased the consumer debt Ziegler owed. For readability, we will at times refer to UHG as “the lender.”

⁴ *Velocity Invs., LLC v. Ziegler*, No. 2021AP556, unpublished slip op. (WI App Dec. 8, 2021).

decision on his motion, the court summarized the case history, specifically noting that: (1) UHG had filed the Complaint in November 2020; (2) Ziegler did not file his motion to compel arbitration until eight months later in July 2021; and (3) the court had stayed the proceedings pending the outcome of the appeal in *Velocity Investments, LLC v. Ziegler*, No. 2021AP556, unpublished slip op. (WI App Dec. 8, 2021). The circuit court went on to reference the *Velocity* decision and explained that based on that case and the fact that Ziegler had not sought to compel arbitration until eight months after UHG filed suit, Ziegler’s motion was untimely and was therefore denied.⁵ The circuit court then went on to address the merits raised at trial, ruled in favor of the lender, and ordered Ziegler to pay \$17,378.79 plus costs and fees.

The issue presented is whether the circuit court erred in denying Ziegler’s motion as untimely. “Whether conduct amounts to a waiver of the right to arbitrate is a mixed question of fact and law.” *Meyer v. Classified Ins. Corp. of Wis.*, 179 Wis. 2d 386, 396, 507 N.W.2d 149 (Ct. App. 1993). We will not set aside the circuit court’s findings of fact unless they are clearly erroneous. *Id.* However, we review the application of those facts to the waiver standard de novo. *Id.*

We conclude the circuit court did not err. The court, referencing our decision in *Velocity*, noted “that arbitration and mediation are designed to effect an expedient resolution of contested issues. Waiting until the matter is brought before circuit court and a lawsuit is filed defeats the

⁵ Ziegler seems to suggest that UHG was somehow at fault or responsible for the eight-month delay in his filing of his motion seeking to compel arbitration because UHG “waited five months after [his] answer to schedule an initial hearing,” which “caused the lengthy” delay in his filing the motion. Ziegler is wrong. Filing his motion to compel arbitration was his responsibility, and he could have done so at any time regardless of whether UHG had previously sought to schedule a hearing. He also has offered no other explanation, either here or before the circuit court, explaining why he waited eight months to file his motion.

purpose of including an arbitration agreement.” It therefore found that Ziegler’s eight-month delay in filing his arbitration motion—plus waiting until the lender finished presenting its evidence at the trial before raising the issue again—rendered the motion untimely.

We agree that Ziegler’s eight-month delay renders his arbitration request untimely.⁶ Although the loan contract Ziegler entered into contained an optional arbitration clause, Ziegler failed to timely exercise his right to arbitration. Ziegler could have exercised his right by immediately filing a motion to compel arbitration after UHG filed suit, but instead he simply signaled that he *would* file a motion if the circuit court did not schedule a hearing within two weeks. Those two weeks passed without the court scheduling a hearing, and Ziegler did not file his motion. Instead, he waited until eight months after UHG filed suit before doing so and

⁶ Ziegler asserts that pursuant to WIS. STAT. § 788.02, it “is irrelevant” that he did not file his motion to compel arbitration until eight months after UHG filed its lawsuit. Ziegler is wrong. Section 788.02 states:

If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, *providing the applicant for the stay is not in default in proceeding with such arbitration.*

(Emphasis added.) We stated in *Meyer v. Classified Insurance Corp. of Wisconsin*, 179 Wis. 2d 386, 390, 393, 397, 507 N.W.2d 149 (Ct. App. 1993), that § 788.02’s “statutory right to arbitrate a claim is not absolute and may be waived” by conduct, and whether conduct indicates such waiver “must include an overall evaluation of the applicant’s involvement and conduct *up to the time of request.*” (Emphasis added.) As explained, his conduct here evidenced waiver of the right to arbitrate.

Ziegler’s reliance on *J.J. Andrews, Inc. v. Midland*, 164 Wis. 2d 215, 474 N.W.2d 756 (Ct. App. 1991), is also misplaced. Although we acknowledged in that case that “Wisconsin has a policy to encourage arbitration as an alternative to litigation[,]” we also noted that “[t]here are circumstances where a party may be deemed to have waived arbitration” and that a party’s conduct can be construed as a waiver. *Id.* at 223.

apparently did not raise the issue again until after UHG had presented its evidence at trial (more than one year after UHG filed suit).⁷ Based on these circumstances, we cannot conclude that the circuit court's decision denying Ziegler's motion was erroneous.

Therefore,

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

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

Sheila T. Reiff
Clerk of Court of Appeals

⁷ We are troubled that the Record, which includes the CCAP notes pertaining to this matter, lacks reference to a hearing prior to trial at which the circuit court apparently denied Ziegler's arbitration motion. Nevertheless, it is clear from the circuit court's statements at trial concerning his motion that Ziegler's eight-month delay in filing his motion was the primary factor in its decision finding Ziegler's motion to be untimely, and that lengthy delay was the same regardless of when the circuit court denied his motion.

