



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 7, 2024

To:

Hon. Dale L. English
Circuit Court Judge
Electronic Notice

Daniel Kaminsky
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Joseph Norris
46060 Crystal Lake Rd.
Cable, WI 54821

Robert Norris
N7370 Raven View Ct.
Fond du Lac, WI 54937

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

2021AP2211

Robert Norris v. Anthony Norris (L.C. #2018CV183)

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

Robert Norris sued his son, Anthony Norris, alleging (among other things) breach of contract related to the succession of his welding business. Anthony largely prevailed in the trial court and moved for an award of the reasonable expenses he incurred in order to prove facts that Robert denied in response to requests for admission. Anthony cross-appeals¹ from the trial

¹ Although Robert filed a notice of appeal from the judgment, he failed to file a brief in minimal compliance with WIS. STAT. RULE 809.19 (2021-22), and his appeal was dismissed.

All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

court's order denying this motion. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Because we conclude that an order granting Anthony's motion was required as a matter of law, we reverse the order denying reasonable expenses and remand for a determination of the expenses incurred in proving facts that Robert failed to admit in discovery.

In Robert's lawsuit against Anthony, he claimed that although he had given the business to Anthony, the deed by which he transferred the real property should not be considered valid, that the equipment and inventory inside the building was not part of any gift, and that the money he loaned to Anthony had not been repaid. Robert's other son (and Anthony's brother), Joseph Norris, filed an intervening complaint alleging that Joseph had a future interest in the business such that Robert could not transfer the business property to Anthony. Early in the litigation, Anthony served Robert with the following requests for admission, each of which Robert denied:

1. You gave all of the business equipment, materials, inventory, and supplies of your prior welding business located at N7305 Lakeshore Drive, Fond du Lac, WI 54937 to your son Anthony Norris.
2. You gave the real property located at N7305 Lakeshore Drive, Fond du Lac, WI, to your son Anthony Norris.
3. You wrote a check to the law [firm] of Everson & Gibbs for their fees to represent Joseph Norris in this action.
4. You have been paid back all monies you loaned to Anthony Norris as indicated in his accounting filed with his Motion for Summary Judgment in this action.

Each of these facts was ultimately proven true. The trial court granted summary judgment in favor of Anthony with respect to the fact stated in Request No. 2; at a hearing, Robert admitted under oath that he had deeded the property to Anthony with the help of his attorney, who also testified and confirmed that Robert had not reserved any rights to the

property. With respect to Request No. 3, Joseph testified at trial that Robert did indeed write a check to pay for Joseph's representation in the action. The facts contained in Request Nos. 1 and 4 were found by the jury in a special verdict. Robert testified in a deposition and at trial that he did not actually know whether Anthony had fully repaid the loans at issue, and additional testimony from another witness established that Robert admitted that he gave Anthony "everything, the equipment, the supplies, the building." In addition to granting summary judgment for Anthony with respect to ownership of the real property, the trial court dismissed Joseph's intervening complaint with prejudice. Robert was awarded only \$3,820 for a separate claim related to Anthony's destruction of an engine that was Robert's personal (non-business) property.

Anthony moved the trial court for an order granting him the reasonable expenses incurred in proving the facts contained in these four requests for admission pursuant to WIS. STAT. § 804.12(3). The trial court denied his motion, stating that "Robert ... prevailed in part on his claims, and even where he did not prevail he introduced testimony at the jury trial in support thereof, and contrary to the matters sought to be admitted." Thus, according to the trial court, Robert "had reasonable ground to believe he might prevail on the matters." Anthony appeals.

As pointed out in Anthony's brief to this court, WIS. STAT. § 804.12(3) makes it mandatory for a court to award reasonable costs and fees to a requesting party in the event it proves the truth of a fact denied in its request for admission so long as the request was not held objectionable, the admission sought was of substantial importance, the party failing to admit had no reasonable ground to believe that it might prevail on the matter, and there was no other good reason for failing to admit. See *Michael A.P. v. Solsrud*, 178 Wis. 2d 137, 147, 502 N.W.2d 918 (Ct. App. 1993). "We must uphold the trial court's factual findings unless they are clearly

erroneous,” but the question of “[w]hether, under sec. 804.12(3), those facts require the award of attorney’s fees and costs to [Anthony] is a question of law that we review independently of the trial court.” *See id.* at 148.

Here, the trial court’s decision on fees does not include any specific factual findings supported by the Record. The court’s statement that Robert “prevailed in part on his claims” is clearly erroneous; the only claim on which Robert prevailed was one for conversion of personal (non-business) property that was not related to any of the requests for admission. All of the denied facts had to do with the claims related to business property on which Anthony prevailed. Thus, the trial court’s statement regarding Robert’s success on the claims at issue—those related to the requests for admission—was clear error.

Anthony persuasively argues that there was no testimony or other evidence contrary to the facts in the requests for admission and that all of the statutory conditions for an award of expenses and fees under WIS. STAT. § 804.12(3) are met. For example, he points to Robert’s sworn testimony admitting to having deeded the business property to him, Robert’s attorney’s testimony that there was no reservation of rights in the transfer of the business property, Robert’s testimony that he did not know whether Anthony had fully repaid his loans, and Joseph’s testimony that Robert paid his legal fees. Robert has not submitted a brief in this appeal, and unrefuted arguments are deemed conceded. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Under these circumstances, we conclude that Anthony’s motion for reasonable expenses and fees pursuant to § 804.12(3) must be granted as a matter of law.

IT IS ORDERED that the order of the circuit court is reversed and cause remanded for a determination of the reasonable expenses and fees incurred in proving the facts denied in the four relevant requests for admission. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals