COURT OF APPEALS
DECISION
DATED AND FILED

October 2, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2626 **Cir. Ct. No. 2005CV2305**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

TODD SCHRAMM,

PLAINTIFF-APPELLANT,

V.

KEVIN RASMUSSEN, D/B/A ALL METRO PROPERTIES LLC,

DEFENDANT-RESPONDENT.

APPEAL from orders of the circuit court for Milwaukee County: MICHAEL GUOLEE and ELSA C. LAMELAS, Judges. *Affirmed.*

Before Curley, P.J., Wedemeyer and Kessler, JJ.

¶1 WEDEMEYER, J. Todd Schramm appeals from orders related to a post-verdict amendment of the judgment. Schramm claims the trial court erred when it ruled as a matter of law that Kevin Rasmussen should not be personally liable for the breach of contract claim Schramm successfully litigated against All

Metro Properties, LLC. Schramm further contends that the trial court did not have the authority to amend the judgment more than ninety days after the verdict. Because Schramm waived his right to challenge the trial court's decision to remove Rasmussen from personal liability and because the trial court had the authority to amend the judgment, we affirm.

BACKGROUND

¶2 Schramm is a self-employed contractor, who agreed to renovate a residential property in order for the property to be resold. Schramm contracted with Rasmussen, the principal of All Metro. After they entered into the contract, a dispute arose on the type of contract involved. Rasmussen asserted that the contract was for a flat cost of approximately $17,000 and due to unforeseen problems, he later agreed to pay a total of $22,000 for the complete job. Schramm indicated that the employment would be on a time/material basis.

¶3 During the course of the work, Schramm was paid by All Metro with checks totaling $17,000. At the conclusion of the work, All Metro expected to receive a final invoice of approximately $5000. Instead, Schramm sent an invoice for $13,850. When All Metro refused to pay, Schramm filed suit against Rasmussen d/b/a All Metro. The case proceeded to a jury trial.

¶4 At the close of evidence on the first day of trial, defense counsel moved to dismiss the case altogether. The trial court denied the motion. Defense counsel then moved to dismiss Rasmussen personally so that any judgment entered would be solely against All Metro. The trial court granted the motion, stating that "[t]he plaintiff surely knew he was dealing with All Metro Properties, LLC. That's what the Court will do and will strike Kevin Rasmussen from the

verdict." Schramm did not object or challenge the trial court's decision at that time or later.

¶5 On the next morning of trial, defense counsel objected to the form of the special verdict because it asked whether "Kevin Rasmussen d/b/a All Metro Properties, LLC" breached the contract with Schramm. The court stated that the special verdict would not be changed as that might confuse the jury. Instead, the trial court assured defense counsel that it would take care of removing Rasmussen: "It won't be a judgment against him individually." Again, Schramm did not object to the trial court's statement of intent as to the judgment.

¶6 On April 5, 2006, the jury returned a verdict in favor of Schramm, finding damages in the amount of $13,500. On May 31, 2006, Schramm submitted an order for judgment, which contained the phrase "Kevin Rasmussen d/b/a All Metro Properties." By letter dated June 5, 2006, Rasmussen objected to the phrasing on the grounds that the court had previously determined that the judgment would not be entered against Rasmussen individually. The trial court signed the order as submitted on June 9, 2006.

¶7 On June 20, 2006, Rasmussen filed a motion for relief from judgment, requesting that the trial court amend the judgment to reflect the ruling during the trial. The trial court held a hearing on the motion on July 25, 2006. During the hearing, the trial court, the Hon. Michael Guolee, verbally admonished Schramm's counsel for submitting a final order, which failed to comport with the rulings during the trial:

> But it was clear, wasn't it? I said on the record we would clear that up later. I don't know why you would do that. You know, it seems to me it is clear what the Court's intent was. To slip that order in is highly suspect. Please don't do those things to the court. It was very clear what

> the Court was going to do. And I don't know why any attorney would do that. I am not going to hear anymore.
>
> It is very clear to this Court that it was only going to be against this company, not against him personally.

Rasmussen then submitted a proposed order entering judgment solely against All Metro, which was signed by the court on August 17, 2006. On August 29, 2006, Schramm filed a motion to vacate the order granting relief from judgment on procedural grounds. Due to judicial rotation, the motion was heard by the Hon. Elsa Lamelas and the motion was denied on September 11, 2006. Judge Lamelas noted that Judge Guolee's decision was clear that the judgment was to be against All Metro and not Rasmussen individually.

¶8 Schramm now appeals to this court from the order amending the judgment and the order denying his motion to vacate the order amending the judgment.

DISCUSSION

¶9 Schramm first contends that the trial court erred when it ruled as a matter of law that Rasmussen would not be personally liable for the judgment in this case. The trial court ruled that Schramm clearly understood that the contract was with All Metro and not Rasmussen individually. Schramm disputes this ruling, asserting that he dealt solely with Rasmussen and put Rasmussen's name on each invoice submitted. Schramm does admit that all checks for payment were from All Metro, but citing ***Benjamin Plumbing, Inc. v. Barnes***, 162 Wis. 2d 837, 848, 470 N.W.2d 888 (1991), claims that this was insufficient to satisfy disclosure requirements.

¶10 Because Schramm repeatedly failed to object to the trial court's ruling at trial, we will not consider this issue on appeal, and consider it waived. ***Segall v. Hurwitz***, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983). The record is clear—Schramm did not object when the trial court ruled that Rasmussen would not be personally liable for any verdict. At no time did Schramm even attempt to place such objection on the record before the trial court. Accordingly, he has waived his right to have this court consider the issue. The purpose of the waiver rule has been often stated. A timely objection enables the trial court to avoid or correct any error with minimal disruption of the judicial process. ***State v. Boshcka***, 178 Wis. 2d 628, 643, 496 N.W.2d 627 (Ct. App. 1992). By failing to object to the trial court's ruling in a timely fashion, Schramm made it impossible for the trial court to consider his objection and the reasons for it. We will generally not consider an issue raised for the first time on appeal. ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980).

¶11 Schramm's next claim is that because the trial court's amendment came more than ninety days after the verdict, it lost competency to act under WIS. STAT. § 805.16 (2005-06),[1] thus, rendering the order null and void. Schramm is correct that § 805.16 sets strict guidelines for motions after verdict and that a trial court can not change the jury's answers after the time deadlines set forth in the statute have expired. ***Fakler v. Nathan***, 214 Wis. 2d 458, 464, 571 N.W.2d 465 (Ct. App. 1997); ***Ahrens-Cadillac Oldsmobile, Inc. v. Belongia***, 151 Wis. 2d 763, 766-67, 445 N.W.2d 744 (Ct. App. 1989).

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶12 However, in reviewing what happened in this case, we are not convinced that the statute bars the trial court's amendment. First, the trial court did not change the jury's answer in the verdict. Rather, it amended the judgment to accurately reflect its ruling made prior to judgment. The amendment did not change the jury's verdict, it corrected the order for judgment. Second, the correction was due in large part to Schramm's inappropriate final order submission, which included Rasmussen's name despite the trial court's ruling not to, which contributed to the resulting problem with the judgment in this case. As noted above, Schramm's counsel was admonished by the trial court for submitting a judgment inconsistent with the trial court's ruling. The matter was further complicated by the trial court's failure to note Rasmussen's letter objecting to the order submitted by Schramm, which should have caused the trial court to decline to sign the order submitted. Nevertheless, trial courts expect attorneys, who have an ethical duty as officers of the court, to be forthright with the tribunal and submit orders that comport with the trial court's rulings. Schramm's failure to do so here resulted in the additional proceedings to correct the judgment.

¶13 The trial court has the authority to amend a judgment to correct errors. *See* ***State v. Prihoda***, 2000 WI 123, ¶17 & n.9, 239 Wis. 2d 244, 618 N.W.2d 857; *See also* WIS. STAT. § 806.07(1)(a) (court may relieve a party from a judgment based on a mistake). That is what happened here. Accordingly, we affirm the orders of the trial court.

By the Court.—Orders affirmed.

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