

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 19, 2012**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP104**

**Cir. Ct. No. 2010SC1334**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**DEAN ANDERSEN,**

**PLAINTIFF-APPELLANT,**

**V.**

**STATE COLLECTION SERVICE, INC.,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment and an order of the circuit court for Waukesha County: DONALD J. HASSIN, JR., Judge. *Affirmed.*

¶1 REILLY, J.<sup>1</sup> Dean Andersen appeals an award of summary judgment dismissing his claims against State Collection Service, Inc. for alleged

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

violations of the Fair Debt Collection Practices Act (FDCPA), the Wisconsin Consumer Act (WCA), and the Fair Credit Reporting Act (FCRA) as well as for negligent supervision and training. Andersen also appeals the circuit court's order awarding \$18,125 in attorney fees to State Collection Service under 15 U.S.C. § 1692k(a)(3) (2012). As the undisputed facts do not support a violation of any of the acts, we affirm. We also affirm the circuit court's award of attorney fees based on a finding that Andersen filed this action in bad faith and for the purpose of harassment.

### **BACKGROUND**

¶2 Andersen called State Collection Service regarding two debts. In his first call, Andersen asked about a utility bill. The account manager told him: “[M]y name is Rose. I am a debt collector here with State Collection Service. This is an attempt to collect a debt. Any information obtained will be used for that purpose, and the call will be recorded.” Andersen stated that he wished to dispute the debt because he had moved from the residence and “when I left, the bill was paid.” Rose stated this did not constitute a dispute. “So I can’t dispute this?” Andersen asked. Rose responded: “Well, you can dispute it, ... [but] they are not going to agree to it because you never called to have your service disconnected.” Rose told Andersen that she would “go ahead and note the account” that he was disputing the bill, “but collection activities aren’t going to cease until the account is resolved.”

¶3 Within minutes of his first call to State Collection Service, Andersen called again—this time about a debt from the Wisconsin public defender’s office. After locating Andersen’s account, the State Collection Service employee told Andersen, “[M]y name is Brandy. I am a debt collector with State Collections

attempting to collect a debt and—for payment. For that purpose, all calls are recorded.” Andersen stated he was disputing the debt as he had paid the bill. Brandy told Andersen that she would “mark it disputed” but that collection efforts would continue until Andersen proved he had paid.

¶4 The following day, Andersen faxed a letter addressed to State Collection Service’s owner, Thomas Haag, and corporate counsel, Marc Soderbloom, to which he attached the draft of a civil complaint detailing his conversations with Rose and Brandy. In the letter, Andersen stated he intended to file a lawsuit. The letter told Haag and Soderbloom to call Andersen “[i]f you wish to save the time and money of litigating these matters in both federal and state court.”

¶5 Andersen eventually filed this action in small claims court, alleging violations of the FDCPA, WCA, and FCRA as well as negligent training and supervision by State Collection Service. State Collection Service filed a motion for summary judgment seeking dismissal of all of Andersen’s claims. The court commissioner granted State Collection Service’s motion and dismissed Andersen’s claims.

¶6 Andersen filed a demand for a trial in the circuit court. State Collection Service “refiled” its summary judgment motion, briefs, and affidavits with the circuit court. The circuit court held a de novo hearing and granted summary judgment to State Collection Service. The circuit court concluded that the record showed no violations of federal or state law. Following briefing by both parties, the circuit court ordered Andersen to pay \$18,125 to State Collection Service for its attorney’s fees in this action.

## STANDARD OF REVIEW

¶7 We review summary judgment determinations de novo, employing the same methodology as the circuit court. *Mrozek v. Intra Fin. Corp.*, 2005 WI 73, ¶14, 281 Wis. 2d 448, 699 N.W.2d 54. Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law. *Tews v. NHI, LLC*, 2010 WI 137, ¶42, 330 Wis. 2d 389, 793 N.W.2d 860.

¶8 In reviewing awards of attorney fees, we will uphold a lower court's findings of fact, *Wisconsin Chiropractic Ass'n v. Wisconsin Chiropractic Examining Bd.*, 2004 WI App 30, ¶16, 269 Wis. 2d 837, 676 N.W.2d 580, and determination of the amount of the award, *Jandrt v. Jerome Foods, Inc.*, 227 Wis. 2d 531, 575, 597 N.W.2d 744 (1999), unless they are clearly erroneous. Whether a court applied the correct legal standard in making a determination as to whether an action was brought in bad faith and for the purpose of harassment under 15 U.S.C. § 1692k(a)(3) constitutes a question of law, which we review de novo. See *Wisconsin Chiropractic Ass'n*, 269 Wis. 2d 837, ¶16.

## DISCUSSION

¶9 Andersen relies largely on conclusory statements and broad citations to law to assert that State Collection Service is somehow liable and he is entitled to a jury trial.<sup>2</sup> The only facts forwarded by Andersen to support his allegations

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<sup>2</sup> Andersen asserts that the circuit court wrongly denied his request for a jury trial when it dismissed his case on summary judgment. He argues that WIS. STAT. § 799.207(4)-(5) gives him the right to a jury trial, apparently regardless of whether he has a dispute to present to that jury. Andersen is wrong. See *Tews v. NHI, LLC*, 2010 WI 137, ¶42, 330 Wis. 2d 389, 793 N.W.2d 860 (“The purpose of the summary judgment procedure is to avoid trials when there is nothing to try.”).

that State Collection Service violated the consumer acts and was negligent in its supervision and training come from the statements made in the two recorded phone calls with Andersen.

¶10 In his complaint, Andersen contends that State Collection Service violated the FDCPA by not providing the required debt collection notice, by using unfair and unconscionable means to collect a debt, and by being deceptive and misleading, *see* 15 U.S.C. §§ 1692e-1692g; violated the FCRA by not notifying consumer reporting agencies of his dispute, *see* 15 U.S.C. § 1681s-2(a)(3) (2012), and by not conducting an investigation, by not reviewing relevant information provided by a consumer reporting agency, and by not reporting the results of the investigation to a consumer reporting agency, *see* § 1681s-2(b)(1)(A)-(C); violated the WCA by harassing him, *see* WIS. STAT. § 427.104(1)(h), (j), and (L), and by not notifying consumer reporting agencies that he was disputing his debt, *see* § 427.104(1)(c) and (f); and was negligent in the supervision and training of its employees.

#### *FDCPA Violation*

¶11 Andersen has alleged that State Collection Service violated the FDCPA by not identifying itself and by not providing him with the required notice before obtaining information related to his debts. *See* 15 U.S.C. § 1692e(11). Section 1692e(11) requires that debt collectors inform debtors in their initial communication that they are “attempting to collect a debt and that any information obtained will be used for that purpose.” Subsequent communications do not require as much disclosure. *See id.* Debt collectors do not have to mirror the statutory language to comply with the disclosure requirements. *See Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 26 (2d Cir. 1989).

¶12 We need not analyze whether Andersen’s phone calls with State Collection Service were initial communications or not because he received disclosures that would meet the requirements of an initial communication in both calls. Rose quoted the statutory language needed for an initial communication nearly verbatim. Brandy identified herself and State Collection Service, told Andersen that she was attempting to collect a debt, and then immediately added, “For that purpose, all calls are recorded.” As such, while Brandy did not repeat the statutory language that all information obtained in the phone call would be used for debt collection, she let Andersen know that she was recording their conversation for the purpose of the debt collection. Recording the phone call would include the collection of all the information that Andersen would relay to Brandy. Both disclosures meet the requirements of the FDCPA.

¶13 Andersen additionally alleged in his complaint that the statements by the State Collection Service employees were somehow unconscionable, unfair, misleading, or deceptive. He has provided no support for these conclusions. We can find no such violations from the facts he has submitted. Accordingly, the circuit court properly granted summary judgment by dismissing Andersen’s claims that State Collection Service violated the FDCPA.

#### *FCRA Violation*

¶14 Andersen has alleged that State Collection Service committed four violations of the FCRA. The first alleged violation—that State Collection Service did not notify consumer reporting agencies that he was disputing his debts—can be dispatched with easily because the statute specifically provides that that particular subsection is not enforceable by a private cause of action. *See* 15 U.S.C. § 1681s-2(a)(3), (d).

¶15 Andersen’s remaining claims under the FCRA involve violations of 15 U.S.C. § 1681s-2(b)(1). A plain reading of this subsection shows that State Collection Service’s liability is not triggered until after it has received notice of a dispute from a consumer reporting agency. Andersen has neither alleged that he told a consumer reporting agency that he disputed the debts nor alleged that a consumer reporting agency informed State Collection Service that he disputed the debts. The circuit court properly granted summary judgment to State Collection Service dismissing Andersen’s claims that it had violated the FCRA.

#### *WCA Violation*

¶16 Andersen claims that State Collection Service violated WIS. STAT. § 427.104(1)(h), (j), and (L) in that the statements by its employees constituted harassment “because the debt collector unilaterally dismissed the consumer’s dispute request and request to be able to send a letter of dispute in order to try and get the consumer to pay a bill he just clearly stated that he had already paid.” Andersen provides no other argument for how these statements violated these particular subsections.

¶17 Based on the record, we find that no reasonable jury could conclude that State Collection Service harassed Andersen. The circuit court’s grant of summary judgment dismissing Andersen’s WCA claims of harassment was appropriate as State Collection Service was entitled to judgment as a matter of law.

¶18 Andersen also claims that State Collection Service violated the WCA “by not notifying the consumer reporting agencies that information Defendant supplied is disputed by the consumer” after the two phone calls. *See* WIS. STAT. § 427.104(1)(c), (f). Andersen provides no support for this allegation,

and we discuss it no further. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

#### *Negligent Supervision and Training Claim*

¶19 Andersen’s claim of negligent supervision and training fails as a result of his inability to establish any of the foregoing statutory violations. State Collection Service cannot be held negligent for its training and supervision if its employees did nothing wrong. See *John Doe 1 v. Archdiocese of Milwaukee*, 2007 WI 95, ¶2, 303 Wis. 2d 34, 734 N.W.2d 827 (negligent supervision claims are derivative of the underlying wrongful act of the employee). The circuit court appropriately dismissed Andersen’s negligence claim on summary judgment.

#### *Attorney Fees*

¶20 A defendant in an FDCPA action may be awarded reasonable attorney fees “[o]n a finding by the court that [the lawsuit] was brought in bad faith and for the purpose of harassment.” 15 U.S.C. § 1692k(a)(3). The circuit court’s findings on State Collection Service’s motion for attorney’s fees were that: (1) Andersen’s claims were without merit, (2) Andersen had overlitigated the case “at every turn,” and (3) Andersen had made “extortionate demands” on State Collection Service. Based on these findings, the circuit court determined that Andersen’s claims were brought in bad faith and for the purpose of harassment per § 1692k(a)(3). The circuit court further determined that the 72.5 hours that State Collection Service’s attorney expended were reasonable and necessary and that \$250 per hour was a reasonable rate. The circuit court ordered Andersen to pay \$18,125 to State Collection Service.



¶21 The circuit court's factual findings that Andersen's claims were meritless and harassing are supported by the record. In initiating the calls to State Collection Service, asking questions for which he already knew the answers, and immediately following up with the draft of a civil complaint, Andersen's actions justify this conclusion. Andersen's repeated motions for review and reconsideration in which he offered no new facts or legal arguments seem little more than an effort to force State Collection Service to succumb to settlement rather than attempts to persuade a court to rule in his favor.

¶22 The number of hours and rate charged by State Collection Service's attorney are supported by the record and we affirm the award of attorney's fees in the amount of \$18,125.

### CONCLUSION

¶23 As there is no disputed issue of material fact and no violation by State Collection Service of any of the consumer acts, we affirm the circuit court's decision of summary judgment dismissing Andersen's claims. We also affirm the circuit court's finding that Andersen brought this lawsuit in bad faith and for the purpose of harassment and affirm the award of \$18,125 in attorney's fees to State Collection Service.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.



