COURT OF APPEALS
DECISION
DATED AND RELEASED

NOVEMBER 12, 1996

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

NOTICE

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

No. 96-0430

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

WENDY LEE MILAND,

Plaintiff-Appellant,

v.

RUSSELL ATTER, LAMONT E. GRAHAM, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, and PRUDENTIAL PROPERTY & CASUALTY INSURANCE COMPANY,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Reversed and cause remanded*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Wendy Lee Miland appeals a summary judgment dismissing her personal injury action against Russell Atter, Lamont Graham and their insurers. Although the appeal is brought in Miland's name, it is prosecuted by the Development and Training Center for the Developmentally Disabled (DTCDD) and its insurer. They had been named as co-defendants in Miland's action. After the trial court granted a default judgment against them for $67,062.83, they paid Miland $50,000 and received an assignment of her action against the other defendants. The trial court dismissed the action against Atter and Graham, concluding that Miland was fully satisfied when she was granted a default judgment for the full amount of her damages. We reverse the summary judgment because the record does not establish that, as a matter of law, Miland received full satisfaction.

The mere granting of a default judgment to Miland does not constitute satisfaction of her claims. Satisfaction occurs upon payment of an amount due, not merely the granting of a judgment. BLACK'S LAW DICTIONARY 1204 (5th ed. 1979). *See also* ***Wiebke v. Richardson & Sons, Inc.***, 83 Wis.2d 359, 367, 265 N.W.2d 571, 575 (1978); ***A.I.C. Fin. Corp. v. Commercial Units, Inc.,***, 74 Wis.2d 70, 77-78, 245 N.W.2d 923, 927 (1976). Miland was entitled to proceed with her litigation against Atter and Graham until she received full payment of the amount awarded in the judgment (the full amount she claimed for her injuries) or until she agreed to accept a lesser amount as full payment.

Atter and Graham argue that Miland was made whole because upon receiving the $50,000 payment she signed a release stating that the $50,000 represents full and complete compensation for all her personal injury, disability, costs, expenses, losses or damages of any kind. While this statement, taken out of context, appears to preclude the award of any additional damages, we must examine the settlement agreement as a whole. *See* ***General Split Corp. v. P & V Atlas Corp.,*** 91 Wis.2d 119, 125, 280 N.W.2d 765, 768 (1979). Other parts of the agreement are inconsistent with the paragraph suggesting Miland's satisfaction with the $50,000 payment. Rather, they support DTCDD's argument that the $50,000 represents consideration for the assignment rather than payment of the default judgment.

The other paragraphs of the settlement agreement state that Miland has made no settlement with or given any release to prosecute any claim to judgment against any person or organization and that she will without

"additional consideration or compensation" enter into a full and complete release of her claims against the DTCDD and its insurer. The words "additional consideration" support DTCDD's assertion that the $50,000 constituted consideration for the assignment, not payment of the default judgment. Miland also agreed to cooperate fully in DTCDD's action against Atter and Graham. These provisions are evidence of the parties' intent to assign Miland's action against Atter and Graham, warrant that she has not settled her actions against any person or organization, and speak in the future tense about signing a full and complete release of DTCDD and its insurer.

The inconsistencies in the settlement agreement create an ambiguity regarding the parties' intent that cannot be resolved on summary judgment. ***Brown v. Hammermill Paper Co.***, 88 Wis.2d 224, 234, 276 N.W.2d 709, 713 (1979). Because the parties to the settlement agreement may have intended the $50,000 to constitute consideration for the assignment rather than payment of the default judgment, we cannot conclude as a matter of law that Miland received full satisfaction and has no remaining cause of action against Atter and Graham.

In support of their motions for summary judgment, Atter and Graham presented other arguments that the trial court did not decide. These other issues are mentioned but not argued on appeal. On remand, the trial court may rule on the other grounds for summary judgment and may grant summary judgment on the intent of the parties to the settlement agreement if the parties' affidavits conclusively establish their intent. If the question of the parties' intent must be presented to the jury, the trial court may bifurcate the trial if that appears appropriate. If the jury finds, or if the court concludes on summary judgment, that the $50,000 payment was consideration for the assignment, DTCDD and its insurer will stand in Miland's shoes and may seek compensation for her injuries. The consideration paid for the assignment is irrelevant to damages.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.