COURT OF APPEALS
DECISION
DATED AND RELEASED

APRIL 30, 1997

NOTICE

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.

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

No. 96-3210

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

KENOSHA COUNTY,

PLAINTIFF-RESPONDENT,

V.

SUBURBAN VIDEO, INC., D/B/A SUPERB VIDEO,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Reversed.*

ANDERSON, J. Suburban Video, Inc., d/b/a Superb Video (Suburban), appeals from an order denying it costs from an alleged Kenosha County ordinance violation. On appeal, Suburban argues that a defendant who prevails on a forfeiture action is entitled to receive costs of the process. Because

we find that the recovery for costs is in accordance with § 814.23, STATS., we reverse the trial court's order.[1]

The case originates from Suburban's alleged violation of KENOSHA, WIS., ORDINANCES § 9.10.2, Kenosha's obscenity statute. Kenosha County initiated the action by filing a summons and complaint alleging that Suburban sold a sexually explicit video entitled "Spanner." Kenosha County's request for relief included the imposition of the maximum fine, in addition to costs, fees and disbursements to which it was entitled. After a two-day jury trial, a not guilty verdict was returned in favor of Suburban.

On August 2, 1996, Suburban filed a motion for taxation of costs. Suburban requested costs for attorney's fees and an expert witness who testified at trial. The circuit court denied the motion. The court concluded that this situation was indistinguishable from that previously decided in ***City of Janesville v. Wiskia***, 97 Wis.2d 473, 293 N.W.2d 522 (1980). Suburban appeals.

The case involves the interpretation and application of a statute to undisputed facts. This is a question of law which is reviewed independently of the trial court's determination. *See* ***Dorschner v. DOT,*** 183 Wis.2d 236, 239, 515 N.W.2d 311, 312 (Ct. App. 1994).

Costs are the creature of statute which are not allowed unless expressly provided for. *See* ***City of Milwaukee v. Leschke***, 57 Wis.2d 159, 161, 203 N.W.2d 669, 670 (1973). At common law, costs were not recoverable by

[1]Suburban further claims that the alleged violation of an ordinance is a civil action. Because we decide the costs issue in favor of Suburban, we need not address this argument. *See* ***Bernhardt v. LIRC,*** 207 Wis.2d 294, 310 n.3, 558 N.W.2d 874, 880 (Ct. App. 1996) (if a decision on one point disposes of an appeal, this court need not decide other issues raised).

either party in civil or criminal cases. *See* ***id.*** This court has previously ruled that costs against the state are regulated exclusively by statute as a matter of legislative discretion.[2] *See* ***id.*** at 161, 203 N.W.2d at 670-71. Similarly, unless a statute explicitly authorizes the recovery of costs against municipalities, they are not recoverable. *See* ***id.*** at 161, 203 N.W.2d at 671.

In this case, § 814.23, STATS., provides for recovery. The statute provides:

> In *all actions* by or against a county, and in actions or proceedings by or against county officers in their name of office, costs shall be awarded to the prevailing party as in actions between individuals. [Emphasis added.]

Suburban is the prevailing party and is therefore entitled to costs. Accordingly, we reverse the circuit court's order to the contrary.

By the Court.—Order reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

[2] Section 775.10, STATS., specifically denies recovery of costs against the state. The statute provides in pertinent part: "The state may be made a party defendant in any action …. But no judgment for the recovery of money or personal property or costs shall be rendered in any such action against the state."