

**COURT OF APPEALS
DECISION
DATED AND FILED**

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September 28, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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.

No. 98-1857

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

BRANDON ROBERTS,

PLAINTIFF-APPELLANT,

V.

BADGER STATE AUTO AUCTION,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Affirmed.*

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

PER CURIAM. Brandon Roberts appeals the judgment dismissing his declaratory judgment action against Badger State Auto Auction. Roberts argues that the circuit court erred when it dismissed his complaint, stating that the complaint failed to state a claim upon which declaratory relief may be granted.

We conclude that the circuit court properly exercised its discretion in dismissing Robert's declaratory judgment action because Roberts' claim: (1) falls outside the Uniform Declaratory Judgments Act; and (2) fails to establish the prerequisites to a declaratory judgment action. Accordingly, we affirm the judgment and order of the circuit court.

I. BACKGROUND.

Brandon Roberts and his father, Floyd Roberts, operated Roberts Auto Exchange, a registered automobile dealership. During 1995, Roberts Auto Exchange purchased a number of cars from Badger State Auto Auction, which is a weekly automobile auction open only to registered dealerships. In May of 1995, Roberts Auto Exchange purchased an automobile through Badger and, in payment, issued a check to Badger for \$10,145, purportedly signed by Brandon Roberts. Badger soon discovered that the check was worthless and reported the matter to the police. After an investigation, Brandon was arrested and charged with issuing the worthless check. He then spent two days in a holding cell before being released on bail.

At the preliminary hearing it was revealed that Floyd Roberts, not Brandon Roberts, had signed the worthless check. This discovery came about when a Badger representative testified at the hearing and identified Floyd as the person who had signed the check. Floyd had signed Brandon's name on the check. The charges against Brandon were dismissed and identical charges were brought against Floyd.

After the charges against Brandon were dismissed, he initiated this declaratory judgment action against Badger. Brandon asked the trial court to determine whether Badger could hold him civilly liable for the worthless check.

Brandon also asked the court to determine: whether he could hold Badger civilly liable for his arrest and imprisonment; whether he was falsely imprisoned; and whether he was entitled to damages. Badger filed a motion to dismiss for failure to state a claim upon which relief may be granted. The circuit court granted Badger's motion to dismiss.¹ Brandon appeals the dismissal of his declaratory judgment action.

Standard of Review

The decision to grant or deny declaratory relief is within the sound discretion of the trial court. *See State ex rel. Lynch v. Conta*, 71 Wis.2d 662, 668, 239 N.W.2d 313, 322 (1976). We review the trial court's discretionary decision to determine "whether the trial court exercised its discretion within the confines of statutes and well-established precedents." *Loy v. Bunderson*, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982).

II. ANALYSIS.

We are satisfied that the trial court properly exercised its discretion in dismissing Brandon's declaratory judgment action. We conclude that dismissal was proper for two reasons: (1) the Uniform Declaratory Judgments Act should not be read so broadly as to cover Brandon's claim; and (2) under well-established precedent, Brandon's claim did not satisfy the four prerequisites of a declaratory judgment action. Therefore, in dismissing Brandon's complaint, the trial court

¹ In addition to its motion to dismiss, Badger filed a motion for protective order in an effort to preclude Floyd Roberts from using discovery in Brandon Roberts' civil case as a fishing expedition for Floyd's pending criminal case. Badger also filed a motion to change venue from Milwaukee County to Fond du Lac County. Because the trial court granted Badger's motion to dismiss it did not address these additional motions.

exercised its discretion “within the confines of statutes and well-established precedents.”

A. Uniform Declaratory Judgments Act

The trial court correctly refused to extend the Uniform Declaratory Judgments Act to cover Brandon’s cause of action. The Uniform Declaratory Judgments Act gives courts the ability to “declare rights, status and other legal relations” of parties under a contract, and to determine the construction or validity of a statute.² Section 806.04(1) & (2).³ In his complaint, Brandon requested that the court:

² This enumeration of the court’s powers, conferred by the Uniform Declaratory Judgments Act, is not exclusive. *See* Section 806.04(5), STATS. Under the Act a court may exercise its powers “in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.” *Id.*

³Section 806.04(1) & (2), STATS., provides:

Uniform declaratory judgments act.

(1) SCOPE. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree, except that finality for purposes of filing an appeal as of right shall be determined in accordance with s. 808.03 (1).

(2) POWER TO CONSTRUE, ETC. Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder. No party shall be denied the right to have declared the validity of any statute or municipal ordinance by virtue of the fact that the party holds a license or permit under such statutes or ordinances.

[Declare] all of the parties' respective rights and obligations with respect to the aforesaid matters, including, but without limitation, [Brandon's] civil liabilities for [Roberts Auto Exchange's] debt and [Badger's] civil liabilities with respect to [Brandon's] arrest, imprisonment and eventual vindication . . . declaring whether or not [Brandon] was falsely arrested and imprisoned, and whether or not he is legally entitled to recover any compensatory damages and/or punitive damages

Brandon then requested that the court award costs, fees, supplementary relief, and any further relief the court deemed appropriate. In its decision, the trial court asserted:

I had some questions about just how broadly this Uniform Declaratory Judgments Act could be read. But I'm satisfied that it should not be read so broadly that it simply becomes a substitute for the filing of a sufficient claim against a party, that it is not intended to function as an alternative to someone who has a tort claim against a party and who simply chooses to file a document that says to the court: tell us whether the defendant has liability here, and by the way, if there is liability let's have a damage case as well and it will really be exactly the same thing as if we brought a proper tort claim but we'd rather do it by means of a declaratory judgment. It makes no sense to me and I do not believe it is what the statute intends to cover.

We agree.

Wisconsin courts have consistently refused to entertain declaratory judgment actions where ordinary remedies exist for granting relief. *See F. Rosenberg Elevator Co. v. Goll*, 18 Wis.2d 355, 363, 118 N.W.2d 858, 862 (1963) ("It is not the role of declaratory judgment to take the place of an action for damages."); *Schmidt v. La Salle Fire Ins. Co.*, 209 Wis. 576, 580, 245 N.W. 702, 703 (1932); *see also Conta*, 71 Wis.2d at 671, 239 N.W.2d at 323 ("Those in the position of the petitioner have a ready and adequate forum for their proposed construction of a law in the normal enforcement action. Declaratory judgment is

reserved for those without such available recourse.”); *Hancock v. Regents of the Univ. of Wisconsin*, 61 Wis.2d 484, 491, 213 N.W.2d 45, 48 (1973) (“[A] declaratory judgment will not ordinarily be entertained where another equally or more appropriate remedy is available for the issues or rights sought to be determined.”). Essentially, Brandon asked the trial court to substitute a declaratory judgment action for an action for damages. There are equally or more appropriate remedies available to decide the issues raised by Brandon than a declaratory judgment action; therefore, the trial court properly refused to extend the Uniform Declaratory Judgments Act to cover Brandon’s claim.

Furthermore, we note that Brandon’s claim contradicts the basic purpose behind the Uniform Declaratory Judgments Act. See *Looman’s v. Milwaukee Mut. Ins. Co.*, 38 Wis.2d 656, 662, 158 N.W.2d 318, 320 (1968) (asserting that the appellate court will look for reasons to sustain the trial court’s discretionary decision). Wisconsin courts are charged with interpreting and construing the Uniform Declaratory Judgments Act so “as to effectuate its general purpose.” Section 806.04(15), STATS. The “underlying philosophy” of the act is to enable controversies to be brought before the courts for resolution before a wrong has been threatened or committed. *Lister v. Board of Regents of the Univ. Wisconsin Sys.*, 72 Wis.2d 282, 307, 240 N.W.2d 610, 624 (1976). This purpose “is facilitated by authorizing a court to take jurisdiction at a point earlier in time than it would do under ordinary remedial rules and procedures.” *Fire Ins. Exch. v. Basten*, 202 Wis.2d 74, 85, 549 N.W.2d 690, 694 (1996). However, it is quite apparent from the facts of this case that any wrong done to either party has *already* been committed. Therefore, it is impossible for the instant controversy to be brought to a court *before* a wrong has been committed, and the trial court could

not have granted declaratory judgment here without violating the purpose of the Uniform Declaratory Judgments Act.

Accordingly, we are satisfied that the trial court correctly refused to extend the provisions of the Uniform Declaratory Judgments Act to cover Brandon's cause of action.

B. Prerequisites to a declaratory judgment action.

The trial court properly concluded that Brandon failed to establish the prerequisites to a declaratory judgment action. In order to assert a claim for declaratory relief there must be a "justiciable controversy." *Lister*, 72 Wis.2d at 306, 240 N.W.2d at 624. A controversy is not justiciable unless it:

(1) Involves a claim of right on the part of the plaintiff which is asserted against one who has an interest in contesting it; (2) is between two persons whose interests are adverse; (3) involves a legally protectible interest in the person seeking declaratory relief; and (4) is ripe for judicial determination.

Id. These four prerequisites are designed to insure that an actual controversy exists; they preclude the court from acting in a merely advisory capacity. *See id.* Finally, a court may refuse to grant declaratory relief where such relief "would not terminate the uncertainty or controversy giving rise to the proceeding." Section 806.04(6), STATS. Obviously, declaratory judgment would not have terminated the instant controversy. The trial court concluded that Brandon failed to establish the four prerequisites and, therefore, the controversy was not justiciable and declaratory relief was inappropriate. We agree.

The trial court correctly concluded that Brandon's claim did not involve a claim of right. On appeal, Brandon argues that his claim of right "was,

and is, to be free of any civil liability to Badger Auto *vis a vis* that NSF check.” Freedom from potential liability is not a claim of right, nor is it a legally protected interest. Brandon cannot force Badger, as a potential plaintiff, to “litigate [its] claim at a time and in a forum chosen by [Brandon].” *Friedman v. Geller*, 925 F.Supp 611, 613 (E.D. Wis. 1996) (“It is inappropriate to use the declaratory judgment statute in what would otherwise be a run-of-the-mill negligence action.”).⁴ Therefore, the issue of Brandon’s civil liability for the worthless check does not involve a claim of right, nor can Badger be forced, under the declaratory judgment statute, to litigate potential claims prematurely.

Finally, a declaratory judgment action would not terminate the uncertainty or controversy giving rise to the proceeding. As explained, if Brandon is asking the court to assign liability and measure damages arising out of the transaction between Roberts Auto Exchange and Badger, then Brandon’s cause of action is one for damages and not declaratory judgment. However, if Brandon is simply asking the court to construe each party’s possible liability arising out of this transaction, then a second and separate action for damages will certainly follow this action once liability has been assigned; declaratory judgment will not terminate the controversy. Under either scenario, Brandon has not asserted a valid cause of action for declaratory judgment.

For all of these reasons, we conclude that the circuit court properly exercised its discretion in dismissing Roberts’ complaint for failure to state a claim upon which relief may be granted.

⁴ Not only must we interpret and construe the Uniform Declaratory Judgments Act so as to effectuate its purpose, but we must do so in a way that “harmonize[s], as far as possible, with federal laws and regulations.” Section 806.04(15), STATS.

By the Court.—Judgment affirmed.

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

