COURT OF APPEALS
DECISION
DATED AND FILED

February 19, 2003

Cornelia G. Clark
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. 02-1467 **Cir. Ct. No. 01-CV-631**

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

WESLEY RATHBURN,

PLAINTIFF-APPELLANT,

V.

DALLAS AND EDITH PANKOWSKI,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Brown County: MARK A. WARPINSKI, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Wesley Rathburn, pro se, appeals a judgment imposing joint and several liability on Rathburn and the Wisconsin Technology Training Institute (WTTI) in the sum of $32,586.30, in favor of Dallas and Edith Pankowski, and permitting the Pankowskis to dispose of secured property to satisfy the indebtedness. Rathburn argues that the circuit court (1) was biased and

prevented him from presenting his case; (2) failed to properly apply WIS. STAT. § 401.201(57) and § 134.01; (3) erroneously applied the terms of an expired lease; and (4) erroneously disregarded the corporate entity of WTTI and imposed personal liability on Rathburn. Because the record fails to support Rathburn's claims, we affirm the judgment.

¶2 Rathburn filed a small claims action seeking the return of computer equipment. The Pankowskis responded by seeking past due rents. They alleged that Rathburn owned WTTI, a business that provided computer training services. WTTI occupied rental premises the Pankowskis owned. To secure its rental obligations to the Pankowskis, WTTI, by Rathburn, granted the Pankowskis a security interest in "all equipment, fixtures, inventory … accounts [and] contract rights."[1] In addition, Rathburn personally granted the Pankowskis a security agreement in three computer items to secure WTTI's obligations.[2]

¶3 On February 23, 2001, after WTTI defaulted on the terms of the lease, the Pankowskis changed the locks and excluded Rathburn from the premises. The Pankowskis retained possession of WTTI's equipment on site to which they believed they were entitled under the terms of a sublease and two security agreements. Rathburn commenced this action, alleging personal ownership of the equipment represented to have belonged to WTTI in the security agreement.

[1] The security agreement stated that "Debtor warrants … debtor owns … the Collateral."

[2] Those items were a color laser printer, a pro imager and a film scanner.

¶4 On the day of trial, following extensive discussions,[3] the court outlined the issues to be addressed:

> First, who owns the equipment which was repossessed by the Pankowskies. Secondly, if it's determined that Mr. Rathburn owned the equipment, did the Pankowskies act reasonably in seizing that equipment or repossessing it for purposes of or as part of a default on a lease. And third, in the event that it's determined that they acted unreasonably, the Pankowskies would then be liable in damages to plaintiff.

The record discloses no objection to the court's summary of the issues. The parties stipulated that the Pankowskis were owed $16,806.55 in rent.

¶5 Rathburn proceeded with his opening statement, during which he stated that he purchased the equipment for $30,000 on July 29, 1998. Rathburn explained that he purchased the equipment from various suppliers but had no receipts or invoices with him. The court inquired what in his opening statement would direct the court to the conclusion that Rathburn owned the property instead of WTTI. Rathburn responded that a lease would show that he leased the equipment to WTTI. The court ruled that a lease alone was insufficient to prove Rathburn owned the equipment.

¶6 Rathburn asked for a continuance to furnish the invoices to the court. The court noted that at the pretrial conference, Rathburn was made aware of what he needed to prove. It ruled that unless the opposing party stipulated, it was not inclined to adjourn the trial "so you can assemble and provide the information so they have it available and digest it and be the subject of discovery." Opposing counsel noted that its first request for production of documents specifically asked

[3] The parties' briefs discuss a number of preliminary procedural events that we do not detail because they are not material to our ultimate determination of the issues raised on appeal.

for all records of payments for computer equipment, to which Rathburn responded "payment information not available and immaterial."

¶7 Nonetheless, the court granted a fifty-minute adjournment to permit Rathburn to retrieve the documents from his office. Upon his return, the trial resumed with Rathburn calling his witnesses and producing invoices. The court noted that a number of the invoices were dated after July 29, 1998, and not made out to Rathburn.

¶8 The court ultimately determined that Rathburn failed to meet his burden of proof to show that he owned the equipment the Pankowskis seized. Also, it found that due to WTTI's default in payment of rent, the Pankowskis were entitled to seize the property under the terms of the security agreement. It entered judgment in favor of the Pankowskis.

¶9 At the outset, we reject Rathburn's contention that the record shows bias against him on the part of the trial judge. To the contrary, the record shows that, over opposing counsel's objection, the trial court granted Rathburn an adjournment to obtain documents that were not produced during the discovery process. Rathburn fails to provide adequate legal or record citation to support this argument, and we decline to abandon our neutrality in an attempt to develop an argument for him. *See* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). Pro se litigants, other than prisoners, are "bound by the same rules that apply to attorneys." ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

¶10 Next, Rathburn argues that the court failed to properly apply the law. He complains that under WIS. STAT. § 401.201(57), "ownership of the equipment subject to the lease remains with the lessor as long as the lease is in effect." The

statute cited fails to support the proposition asserted and in fact fails to contain a subsec. (57). Rathburn could mean subsec. (37). Even if this subsection were the one on which Rathburn relies, his argument would fail because it rests on the faulty premise that he had proven ownership.

¶11 Rathburn further argues that the court misapplied WIS. STAT. § 134.01.[4] We reject his argument. The record fails to support his implicit contention that the provisions of this statute relate to an issue outlined by the court to be addressed at trial.

¶12 Next, Rathburn contends that the court erroneously applied the terms of an expired lease. He argues that the lease giving the Pankowskis the right to seize the equipment had expired and therefore was not in effect and unenforceable. We are unpersuaded. This argument ignores the Pankowskis' rights under the security agreement. Because Rathburn fails to provide legal citation and adequately develop his argument, we do not address it further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶13 Finally, Rathburn argues that the court erred when it disregarded the corporate entity of WTTI and imposed liability on Rathburn personally. We reject

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[4] WISCONSIN STAT. § 134.01, entitled "**Injury to business, restraint of will**" reads:

> Any 2 or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully or maliciously injuring another in his or her reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his or her will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500.

this argument. First, Rathburn fails to support his contentions with appropriate legal citation as required by WIS. STAT. RULE 809.21 and, as a result, it is rejected. *See* ***id.*** Second, the argument fails on its merits. The

> existence of the corporation as an entity apart from the natural persons comprising it will be disregarded, if corporate affairs are organized, controlled and conducted so that the corporation has no separate existence of its own and is the mere instrumentality of the shareholder and the corporate form is used to evade an obligation, to gain an unjust advantage or to commit an injustice.

Wiebke v. Richardson & Sons, 83 Wis. 2d 359, 363, 265 N.W.2d 571 (1978). The record discloses detailed trial court findings of fact supporting its conclusion that "Wesley Rathburn, WTTI, Performance Leasing and Performance Computer Corporation, are all the same person."

¶14 The court found that Rathburn misled the Pankowskis to believe WTTI owned all the equipment used to secure the lease. The court ruled that for Rathburn to lead an innocent party "to the conclusion that WTTI was the owner of … all of the property and then to pledge that property as collateral and to now say it wasn't owned by the corporation would be inequitable." The trial court's findings of fact are unchallenged. These findings form a reasonable basis for the court's conclusion and therefore it will not be overturned on appeal.

By the Court.—Judgment affirmed.

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