**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**October 28, 2004**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 04-0376** **02SC001610**

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

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**MICHAEL CICERO,**

**PLAINTIFF-APPELLANT,**

**V.**

**KAS OF MADISON, LLC,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 VERGERONT, J. Michael Cicero appeals the circuit court's order awarding him $2000 for attorney fees in this small claims landlord/tenant action contending the circuit court erroneously exercised its discretion in not awarding a greater amount. He also appeals the offset awarded in favor of the landlord for

$50 in statutory damages plus $1050 in attorney fees pursuant to WIS. STAT. § 806.20(2) for his failure to provide a proper satisfaction of judgment. .

¶2 We conclude the circuit court properly awarded the landlord, KAS of Madison, LLC, $50 in statutory damages under WIS. STAT. § 806.20(2) because Cicero did not provide a satisfaction of judgment as required by the statute. However, the award of attorney fees to KAS was improper because the term "actual damages" in the statute does not include attorney fees. With respect to the award of $2000 in attorney fees to Cicero under MADISON GENERAL ORDINANCE § 32.07(10), we agree with the circuit court that the record supports a substantial reduction from the $29,181 Cicero requested. However, we are unable to conclude, based on the court's explanation and our own review of the record, that the record supports an award as low as $2000, and we therefore reverse and remand on this issue. Finally, for the reasons we explain below, we do not address Cicero's contention that the circuit court erred in not awarding him attorney fees under WIS. STAT. §§ 802.05 and 814.025.

¶3 Accordingly, we affirm the $50 in statutory damages awarded KAS under WIS. STAT. § 806.20(2) and reverse the $1050 in attorney fees awarded KAS under that statute. We reverse the $2000 in attorney fees awarded Cicero and remand for a determination of reasonable attorney fees for Cicero consistent with this decision.

## BACKGROUND

¶4 Cicero filed this small claims action in February 2002 to recover compensation for damage to his personal property and a $450 security deposit which, he alleged, had been withheld in violation of MADISON GENERAL ORDINANCE § 32.07(6) and (7) and his lease agreement with KAS. At a hearing

on May 16, 2002, the circuit court awarded $2361 to Cicero in damages and fees. This amount did not include any attorney fees. On June 4, 2002, judgment was entered in the amount of $2361 in favor of Cicero, as well as an order that, within fifteen days, KAS either pay the judgment in full or accurately complete the attached financial disclosure statement and send it to Cicero's attorney.[1] KAS had done neither by August 6, 2002, when Cicero filed a garnishment action to collect the judgment. The garnishment action was subsequently dismissed for lack of proper service and Cicero did not further pursue the garnishment action.

¶5 On November 19, 2002, Cicero filed a motion for an order finding KAS in contempt of court under WIS. STAT. ch. 785 and awarding remedial sanctions because KAS had not paid the judgment or provided the financial disclosure statement. On December 11, 2002, two days before the hearing scheduled on the motion, KAS provided Cicero with a financial disclosure statement. The statement contained the following information. KAS owned an investment property located at 831 East Johnson Street, Madison, Wisconsin, with a current value of $320,000 subject to a first mortgage lien in favor of M&I Bank with a current principal balance of $2,263,554. KAS did not have any other income, any bank or financial accounts, or any other assets. Montana Management, LLC, a property management company, served as landlord of the property owned by KAS, collected all rents and paid all related expenses including taxes and mortgage debt.

[1] The order provided that "[f]ailure to comply … may be contempt of court and subject [KAS] to the following penalties: Imprisonment for up to **6 months**. Forfeitures of not more than **$2000 per day**. Any other order necessary to insure [KAS's] compliance. Punitive (criminal) sanctions under Chapter 785, Wis. Stats."

¶6 At the hearing on December 13, 2002, Cicero maintained that the disclosure statement was incorrect and contained misrepresentations of fact. Consequently, Cicero wished to proceed with the contempt motion. KAS's counsel represented that the financial disclosure statement was correct and in compliance with the order. The court concluded that the financial disclosure statement was not complete and KAS had to provide more information, reasoning that it was unlikely that an entity that owned a building worth over $300,000 with a mortgage for over $2 million had no checking account or any other assets. The contempt hearing was adjourned. On December 16, 2002, the court issued a scheduling order requiring KAS to disclose various items of financial information at least one week before the rescheduled hearing on January 31, 2003.

¶7 KAS filed a response to the scheduling order on January 24, 2003. The response provided more detail on the relationship between KAS, its sole owner, Shawn Sabol, and Montana Management, reiterating that KAS owned no property other than that at 831 East Johnson Street and had no income. KAS's position was that the financial disclosure statement it had already filed was complete and in compliance with the court's June 4, 2002 order. Cicero replied to KAS, advising that one item on the scheduling order was not fully provided. In a letter to the court, Cicero also took the position that KAS's response to the scheduling order showed it was not accurate to say that Montana Management, rather than KAS, owned all the income from the properties. Cicero asked that the court find Sabol personally, as well as KAS, in contempt of court.

¶8 Nothing was resolved at the rescheduled hearing on January 31, 2003. Cicero's counsel took the position that Cicero was entitled to the judgment in full plus statutory interest and attorney's fees; KAS's counsel indicated that KAS—that is, Sabol—would likely agree to pay the judgment and statutory

interest but not attorney fees. The court gave the parties two weeks to attempt to settle the matter; if they did not, another hearing on the contempt motion would be set.

¶9 Settlement efforts were unsuccessful. At a hearing held on August 20, 2003, on Cicero's motion to compel discovery, KAS paid the judgment plus interest to Cicero's counsel. Cicero withdrew his motion to compel after KAS's counsel advised the court that the tax records sought did not exist. However, the motion for contempt remained pending.

¶10 Before resolution of the contempt motion, a new dispute arose over the satisfaction of judgment. In response to KAS's request that Cicero satisfy the judgment pursuant to WIS. STAT. § 806.20, Cicero provided KAS with a document entitled "Partial Satisfaction of Judgment," which acknowledged the receipt of $2705 in "partial satisfaction of the judgment," but reserved the right to recover attorney fees and other sanctions on the motion for contempt. KAS informed Cicero that this did not comply with the statute, but Cicero's position was that it did. At the hearing on KAS's motion to resolve this issue, held on September 25, 2003, the court concluded that KAS had paid the judgment in full and it ordered satisfaction to be entered on the judgment and lien docket. The court also ordered that Cicero pay KAS $50 as provided in § 806.20(2) because the judgment was not satisfied within seven days of request. The court took under advisement KAS's request for an award of the attorney fees it incurred on this motion.

¶11 The hearing on Cicero's motion for contempt was held on December 22, 2003. Prior to the hearing, Cicero filed a motion to recover the attorney fees and costs incurred since the date the judgment was entered on June 4, 2002, based on two grounds in addition to contempt under WIS. STAT. ch. 785:

(1) MADISON GENERAL ORDINANCE § 32.07(10), which provides for attorney fees for prevailing tenants in certain landlord/tenant disputes, and (2) WIS. STAT. §§ 802.05 and 814.025. As to this second ground, Cicero asserted that KAS had made frivolous arguments and submitted documents it knew or should have known contained misrepresentations of fact for purposes of harassment and delay. Accompanying the motion were itemized billing records showing over 227.50 hours of legal work and fees and expenses totaling $29,181.

¶12 At the hearing, the court found KAS was in contempt for not answering the financial statement in a "more complete manner." Based on that finding of contempt and on MADISON GENERAL ORDINANCE § 32.07(10), the court determined that Cicero was entitled to reasonable attorney fees for having to bring a contempt motion. However, the court determined that KAS's arguments were not frivolous.

¶13 As for the amount of attorney fees requested by Cicero, the court determined that amount was not reasonable. The court recognized that Cicero "had to do more than [he] should have … in a normal case because of the conduct of the defendant," and also found that KAS had the ability to pay the judgment. However, the court stated, KAS's "conduct ended relatively quickly in the process" and it did pay the judgment "early on." The court observed that "the fees have escalated exponentially every time we have a hearing," there was no evidence of the fee arrangement with the client, and no expert testimony on whether the fees were reasonable. The conclusion the court drew was that Cicero's attorneys were attempting to "run the meter." The court decided that $2000 was reasonable attorney fees to collect a $2361 judgment.

¶14 The court also decided that KAS was entitled to attorney fees for the work it had to do to obtain a satisfaction of judgment, explaining that the judgment should have been satisfied without the need for KAS to go to court. The court therefore awarded KAS $1050 in attorney fees.

## DISCUSSION

### I. WIS. STAT. § 806.20

¶15 We first address Cicero's contention that the court erred in awarding KAS $50 in statutory damages and $1050 in attorney fees under WIS. STAT. § 806.20(2), which provides:

> **Court may direct satisfaction; refusal to satisfy. (1)** When a judgment has been fully paid but not satisfied … the trial court may authorize the attorney of the judgment creditor to satisfy the judgment or may by order declare the judgment satisfied and direct satisfaction to be entered upon the judgment and lien docket.
>
> **(2)** If an owner of any judgment, after full payment thereof, fails for 7 days after request and tender of reasonable charges therefor, to satisfy the judgment, the owner shall be liable to the party paying the same … in the sum of $50 damages and also for actual damages occasioned by such failure.

¶16 According to Cicero, the partial satisfaction of judgment fully complied with the statutory requirements because WIS. STAT. § 806.19 allows for a partial satisfaction of judgment. In the alternative, Cicero argues that, even if that document did not comply, KAS is entitled to only $50 because "actual damages" does not include attorney fees and KAS proved no actual damages.

¶17 A resolution of this issue requires that we construe WIS. STAT. § 806.20 and related statutes. This presents a question of law, which we review de novo. ***Fox v. Catholic Knights Ins. Soc.***, 2003 WI 87, ¶19, 263 Wis. 2d 207, 665

N.W.2d 181. When we are asked to construe a statute, we begin with the language of the statute and give it its common, ordinary, and accepted meaning, except that technical or specially defined words are given their technical or special definitions. ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, not in isolation but as part of a whole, in relation to the language of surrounding or closely-related statutes, and we avoid absurd or unreasonable results. ***Id.***, ¶46. We also consider the scope, context, and purpose of the statute insofar as they are ascertainable from the text and structure of the statute itself. ***Id.***, ¶48. If, employing these principles, statutory language is unambiguous—that is, there is only one reasonable meaning—then we apply this plain meaning. ***Id.***, ¶46.

¶18 We first analyze WIS. STAT. § 806.19(1)(a) to determine whether, as Cicero contends, the "Partial Satisfaction of Judgment" complied with this statute. Section § 806.19(1)(a) provides in relevant part:

> **Satisfaction of judgments. (1)** (a) A judgment may be satisfied in whole or in part …by an instrument signed and acknowledged by the owner or, … by the owner's attorney of record, or by an acknowledgment of satisfaction, signed and entered on the judgment and lien docket in the county where first entered, with the date of entry, and witnessed by the clerk of circuit court. Every satisfaction of a part of a judgment or as to some of the judgment debtors shall state the amount paid on the judgment or for the release of the debtors, naming them.

It is true that this paragraph permits a judgment to be satisfied "in whole or in part," but that does not answer the real question here, which is whether KAS fully paid the judgment. If KAS did, then WIS. STAT. § 802.06(2) plainly requires that

Cicero satisfy the judgment within seven days of KAS's request. There is nothing in WIS. STAT. §§ 806.19(1)(a) or 806.21, which Cicero also refers to,[2] that suggests a judgment creditor may provide a partial satisfaction of judgment if a judgment has been fully paid. The only reasonable meaning of § 806.19(1)(a) is that a judgment may be satisfied "in part" when not all of the judgment has been paid: in that case, the partial satisfaction must state "the amount paid on the judgment." Section 806.19(1)(a).

¶19 There is no dispute that KAS fully paid the judgment entered on June 4, 2002, and that no other judgment had been entered against it in favor of Cicero when it requested a satisfaction of judgment. Therefore, based on the plain language of WIS. STAT. § 806.20(2), KAS was entitled to a full satisfaction of judgment within seven days of its request. The document Cicero provided did not comply with the statute because it acknowledged "payment of the sum of $2,705.00 in *partial satisfaction of the judgment.*" (Emphasis added.)

¶20 Cicero's justification for providing a partial satisfaction of judgment rather than a full satisfaction of judgment is that if he had not done so, KAS might have argued that the court thereby lost "subject matter jurisdiction" to award attorney fees. We are not persuaded by the two cases Cicero cites that, had KAS

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[2] WISCONSIN STAT. § 806.21 provides:

> **Judgment satisfied not a lien; partial satisfaction**. If a judgment is satisfied in whole or in part or as to any judgment debtor and the satisfaction is entered in the judgment and lien docket, the judgment shall, to the extent of the satisfaction, cease to be a lien. Any execution issued after the satisfaction is entered in the judgment and lien docket shall contain a direction to collect only the residue of the judgment, or to collect only from the judgment debtors remaining liable.

taken that position, it would have been correct.[3] But, more importantly, when the judgment has been paid in full, no statute permits Cicero to refuse to provide a full satisfaction of judgment for the reason he advances. There were no doubt other ways for Cicero to resolve his concern over the effect of a full satisfaction on his pending motion; however, the statutes do not authorize the one he chose. We therefore conclude that Cicero is liable for $50 under WIS. STAT. § 806.20(2). Accordingly, the circuit properly awarded that sum.

¶21 Turning to the question whether the court properly awarded attorney fees under WIS. STAT. § 806.20(2), we observe first that we are uncertain on what basis KAS sought attorney fees in the circuit court. In its brief to that court it did not specifically mention attorney fees, but said simply that under § 806.20(2) "this court has the authority to award damages to the judgment debtor for judgment creditor's failure to satisfy the Judgment upon request." At the hearing, the court raised the issue of attorney fees for bringing the motion, and KAS then requested fees of $210 an hour for five hours in preparing the brief and attending the hearing. KAS argued that attorney fees were appropriate because there was no case law that supported Cicero's position. The court took the issue under advisement, and, when it did decide to award the fees at a later hearing and Cicero's counsel asked the basis for doing so, the court responded that the judgment should have been satisfied without the need for KAS to go to court. It is

[3] Cicero cites two cases relating to child support and does not explain how they apply in this context: ***Hamilton v. Hamilton***, 2003 WI 50, ¶¶19-21, 261 Wis. 2d 458, 661 N.W.2d 832 (citing to another case for the proposition that the circuit court may revise a judgment through a contempt proceeding as long as the court retains jurisdiction to revise its judgment); and ***State ex rel. Wall v. Sovinski***, 234 Wis. 336, 346, 291 N.W. 334 (1940) (referring to a statute on child support that gave the circuit court continuing jurisdiction over proceedings brought to compel support and to revise the amount until the judgment was satisfied).

therefore not clear to us whether the court viewed "the actual damages" language in § 806.20(2) as providing the authority to award attorney fees or whether it had some other basis in mind.

¶22 On appeal, in response to Cicero's argument that "actual damages" in WIS. STAT. § 806.20(2) does not include attorney fees, KAS makes only the brief, general statement that "attorney's fees are allowed under Wis. Stat. § 806.20," without referring at all to the term "actual damages." Nonetheless, because KAS provides no alternative authority for the court's award of attorney fees, we understand its position to be that "actual damages" does include attorney fees. We therefore confine our discussion to this issue.

¶23 Although it appears that no case has construed the term "actual damages" in WIS. STAT. § 806.20(2), we have in the context of another statute held that the term "damages" does not include attorney fees. In ***Bank One v. Koch***, 2002 WI App 176, ¶¶6-7, 256 Wis. 2d 618, 649 N.W.2d 339, we construed WIS. STAT. § 137.01(8), which provides that "[i]f any notary public shall be guilty of any misconduct or neglect of duty in office the notary public shall be liable to the party injured for all the damages thereby sustained." We concluded that, because the statute did not expressly authorize attorney fees, we could not infer that the term "damages" included them. ***Id.***, ¶¶7-8. Our conclusion was based on Wisconsin's long adherence to the American rule, which requires that each party in litigation bear the expense of its own legal fees unless expressly authorized by statute, contract, or certain other limited exceptions. ***Id.***, ¶6. Courts presume that the legislature is aware of this rule in enacting statutes, and there are numerous statutes that expressly allow an award of attorney fees. ***Id.***, ¶8. We emphasized that the American rule was firmly rooted in American and Wisconsin jurisprudence even prior to 1848; thus, the fact that § 137.01(8) was passed in

1848 did not support a different result. ***Id.***, ¶11. We also cited to a Wisconsin case decided in 1846, ***Gear v. Shaw***, 1 Pin. 608 (1846), in which the supreme court stated that "attorney's fees paid are not a legal charge in the assessment of damages." ***Id.***

¶24 We conclude that ***Bank One*** controls and "actual damages" in WIS. STAT. § 806.20(2) does not include attorney fees.[4] Accordingly, the circuit erred in awarding attorney fees to KAS under this statute.[5]

II. Reasonableness of Attorney Fees Awarded to Cicero

¶25 Cicero contends the circuit court erroneously exercised its discretion on a number of grounds in awarding only $2000 in attorney fees: (1) the court based the fees solely on the amount of the judgment sought to be collected; (2) its finding that KAS paid the judgment "early on" is not supported by the record and did not take into account the work necessary to respond to KAS's various positions and actions; (3) the absence of an expert is not a proper factor for reducing fees; and (4) the lack of a contingency fee agreement in the record is not a basis for reducing fees.

¶26 The analysis of the attorney fees awarded in this case must begin with an understanding of the applicable statutory authority, because that may

[4] *See also* our discussion in ***State v. Longmire***, 2004 WI App 90, ¶¶30-31, 272 Wis. 2d 759, 681 N.W.2d 534, where we concluded that "attorney fees and costs awarded to a successful plaintiff in an action under WIS. STAT. § 100.20(5) are not 'damages' recovered but costs of litigation shifted to the defendant."

[5] Because of this conclusion, we do not address Cicero's alternative argument that attorney fess could not be "actual damages" in this case because the record shows that KAS's counsel is a friend of Sabol and is not charging for his services.

affect the analysis. The court awarded fees under both WIS. STAT. § 785.04(1), which provides remedial sanctions for contempt of court, and under MADISON GENERAL ORDINANCE § 32.07(10), which provides for a prevailing tenant's recovery of reasonable attorney fees.[6] Cicero bases his arguments on case law

[6] WISCONSIN STAT. § 785.04(1)(a) provides:

> **(1)** REMEDIAL SANCTION. A court may impose one or more of the following remedial sanctions:
>
> (a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.
>
> (b) Imprisonment if the contempt of court is of a type included in s. 785.01 (1)(b), (bm), (c) or (d). The imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.
>
> (c) A forfeiture not to exceed $2,000 for each day the contempt of court continues.
>
> (d) An order designed to ensure compliance with a prior order of the court.
>
> (e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

MADISON GENERAL ORDINANCE § 32.07(10) provides in part:

> (10) If a landlord fails to comply with or otherwise violates the ordinance provisions set forth below, the tenant shall have the right to recover damages in the amount indicated below together with costs including reasonable attorney's fees:
>
> ….
>
> (c) Failure to use check-in/check-out forms under Sec. 32.07(6).
>
> ….
>
> (d) Failure to return security deposit or provide written statement of reasons for withholding under Sec. 32.07(8)(a) & (b).

developed under fee-shifting statutes—that is, statutes in which the legislative bodies have provided for attorney fees for prevailing plaintiffs in order to encourage plaintiffs to vindicate the rights established by the statutes. We agree that § 32.07(10) GEN. ORD. is properly described as a fee-shifting ordinance.

¶27 Cicero does not separately address the attorney fees he is entitled to under WIS. STAT. § 785.04(1). It is true that § 785.04(1)(a) authorizes the trial court to award attorney fees and other litigation costs. ***Town of Seymour v. City of Eau Claire***, 112 Wis. 2d 313, 320, 332 N.W.2d 821 (Ct. App. 1983). However, Cicero has provided no authority for the proposition that a court may impose remedial sanctions under § 785.04(1) after the contempt has ceased—that is, in this case, after the judgment was paid on August 20, 2003. "Remedial sanctions" is defined as "sanction[s] imposed for the purpose of terminating a *continuing* contempt of court." WIS. STAT. § 785.01(3) (emphasis added). Because Cicero does not address the basis or scope of the court's authority to award attorney fees under § 785.04(1)(a) after the contempt has ceased, we confine our analysis to the ordinance as the basis for the attorney fees the court awarded Cicero.

¶28 The circuit court implicitly concluded that reasonable attorney fees under the ordinance include a tenant's efforts to collect a judgment, and we agree. The purpose for allowing attorney fees to a prevailing tenant in a suit against a landlord is to encourage tenants to bring actions to enforce their rights: the legislative bodies that enact such provisions recognize that the recovery is often small and not enough to justify the expense of a legal action. ***Shands v. Castrovinci***, 115 Wis. 2d 352, 358-59, 340 N.W.2d 506 (1983). A judgment in a tenant's favor is of little benefit unless it is paid. Therefore, including the time reasonably expended by a tenant's attorney in attempting to collect on a judgment when the landlord does not promptly pay is necessary for the prevailing tenant to

obtain the benefits intended by the ordinance. *See* ***id.*** at 359 (concluding that WIS. STAT. § 100.20(5), which allows reasonable attorney fees in actions under regulations relating to tenant security deposits, also includes attorney fees for appellate work; the attorney's work at that stage is as essential to the tenant's success as is the work at the trial court level and is necessary to make sure that the purposes of the statute are not defeated).

¶29 For similar reasons, reasonable attorney fees are recoverable for the time necessary to litigate the recovery of reasonable attorney fees under a fee-shifting statute, unless the statute precludes that result. ***Chmill v. Friendly Ford-Mercury***, 154 Wis. 2d 407, 415, 453 N.W.2d 197 (Ct. App. 1990). If this were not the case, the attorney's effective hourly rate for all hours expended would be decreased, a result which does not comport with the purpose of fee-shifting statutes. ***Id.*** This reasoning applies equally to an ordinance such as MADISON GENERAL ORDINANCE § 32.07(10). Accordingly, Cicero was entitled to reasonable attorney fees for time expended in obtaining payment of the judgment and for time expended in obtaining reasonable attorney fees for those efforts. However, reasonable attorney fees do not include time spent on issues that were not successful, or time spent in litigating fees on issues that were not successful. ***Chmill***, 154 Wis. 2d at 415-16.

¶30 When the reasonableness of a circuit court's award of attorney fees awarded under a fee-shifting statute is challenged on appeal, we affirm unless the circuit court erroneously exercised its discretion. ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2004 WI 112, ¶22 ____Wis. 2d ___, 683 N.W.2d 58. A court properly exercises its discretion when it employs a logical rationale based on correct legal principles and the facts of record. ***Id.*** We give this deference to the

circuit court because it will likely have witnessed the quality of the attorney's service firsthand. ***Id.***

¶31 The supreme court has recently adopted the lodestar methodology established in ***Hensley v. Eckerhart***, 461 U.S. 424, 433 (1983), and has "direct[ed] circuit courts to follow its logic when explaining how a fee award has been determined." ***Kolupar***, 683 N.W.2d 58, ¶30. Under this lodestar approach, the starting point is a determination of the number of hours reasonably expended multiplied by a reasonable hourly rate, with upward or downward adjustments then made based on other relevant factors not already considered. ***Id.***, ¶29. The other factors that may be relevant are contained in SCR 20:1.5:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.[7]

(Footnote added.) The factors in SCR 20:1.5(a)(1), (3), and (7) are examples of SCR factors that are subsumed in the determination of a reasonable number of hours and a reasonable hourly rate. ***Lynch v. Crossroads Counseling Ctr., Inc.,*** 2004 WI App 114, ¶40, ___ Wis. 2d ___, 684 N.W.2d 141.

¶32 We recognize that ***Kolupar*** and ***Lynch*** (in which this court held that courts should use the ***Hensley*** methodology in determining reasonable attorney fees under fee-shifting statutes) were decided after the circuit court made its decision in this case. Previously courts had typically applied the factors in SCR 20:1.5 without "the lodestar framework." ***Kolupar***, 683 N.W.2d 58, ¶33. Therefore, as the supreme court did in ***Kolupar***, we will review the circuit court's decision to determine if we can sustain its exercise of discretion, even though the court did not begin by determining a reasonable number of hours and a reasonable hourly rate.[8]

¶33 Cicero's counsel's billing records show that from June 4, 2002, the date judgment was entered, through October 2003, Cicero's attorneys and their staff spent 227.50 hours litigating this matter. The hourly rate for the associate attorneys was $125, for partners it was $190, and for support staff it was $65. The

[7] The supreme court in ***Kolupar*** also referred to the "***Johnson***" factors, twelve factors adopted in ***Johnson v. Georgia Highway Express, Inc.***, 488 F.2d 714, 717-19 (5th Cir. 1974), for determining the reasonableness of attorney fees for prevailing plaintiffs under 42 U.S.C.A. §§ 2002a *et seq*., 2000e-5(k). The ***Johnson*** factors, with two exceptions, are the same as those in SCR 20:1.5. ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2004 WI 112, ¶¶30, 35, ___ Wis. 2d ___, 683 N.W.2d 58; ***Lynch v. Crossroads Counseling Ctr., Inc.***, 2004 WI App 114, ¶40, ___ Wis. 2d ___, 684 N.W.2d 141.

[8] Because the circuit court here made no findings on whether the hourly rates were reasonable, we focus on the number of hours.

total for legal fees was $28,538, plus costs and expenses of $643. Approximately $16,000 in legal fees were incurred before August 20, 2003, when the judgment was paid.

¶34 The record certainly supports the circuit court's determination that the number of hours for which Cicero was requesting attorney fees was unreasonably high. Examples that are readily evident of time that a circuit court could properly determine were not reasonably necessary to secure payment of the judgment and related attorney fees include the following: (1) the time spent on the garnishment action, which was dismissed for failure to properly serve, and, thus, not successful and not helpful in obtaining payment; (2) the time spent traveling to and from Milwaukee, in the absence of a showing that it was reasonably necessary for Cicero to have Milwaukee counsel; (3) the time spent in defending Cicero's position that the partial satisfaction of judgment complied with the statute, which was not successful either in the circuit court or on appeal; and (4) the time spent after August 20, 2003, in trying to prove the inadequacy of the financial disclosure statement because there was no longer a "continuing contempt" of the June 4 order. *See* WIS. STAT. § 785.01(3). In addition, it is also readily apparent from the billing records that there was significant time devoted to intra-office conferences that a court could decide were not reasonably necessary given the relative lack of complexity of the issues. We do not intend these examples to be exhaustive. The point is that there was a substantial amount of time the circuit court could, in the proper exercise of its discretion, decide was not reasonably necessary.

¶35 However, taking the view of the record most favorable to sustaining the circuit court's decision, we nonetheless cannot tell how the court arrived at a

fee as low as $2000. Neither the explanations the court provided nor our review of the entire record allows us to affirm this amount.

¶36 The court apparently considered the small amount of the judgment to be significant in determining the amount of reasonable attorney fees. However, the amount recovered in itself does not justify a reduction in fees. In ***Lynch***, we addressed the relevance of the amount of recovery in the context of securing the judgment itself—not, as here, post-judgment efforts to obtain payment. We recognized that the size of recovery was relevant when it was small in relation to the amount sought or when it was the same as a rejected settlement offer. ***Lynch***, 684 N.W.2d 141, ¶46. However, we concluded that when the amount recovered was the full amount sought—there, under the wage claim statute, WIS. STAT. § 109.03(6)—the size of recovery was not a basis for reducing attorney fees below an amount that represents a reasonable hourly rate for a reasonable number of hours. ***Id.*** "Any other approach," we stated, "has the likely result of making legal representation more difficult to obtain in cases involving small amounts of unpaid wages; yet it may be precisely the wage claimants owed the smallest amounts who are most in need of their unpaid wages." ***Id.*** A similar rationale applies here. The amounts that tenants recover in actions under MADISON GENERAL ORDINANCE § 32.07 may typically be small: security deposits are an example. If a tenant is unable to collect a judgment because of the landlord's unwillingness to pay even when able to pay, fees for the reasonable efforts to collect that judgment should not be reduced because of the size of the judgment. Any other approach thwarts the purpose of the ordinance and creates an incentive for landlords to withhold payment of small judgments.

¶37 The court also relied on its finding that KAS's "conduct ended relatively quickly in the process" and that KAS paid the judgment "early on." The

difficulty we have with this finding is twofold. First, the judgment was not paid until August 2003, more than a year after the judgment was entered. The relevant inquiry, then, is what time did Cicero reasonably expend in efforts to obtain payment of the judgment during that year and two months. It appears that initially KAS was attempting to get Cicero to agree to accept less than the judgment; at some point in early 2003, it appears that KAS was willing to pay the judgment but not attorney fees. Cicero could reasonably reject both these positions: he was entitled to have the judgment paid in full, since, as the court found, KAS was able to pay, and he was entitled to reasonable attorney fees for the efforts reasonably expended to obtain payment of the judgment. Second, even after KAS paid the judgment, it was reasonable to continue to litigate the recovery of attorney fees—though not, as we have mentioned above, the accuracy or completeness of the financial statement. We see nothing in the court's explanation to indicate that it understood Cicero was entitled to reasonable attorney fees for litigating the recovery of reasonable attorney fees.

¶38 The circuit court mentioned the lack of expert testimony as, apparently, another reason for its decision. However, we are aware of no requirement that a motion for attorney fees must be supported by expert testimony. The party seeking attorney fees must support the request with documentation of the hours worked and rates claimed. ***Kolupar***, 683 N.W.2d 58, ¶31. Cicero did that here with the detailed billing statement. If expert testimony is submitted, the court must consider it. *See* ***Lynch***, 684 N.W.2d 141, ¶49. But there is no requirement for expert testimony; indeed, we view the adoption of such a requirement as adding unnecessarily to the complexity of proceedings to recover attorney fees under fee-shifting statutes.

¶39 Finally, the circuit court referred to the lack of a contingent fee agreement on the record. It is not clear how the court viewed this factor as affecting a reasonable fee. The affidavit submitted by Cicero's counsel in support of his motion for fees avers that Cicero initially retained the services on the "contingency" that pursuant to the ordinance, Cicero

> could be entitled to recover reasonable attorney fees and costs incurred in the litigation of this matter.[9] After the judgment was entered, [Cicero] and the Law Firm re-negotiated the contingency agreement whereby the Law Firm would recover any actual attorney fees and costs, and/or sanctions awarded by the Court in any post-judgment collection efforts.

(Footnote added.) Apparently counsel's use of the term "contingency agreement," both in the affidavit and at the hearing on attorney fees, was confusing to the circuit court and to KAS's counsel. A "contingent fee" generally refers to an agreement whereby the client agrees to pay a percentage of recovery, and such agreements are regulated by SCR 20:1.5(c). The agreement Cicero's counsel described was not a contingent fee agreement in this sense, but, rather, an agreement that Cicero's attorney would not charge him for efforts to obtain the judgment and payment of the judgment, but instead would attempt to recover attorney fees and costs from KAS for those efforts.

¶40 We agree with Cicero that the lack of an obligation on Cicero's part to pay his attorney even if the attorney were not successful in recovering fees from KAS is not a reason to reduce or deny attorney fees under a fee-shifting statute. In ***Shands***, 115 Wis. 2d at 361, the supreme court held that prevailing tenants under

[9] It appears from the record that Cicero's counsel did not seek attorney fees under the ordinance for obtaining the judgment, that is, for work performed before June 4, 2002.

that fee-shifting statute may recover attorney fees even when they are represented without charge by legal services organizations. We see no principled reason for distinguishing between a legal services organization and an attorney in private practice who agrees to represent a tenant without charge but with the understanding that the attorney will attempt to recover fees under the fee-shifting statute or ordinance. We thus can discern no reason why the lack of evidence of a written fee agreement in this case bears on the determination of a reasonable fee.

¶41 In summary, although the record supports a determination that a reasonable attorney fee is substantially below that requested, we cannot conclude that the record supports the determination that $2000 is reasonable. We therefore must reverse and remand for the court to determine a reasonable attorney fee consistent with this decision. On remand, the court should begin, as now required by ***Kolupar***, 683 N.W.2d 58, ¶30, by determining what number of hours were reasonably expended in obtaining payment of the judgment and payment of reasonable attorney fees and what hourly rate is reasonable for that work. The court may then take into account any relevant factors in SCR 20:1.5 that it did not already consider. Of course, the court's view that much work here was unnecessary is highly relevant to the determination of a reasonable number of hours. The court need not "itemize each entry it determines is unnecessary, but some explanation of the unnecessary tasks is needed to assist us in reviewing the trial court's decision." ***Lynch***, 684 N.W.2d 141, ¶44. Overall, the court should explain the reasons for the fee award it arrives at. ***Kolupar***, 683 N.W.2d 58, ¶29.

III. Attorney Fees under WIS. STAT. §§ 802.05(1) and 814.025.

¶42 Cicero argues the circuit court erred in concluding that he was not entitled to reasonable attorney fees under WIS. STAT. §§ 802.05 and 814.025.[10] His arguments are focused on the financial disclosure statement and KAS's position that it was complete and accurate. However, he does not explain why he would be entitled to more fees under these statutes than he is entitled to under the

[10] WISCONSIN STAT. § 802.05(1)(a) states, in relevant part:

> **(1)** (a) Every pleading, motion or other paper of a party represented by an attorney shall contain the name ... of the attorney ... and shall be subscribed with the handwritten signature of at least one attorney of record in the individual's name.... The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the attorney's or party's knowledge, information and belief, formed after reasonable inquiry, the pleading, motion or other paper is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that the pleading, motion or other paper is not used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.... If the court determines that an attorney or party failed to read or make the determinations required under this subsection before signing any petition, motion or other paper, the court may, upon motion or upon its own initiative, impose an appropriate sanction on the person who signed the pleading, motion or other paper, or on a represented party, or on both. The sanction may include an order to pay to the other party the amount of reasonable expenses incurred by that party because of the filing of the pleading, motion or other paper, including reasonable attorney fees.

WISCONSIN STAT. § 814.025 provides in relevant part:

> **Costs upon frivolous claims and counterclaims**. **(1)** If an action or special proceeding commenced or continued by a plaintiff or a counterclaim, defense or cross complaint commenced, used or continued by a defendant is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs determined under s. 814.04 and reasonable attorney fees.

ordinance. To the extent it was reasonably necessary for Cicero's counsel to expend time in response to KAS's financial disclosure statement in his overall efforts to obtain payment of the judgment, reasonable compensation for that time is recoverable under the ordinance, whether KAS's positions were reasonable or not. To the extent Cicero's counsel expended time after payment of the judgment in attempting to prove the financial disclosure statement was incomplete or inadequate, Cicero does not explain why it was reasonably necessary for him to expend that time. That time was not reasonably necessary to recover reasonable attorney fees for efforts to obtain the judgment, which was the only remaining issue after the judgment was paid. (As we have already noted, Cicero has not provided authority for being entitled to remedial sanctions under WIS. STAT. § 785.04 on the contempt motion after the judgment was paid.) In the absence of a more fully developed argument, we conclude it is unnecessary to address Cicero's position that the financial disclosure statement and KAS's arguments relating to it entitled him to attorney fees under either §§ 802.05 or 814.025.

¶43 Cicero also argues that KAS's motion under WIS. STAT. § 806.20(2) entitled him to attorney fees under WIS. STAT. §§ 802.05 and 814.015. However, we have already concluded that KAS's position that Cicero did not comply with § 806.20(2) is correct. While Cicero has succeeded on appeal in arguing that § 806.20(2) did not authorize the imposition of attorney fees against him, we see no indication in the record that he argued in the circuit court that KAS's position on this issue entitled him to attorney fees under either §§ 802.05 or 814.025; the court therefore did not rule on this issue. We generally do not consider arguments raised for the first time on appeal and we decline to do so here. ***Evjen v. Evjen***, 171 Wis. 2d 677, 688, 492 N.W.2d 361 (Ct. App. 1992).

## CONCLUSION

¶44 We affirm the $50 in statutory damages awarded KAS under WIS. STAT. § 806.20(2) and reverse the $1050 in attorney fees awarded KAS under that statute. We reverse the $2000 in attorney fees awarded Cicero and remand for a determination of reasonable attorney fees for Cicero consistent with this decision.

*By the Court.*—Order affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.

¶45 DYKMAN, J. (*dissenting*). The trial court was faced with an uncomplicated case but two fractious attorneys, Manuel Raneda and Peter M. Garson. Raneda recovered a $2,361 judgment against Garson's client, KAS of Madison, LLC, in a landlord-tenant dispute. There are eighteen pages of the record between the small claims summons and complaint and the judgment. I do not care to count the pages from the judgment until now, but the record of that time weighs over six-and-one-half pounds, not counting the correspondence file. That is the amount of paperwork Raneda (and to some extent Garson) generated over whether Raneda's client would be able to collect $2,361 from KAS.

¶46 Raneda amassed much of this record by going through an inefficient method of discovering KAS's assets, and by writing briefs and letters. Garson did not help matters, by producing paperwork showing that KAS, a landlord with an apartment building worth $320,000 and a mortgage for $2.2 million, did not have any income, cash or bank account. While that was literally true, it was not the whole story. The trial court attempted to stop the waste of its time by asking Raneda if he had subpoenaed KAS employees to see where its assets lay. Raneda had not. The trial court said: "Well, if you want witnesses here, the way you get them here is to subpoena them." I agree.

¶47 Any attorney who works with collections knows that collecting a judgment against a landlord is relatively easy. Landlords have tenants who can be garnished. Those tenants are usually cooperative when they learn of a fellow tenant's plight. Landlords receive rent checks which have to be deposited somewhere. Bank accounts can be garnished. Raneda did this two months after

obtaining a judgment, but KAS moved to dismiss the garnishment action, and the trial court granted the motion.

¶48 Raneda knew of KAS's tenants because Cicero lived in a KAS apartment at 831 East Johnson Street in Madison. A small amount of time by Raneda or a cooperating Madison attorney or private detective agency would have revealed that KAS employed a rental agency to manage KAS's apartments. A quick look at a recent tenant's returned rent check would have revealed the agency and its bank account.

¶49 Landlords have mortgages, and banks try to get their loan customers to place their checking accounts with them. Credit agencies often have information about a landlord's finances. Raneda could have subpoenaed KAS's agent, Shaun Sabol, *duces tecum* to appear at the first of the hearings he obtained. But he did not. Sabol was listed as landlord on Cicero's rental agreement. Raneda could have found Sabol's name and address in the Madison telephone directory. He could have discovered that Montana Management, LLC, receives all of KAS's rents.

¶50 Any attorney who works with collections could have found a way to collect a $2,000 judgment from KAS in less than eight hours. Indeed, collections attorneys often do so on a contingent basis, suggesting that it is unnecessary to spend nearly $30,000 to collect a $2,000 debt. In the real world, this is unheard of.

¶51 But Raneda did not try to do this collection the easy way. The six pounds of record—motions, hearings, letters, and affidavits—reveal that Raneda was milking this case. He was not alone. At one hearing he obtained the assistance of a partner and adjunct professor of law at Marquette Law School. All

of this did not escape the trial court. It noted: "This appears to the court as nothing more than an attempt, a blatant attempt to run up the fees as high as possible, hoping that a judge would grant recovery for the plaintiff." The trial court concluded that: "There is no evidence in the record about whether these fees are reasonable." And: "The only conclusion one can reach is that this was just an attempt to run the meter, as they say." Even the majority recognizes that Raneda's fees were unreasonably high.

¶52 Raneda's tactics did not stop in the trial court. His brief is fifty pages long, and his appendix contains 184 pages. One of the three issues he raises was rejected by the trial court, and is rejected unanimously by this court because "[t]he only reasonable meaning of § 806.19(1)(a) is that a judgment may be satisfied 'in part' when not all of the judgment has been paid …" and "[t]herefore, based on the plain language of WIS. STAT. § 806.02(2), KAS was entitled to a satisfaction of judgment …." Majority at ¶¶18 and 19. Another of the issues was whether Cicero was entitled to attorney fees under WIS. STAT. §§ 802.05 and 814.025 (2001-02).[11] The majority addresses this issue by noting: "However, he does not explain why he would be entitled to more fees under these statutes than he is entitled to under the ordinance." Majority at ¶42. I agree. Even if addressed substantively, this issue had little, if any chance of success. Thus, on only one of three issues did Raneda have a reasonable chance of success on appeal.

¶53 The majority recognizes that our standard of review gives considerable deference to a trial court's determination of what constitutes a

[11] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

reasonable attorney fee. But it ignores the very thing that the trial court noted as a reason for awarding $2,000 in attorney fees: The plaintiff had failed to show that the nearly $30,000 in attorney fees was reasonable.

¶54 It is the plaintiff's burden to provide information from which the trial court can determine a reasonable attorney fee. ***Standard Theatres, Inc. v. Transp. Dep't***, 118 Wis. 2d 730, 748, 349 N.W.2d 661 (1984). Plaintiffs often submit affidavits of attorneys with expertise in the area of law relevant to the case who testify to the reasonableness of the requested fee. They may also present examples of similar awards in comparable cases. *See, e.g.,* ***Crawford County v. Masel***, 2000 WI App 172, ¶13, 238 Wis. 2d 380, 617 N.W.2d 188. Raneda offered no such evidence to support his fee request. For me, it is not possible to determine from Raneda's records what a reasonable fee would be.

¶55 Nor do I agree that, in this case, expert testimony was unnecessary to prove the reasonableness of attorney fees. *Someone* must explain to the trial court what was done and why these actions were necessary. Raneda's billing statements alone cannot do this. If the majority is serious about its conclusion, it should reverse and direct the trial court to grant Raneda's attorney fee request. Raneda's records show who spent how much time, and on what the time was spent.

¶56 Apparently, the majority has adopted Cicero's argument that ***Fireman's Fund Ins. Co. v. Gradley Corp.***, 2003 WI 33, ¶67, 261 Wis. 2d 4, 660 N.W.2d 666, and several other cases permit a de novo review of determinations of the reasonable value of attorney fees. I am puzzled, therefore, why the majority fails to set a reasonable fee. Under the majority's view, it has everything it

needs.[12] I, however, do not agree that Raneda's billing records alone can show the reasonableness of attorney fees or the necessity of time spent on a case.

¶57 When a plaintiff fails to prove a case, we accept that the plaintiff loses. The majority does not explain why it rejects this proposition. In ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2004 WI 112, ¶9, ___Wis. 2d ___, 683 N.W.2d 58, the court affirmed a fee award where the trial court reduced a fee award from a requested $41,000 to $15,000 because the plaintiff did not provide sufficient evidence to support the requested fee. The court said:

> With respect to Judge Cooper's explanation for the fee award in this case, we note the dearth of hard facts available to the court. If Judge Cooper had relied upon the ***Hensley*** [***v. Eckerhart***, 461 U.S. 424, 429 (1983)] lodestar approach that we adopt today, he would have been within his discretion to significantly reduce the attorney fee award to nothing or nearly nothing.

***Id.***, ¶31.

¶58 That is exactly what the trial court did here, even though ***Kolupar*** was not yet decided. But ***Hensley*** was. Given the deference that even the majority recognizes exists in fee-shifting cases, Raneda's failure to prove his reasonable fees should have resulted in our affirming the trial court's judgment. I would do so.

¶59 Fee-shifting statutes have proven to be effective and beneficial in leveling the playing field for consumers. But there is a dark side to these statutes that trial and appellate courts must recognize. Though SCR 20:1.5 requires an

[12] It is difficult to discern why the majority remands here, but reverses without remand on KAS's claim for attorney fees. In its view, the trial court did the same thing in both cases; it failed to explain the reason for its award. I will explain this problem later in more detail.

attorney fee to be reasonable, some attorneys cannot resist the temptation to come over to this dark side and litigate endlessly to enrich themselves and punish the defendant. Fee-shifting statutes depend for their legitimacy on attorneys charging a reasonable fee. When trial courts find, as here, that the plaintiff has blatantly attempted to "run the meter," appellate courts should defer to that finding, and the trial court's determination of a reasonable fee. When trial and appellate courts determine that an attorney has litigated in this way, they should send their determination to the Office of Lawyer Regulation. I have done so here.[13]

¶60 The majority also concludes that WIS. STAT. § 806.20(2) does not permit an award of attorney fees as damages. I agree with that conclusion. But I do not understand why, using the majority's reasoning that failure to prove fee reasonableness allows an appellant another kick at the proverbial cat, it still holds that KAS cannot recover attorney fees. The majority first finds that the trial court raised the issue of attorney fees for bringing the § 806.20(2) motion. It then uses this finding to reach its conclusion. But that is not what the record shows. KAS, not the trial court, raised the issue by requesting $1,050 in attorney fees. That is shown by the trial court's comment: "Okay. I will award costs of $50 from the plaintiff to the defendant, and I'll take under advisement the issue of attorney fees. As I understand it, the request is $1050. I'll deal with that at the next hearing …."

¶61 The majority's conclusion that KAS is not entitled to attorney fees under WIS. STAT. § 806.06(2) begs the question: Under what statute did the trial court award KAS attorney fees? When Attorney Raneda asked why a fee award

[13] Referrals to the office of Lawyer Regulation should be considered only in response to egregious fee charges so as to not interfere with the effectiveness of fee-shifting statutes.

was made to KAS, the court answered: "For having to bring a motion to satisfy the judgment that should have been satisfied without the necessity of going to court to do so." That explanation perfectly fits WIS. STAT. § 814.025, which permits an award of attorney fees against persons who advocate a frivolous defense. *See* ***Gardner v. Gardner***, 190 Wis. 2d 216, 250, 527 N.W.2d 701 (Ct. App. 1994). Whether I accept the majority's holding that persons who fail to explain or prove their reasonable attorney fee request are entitled to a second chance to do so, or whether I conclude that the undisputed refusal of Raneda to satisfy Cicero's judgment was frivolous, the result is the same: I would not, as a matter of law, reverse the trial court's award of attorney fees to KAS.

¶62 For the reasons stated, I respectfully dissent.