

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 01, 2005

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. 2005AP627

Cir. Ct. No. 2003SC8611

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT 1**

ROBERT J. MARSO,

PLAINTIFF-RESPONDENT,

V.

KINGSTAD LAW OFFICES, S.C.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: RICHARD SANKOVITZ, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Kingstad Law Offices, S.C., (“Kingstad”) appeals from an order for judgment and a judgment awarding plaintiff Robert J. Marso \$2,547.55, plus statutory costs. Kingstad argues that even though it failed to file a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

timely notice of appeal, it did not breach the contract for legal services that it entered with Marso, and Marso is therefore not entitled to damages. We affirm the order.

BACKGROUND

¶2 The background facts are undisputed. Marso litigated and lost a small claims case in Racine County. He hired Kingstad to appeal that case to the court of appeals. The parties entered into a written contract for legal services that provided in relevant part:

THIS AGREEMENT [is] made between Kingstad Law Offices, S.C. (hereafter “Attorneys”), and *ROBERT MARSO* (hereafter “Client”):

1. SERVICES: Client retains and employs Attorneys to provide legal services and representation in his/her behalf concerning the following: *APPEAL OF RACINE COUNTY DECISION REGARDING AIRPORT LAWSUIT/APPEAL IS TO COURT OF APPEALS ONLY.*

2. FEES: Client agrees to pay Attorneys on the following basis:

(A) FIXED FEE: For a total fee of \$5,000.00 not including costs and disbursements, Attorneys will handle Client’s matter through to conclusion. *\$2,000.00 DOWN[;] \$1,500.00 UPON FILING BRIEF-IN-CHIEF[;] \$1,500 UPON FILING REPLY BRIEF.*

....

4. RETAINER: Client agrees to pay Attorneys in advance a Non-Refundable retainer of \$2,000.00 for fees and an additional [\$0] for anticipated costs....

(Capitalization and underlining in original; italics supplied where contract terms were handwritten.)

¶3 Consistent with this contract, Marso gave Kingstad an initial payment of \$2000. Kingstad arranged for the preparation of a transcript, for which Marso paid \$547.55. Kingstad completed legal research and filed a notice of appeal. The appeal was dismissed because the notice of appeal was filed two days after the statutory appeal deadline.

¶4 Marso filed this small claims action against Kingstad, and against David G. Kingstad personally, seeking return of the \$2,547.55 he paid Kingstad, as well as \$4,111.60 that he was claiming in the underlying suit in Racine County. Kingstad and David Kingstad filed a motion for summary judgment. The trial court concluded that David Kingstad in his personal capacity should be dismissed from the action because he was not a party to the contract, and also dismissed Marso's claim for \$4,111.60 from the underlying suit.

¶5 However, the trial court indicated that it believed that Marso had a valid claim to the \$2,547.55 and encouraged Marso to file a motion for summary judgment. Marso did so. After briefing and oral argument, the trial court concluded that Marso was entitled to judgment for \$2,547.55 plus statutory costs. The trial court subsequently denied Marso's motion for prejudgment interest and attorney fees. This appeal followed.

DISCUSSION

¶6 At issue is whether Kingstad breached the contract and, if so, what damages Marso is entitled to collect.² Interpretation of a contract is a question of

² Marso has not appealed the dismissal of his claims against David Kingstad personally, his claim for \$4,111.60, or the denial of his motion for prejudgment interest and attorney fees. We do not consider these issues.

law that we review independently. *Ford Motor Co. v. Lyons*, 137 Wis. 2d 397, 460, 405 N.W.2d 354 (Ct. App. 1987). The primary goal in contract interpretation is to give effect to the parties' intentions. *Johnson Controls, Inc. v. Employers Ins. of Wausau*, 2003 WI 108, ¶30, 264 Wis. 2d 60, 665 N.W.2d 257. We ascertain the parties' intentions by looking to the language of the contract itself, *see State ex rel. Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 711, 456 N.W.2d 359 (1990), and contracts are interpreted to give effect to the parties' intent, as expressed in the contractual language, *see Danbeck v. American Family Mut. Ins. Co.*, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150. Such language is to be interpreted consistently with what a reasonable person would understand the words to mean under the circumstances. *Id.*

¶7 The trial court concluded that the contract language was unambiguous (a conclusion that Kingstad agreed with at oral argument before the trial court), and that under the plain meaning of the contract, Marso “gets his day in the Court of Appeals.” The trial court concluded that because Kingstad failed to file the appeal on a timely basis, resulting in the appeal's dismissal, it breached the contract.

¶8 On appeal, Kingstad disputes this interpretation of the contract. It explains:

The trial court was wrong in its interpretation of the Agreement, and should have held simply that the Agreement required what it said: for Kingstad to provide legal services and representation to Marso concerning an appeal. Since this is exactly what Kingstad did, the trial court should have found there was no breach and dismissed Marso's entire case....

[T]he Agreement simply says that Kingstad was to provide legal services and representation on Marso's behalf concerning an appeal. This is what Kingstad did between April 20, 2000, and June 7, 2000, when it obtained and

reviewed the transcripts, analyzed trial notes, researched legal issues and prepared legal forms. There was no breach.

(Footnote omitted.)

¶9 We disagree with Kingstad’s reasoning. The unambiguous contract language indicated that Kingstad’s representation was for the purpose of an appeal of the Racine County decision, and specifically referenced an appeal to the court of appeals. The contract also provided that Kingstad would “handle Client’s matter through to conclusion.” The only reasonable interpretation of these provisions that gives effect to the parties’ intent, *see id.*, was that the contract contemplated the successful *filing* and completion of an appeal. There was no guarantee that the Racine case would be reversed on appeal, but the contract clearly contemplated that Kingstad would file and conclude the appeal. Failing to successfully file the appeal constituted a breach of the contract because an appeal could no longer be pursued.

¶10 Next, Kingstad argues that the \$547.55 in transcription fees should not be considered damages, because “there simply was no additional requirement that Marso pay Kingstad’s costs and disbursements only if an appeal was filed.” Once again, this court disagrees. Kingstad breached the contract when it failed to appeal in a timely manner with the court of appeals. Marso is entitled to “losses necessarily flowing from the breach.” *See Kempfer v. Automated Finishing, Inc.*, 211 Wis. 2d 100, 129, n.9, 564 N.W.2d 692 (1997) (citation omitted). The \$547.55 payment for the trial transcript was for the sole purpose of pursuing the appeal. When Kingstad made pursuit of the appeal impossible, the transcript became a useless expense. Marso should not bear this collateral cost of Kingstad’s breach of their contract. Marso spent \$2,547.55 for an appeal that was never

properly filed. This court concludes, as did the trial court, that Marso is entitled to return of those funds.

By the Court.—Judgment and order affirmed.

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

