COURT OF APPEALS
DECISION
DATED AND FILED

September 24, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP892 **Cir. Ct. No. 2007SC1150**

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

LITTLE HANDS CHILD CARE

PLAINTIFF- RESPONDENT,

V.

JASON LILLIS

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Ozaukee County: THOMAS R. WOLFGRAM, Judge. *Affirmed*.

¶1 BROWN, C.J. [1] Jason Lillis appeals a small claims judgment for $1942 plus costs. He contends that Little Hands Child Care never submitted supporting documents to prove the debt. He argues that WIS. STAT.

[1]This appeal is decided by one judge pursuant to Wis. Stat. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

§§ 802.01(2)(b) and 802.03(7) require not only that these documents be submitted as a prior condition to maintaining the action, but also that copies of these documents be provided to him and that neither were done. We have two responses. First, the two statutes he cites have no application to small claims procedure. Second, Little Hands did provide documentation showing the amount owed, albeit at trial. Whether that documentation proved what it was intended to prove was a decision for the small claims court to make. The small claims court found that Little Hands had met its burden of proof. We affirm.

¶2 Lillis' child attended day care with Little Hands from November 2001 to July 2006. Payments were due every Monday. Payments were not always made. Sometimes, Lillis would do handyman jobs for Little Hands and apply part of his payment to the outstanding bill. Also, Lillis received state assistance, on a co-pay arrangement, which payments also reduced the amounts owed. At trial, Little Hands produced an exhibit described in the record as a "payment breakdown." This exhibit showed the dates of day care services provided, the amount owed for these services, the payments made against the amounts owed, and the total amount owed upon termination of the day care arrangement. The owner, who testified, said that she constantly brought up the payment situation with Lillis' girlfriend, who apparently had the responsibility of dropping off and picking up the child, but that the debt continued.

¶3 Lillis, for his part, claimed that he did not know about the existing debt until almost two years had passed. And then, when he received a letter stating the amount owed, he demanded to see proof of the debt but received a summons and complaint instead. He responded by asking the small claims court to dismiss on the grounds that Little Hands had failed to provide any documentation of the debt, any explanation of "where this alleged debt came

from," any dates relating to the debt, and any specific proof that the debt was valid, as required by WIS. STAT. §§ 802.01(2)(b) and 802.03(7). Instead, he received an order to appear for a pretrial conference before the court commissioner, which provided that each party must bring all physical evidence intended to be produced at trial. Lillis asserts that he asked for dismissal at the pretrial conferences on the grounds that the documentation was not provided at that conference as stated in the order. But instead, the matter was set for trial. Lillis testified that before trial he asked for copies of any documents Little Hands had "because [he had] a couple of attorneys that were willing to take a look at it for [him] to decide if [he] needed to hire representation or not," but the owner of Little Hands said she did not have the time to make copies. The owner of Little Hands had earlier testified that she told him he could come and look at all the records himself if he wanted since she couldn't make copies.

¶4 The court, after hearing the sworn testimony, was satisfied that the child did receive the day care services alleged, that certain arrangements were made concerning Lillis receiving credit for services provided to the day care, and with that credit, the amount owed was $1942. Lillis now appeals.

¶5 WISCONSIN STAT. § 799.04(1) provides, in pertinent part, that except as otherwise provided, the general rules of practice and procedure in WIS. STAT. chs. 801 to 847 shall apply to small claims actions. The small claims procedure is very specific regarding what must be in a complaint and how the defendant may answer. The complainant must proceed in accordance with WIS. STAT. § 799.06. This statute requires that the complainant set forth a brief statement of the claim. ***Id.*** It does not require supporting documentation at this time. ***Id.*** WISCONSIN STAT. § 799.20 provides that, on the return date, the defendant may answer or move to dismiss under WIS. STAT. § 802.06(2).

¶6 Neither of the above statutes reference WIS. STAT. §§ 802.01(2)(b) or 802.03(7). Those statutes pertain to large claims. In fact, § 802.01(2)(b) has to do with documents supporting *a motion*, not with documents supporting a complaint. So, that large claim statute is totally irrelevant to this case from the get-go. Section 802.03(7) states that a plaintiff *may* itemize in the complaint the value or agreed price of services provided and, if the complaint does not so particularize and defendant demands itemization in writing, the plaintiff must provide that itemization within ten days after service of the demand. But, WIS. STAT. § 799.20 specifically provides for a different procedure. In a small claims matter, the defendant has two, and only two, options. The defendant may either answer on the return day or may "move to *dismiss*" on the return day under WIS. STAT. § 802.06(2). (Emphasis added). There are ten enumerated instances in § 802.06(2) upon which a motion to dismiss can be made. None of these instances has any application to this case. This court concludes that the two statutes relied upon by Lillis are simply inapplicable to small claims matters.

¶7 Now, WIS. STAT. § 802.06(5) does allow a defendant to move for a more definite statement, which is a different thing altogether from a motion to dismiss. Indeed, a motion for a more definite statement is the only type of motion allowed by small claims procedure at the time the answer is due. And this court sees nothing in WIS. STAT. ch. 799 that would prevent a defendant from making such a motion. But Lillis never cited or used this statute, so we can hardly fault the small claims court for not being clairvoyant enough to think that Lillis was really asking for a more definite statement. Moreover, even if Lillis had made a § 802.06(5) motion, the statute points out that the court has the discretion whether to grant such a motion. So, far from this statute being a mandate upon a plaintiff, it is a motion addressed to the discretion of the court.

¶8 And here, the court gave Lillis his day in court. Lillis saw the exhibit that detailed the dates of child care, the amounts paid and the amounts due. He had the opportunity at that time to cross-examine the owner of Little Hands as to each item in the exhibit had he chosen to do so. But he spent no time at all challenging the exhibit. He only now belittles this exhibit as a mere spreadsheet. In his view, the exhibit should have contained more, but he does not say exactly what was wrong with it. In his written response to the complaint before trial, he complained that there was no documentation of the debt. The exhibit at trial was the documentation. He complained that there was no explanation of where the debt came from. The exhibit showed where the debt came from. He complained that there was no proof that the alleged debt was valid. The small claims court found that it was valid. So, we are at a loss to find anything wrong with the document that requires reversal.

¶9 His major complaint seems to be that he did not get copies of all the recordkeeping on which this spreadsheet was based. But it is not the plaintiff's obligation to do so, unless, in the discretion of the court, the court so orders. Here, while he does cite the small claims pretrial conference form, which commands the parties to bring documentation to the conference with them, the fact is that enforcement of the order is entirely up to the court. Here, it is obvious that the small claims commissioner did not see fit to enforce the order. Lillis did not ask the circuit court to review that. We have no jurisdiction to review an order of the court commissioner, as our responsibility is limited to review of the circuit court.

¶10 And what the court commissioner did in this case is nothing out of the ordinary. The court commissioner gave Lillis, like the defendant in most other civil actions, the opportunity to get behind the paper record and discover the facts himself. The record shows that a time was actually set up for him when he could

do this discovery himself. But he refused to do this discovery, obviously relying on the belief that the plaintiff must do the discovery for him. We affirm.

By the Court.—Judgment affirmed.

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