COURT OF APPEALS
DECISION
DATED AND FILED

October 8, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2386 **Cir. Ct. No. 2008SC456**

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

NICOLE L. MUSICK,

PLAINTIFF-RESPONDENT,

V.

STATE FARM BANK,

DEFENDANT,

MELISSA BRADLEY,

DEFENDANT-APPELLANT,

BILL DAVIS,

RESPONDENT.

APPEAL from an order of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Reversed.*

¶1 DYKMAN, P.J.[1] Melissa Bradley appeals from an oral order in Nicole Musick's small claims replevin action to recover a vehicle in Bradley's possession.[2] Bradley argues that the trial court erred in ordering her to sell the vehicle and split the proceeds equally with William Davis, a non-party witness in this action. Bradley contends that courts may not issue money judgments in replevin actions, and that a court does not have the authority to award money to a non-party. Musick responds that a trial court has broad power to conduct trials, and acted within its authority by effectively adding Davis as a party and then sua sponte ordering the vehicle sold and the proceeds split between Bradley and Davis. We conclude that the trial court's order for Bradley to sell the vehicle and split the proceeds with Davis did not comport with constitutional due process notice principles, because Bradley had no notice that she was expected to defend against a claim by Davis. Accordingly, we reverse.

Background

¶2 The following undisputed facts are taken from the parties' testimony at trial and the trial court's findings of fact. In early 2006, Nicole Musick located a vehicle she decided to purchase. She negotiated with the vehicle's seller for a purchase price of $5000. Musick asked Melissa Bradley to co-sign for a loan for part of the purchase price. Bradley agreed to co-sign on a car loan for Musick, and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] Only written judgments and orders are appealable. WIS. STAT. § 808.03(1). We construe Bradley's appeal to be from the docket entries in this case, which are appealable pursuant to § 808.03(1)(b).

Musick agreed to make the car loan payments and gave Bradley $100,[3] although there was no written document as to this agreement.

¶3 In March 2006, Bradley obtained a car loan in the amount of $3500 from State Farm Bank in Janesville, payable to the owner of the vehicle Musick intended to purchase, and secured by the vehicle. Despite the parties' agreement that Bradley would be a co-signer on the loan for Musick, the loan was issued to Bradley alone.

¶4 Bradley, Musick, William Davis and Davis' mother then travelled to Rockford, Illinois, to purchase the vehicle. They used the check from State Farm Bank, $1200 cash from Davis, and a $300 check from Davis's mother to purchase the vehicle.[4] Nicole took possession of the vehicle, and Bradley received its title. Bradley registered the vehicle in her name. Musick insured the vehicle in her name.

¶5 Musick made only sporadic payments on the car loan, and State Farm Bank began contacting Bradley for payment. Bradley took possession of the car, without Musick's permission, in January 2008. Musick then initiated this small claims replevin action to recover the vehicle.

[3] Musick testified that she gave Bradley $300 to co-sign on the loan, and Bradley testified that it was $100. The court found that Bradley was paid $100 to co-sign.

[4] Davis testified that he loaned Musick $2000 cash that she used towards the purchase of the vehicle, and that he withdrew that amount from his bank account on the day Musick purchased the vehicle. Bradley testified that Davis contributed $1200 cash and his mother contributed a $300 check, totaling $1500. The trial court found "the testimony … of Mr. Davis to be true," but also found "the testimony with respect to the contribution by the Davis[es], in which $300 came from his mom, and $1200 from him, … to be true." Later, the court stated that Davis was "out $2000 or $1500 here."

¶6 The court held a trial on July 7, 2008, and determined that State Farm Bank was a necessary party. The court ordered the parties to bring State Farm Bank into the case. State Farm Bank was then served with a complaint, and the trial was continued on September 15, 2008. State Farm Bank failed to respond to the pleadings or appear for the trial.

¶7 After trial, the court found that Bradley was the owner of the car, and therefore dismissed Musick's action for replevin. The court found that State Farm Bank had failed to appear in the action, and extinguished its interest in Bradley's note and vehicle. The court then ordered the vehicle sold and the proceeds split equally between Bradley and Davis. Bradley appeals.

Standard of Review

¶8 We uphold a trial court's findings of fact unless they are clearly erroneous. ***Global Steel Prods. Corp. v. Ecklund Carriers, Inc.***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. We review a trial court's decision as to whether to grant equitable relief for an erroneous exercise of discretion. ***Zizzo v. Lakeside Steel & Mfg. Co.***, 2008 WI App 69, ¶6 n.3, 312 Wis. 2d 463, 752 N.W.2d 889. "The construction of a statute and its application to undisputed facts are questions of law which we determine de novo." ***Global Steel***, 253 Wis. 2d 588, ¶11. Whether the facts of this case comported with constitutional requirements is a question of constitutional fact, which we also review de novo. *See* ***State v. Greenwold***, 189 Wis. 2d 59, 66-67, 525 N.W.2d 294 (Ct. App. 1994).

Discussion

¶9 Bradley argues that the trial court erred in ordering her to sell her vehicle and to split the proceeds equally with Davis. She argues that the court did

not have the authority to award Davis a money judgment because (1) the only relief available in a replevin action is recovery of property or its value under WIS. STAT. §§ 425.205(1)(e),[5] 810.13[6] and 810.14;[7] and (2) Davis was not a party to this action and therefore is not entitled to a money judgment. We agree that the trial court erred in awarding a money judgment to Davis, who was not a party to the replevin action. Accordingly, we reverse the court's order for Bradley to sell her vehicle and awarding Davis half of the proceeds from the sale.

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[5] WISCONSIN STAT. § 425.205(1) provides, in pertinent part:

> [A] creditor seeking to obtain possession of collateral or goods subject to a consumer lease shall commence an action for replevin of the collateral or leased goods. Those actions shall be conducted in accordance with ch. 799, … except that:
>
> ….
>
> (e) Judgment in such action shall determine only the right to possession of the collateral or leased goods, but such judgment shall not bar any subsequent action for damages or deficiency to the extent permitted by this subchapter.

[6] WISCONSIN STAT. § 810.13(1) provides:

> Upon the trial, the court or jury shall find all of the following:
>
> (a) Whether the plaintiff is entitled to possession of the property involved.
>
> (b) Whether the defendant unlawfully took or detained the property involved.
>
> (c) The value of the property involved.
>
> (d) The damages sustained by the successful party from any unlawful taking or unjust detention of the property to the time of the trial.

[7] WISCONSIN STAT. § 810.14 provides, in pertinent part, that "[i]n any action for replevin judgment for the plaintiff may be for the possession or for the recovery of possession of the property, or the value thereof in case a delivery cannot be had, and of damages for the detention."

¶10 Bradley argues first that the court erred in ordering her to sell the vehicle and split the proceeds equally with Davis because WIS. STAT. § 425.205(1)(e) states that in an action to recover collateral, the court judgment may only determine the right of possession, and may not award damages. As Musick argues, however, § 425.205(1)(e) does not apply in this case. WISCONSIN STAT. § 425.205(1)(e) is contained within WIS. STAT. ch. 425, "Consumer Transactions—Remedies and Penalties." It is further contained within subchapter II, "Enforcement of Security Interests in Collateral." Section 425.201 explains that subchapter II "applies to the enforcement by a creditor of security interests in collateral." Musick brought this action to recover the vehicle from Bradley; Musick is not a creditor and has never claimed a security interest in the vehicle. By the statutes' plain terms, § 425.205(1)(e) does not apply to this case.

¶11 Next, Bradley argues that under WIS. STAT. § 801.13, the verdict in a replevin action must determine whether the plaintiff is entitled to recover the property, and the court denied Musick's action for replevin. Bradley argues that a judgment in a replevin action may award either the property or, if awarding the property is not possible, then its value, but not both. Although Bradley does not specifically say so, we read Bradley's argument to be that once the court denied Musick's claim for replevin, it had resolved this action, and had no basis to then order any relief. Musick responds that the trial court was acting within its broad powers to raise issues sua sponte and resolve the conflict between the parties and Davis efficiently. *See* ***Larry v. Harris***, 2008 WI 81, ¶23, 311 Wis. 2d 326, 752 N.W.2d 279. We conclude that, whether or not the trial court acted properly in ordering the sale of the vehicle after denying Musick's action for replevin, it erred in awarding half of the proceeds of the sale to Davis, because Davis is not a party

to this action and Bradley was not provided notice that she was expected to defend against a claim by Davis.

¶12 Bradley argues that Davis had the opportunity to pursue any interest in the vehicle under WIS. STAT. § 810.11, which allows a third party with an interest in property subject to a replevin action to assert his or her interest through an application to the judge. Musick responds, again, that the trial court had broad power to conduct the trial and effectively added Davis as a party. *See* ***id.***

¶13 The problem, though, is that nothing in the record indicates that Bradley was provided any notice that she was expected to defend against a claim by Davis in an action by Musick. *See* ***William B. Tanner Co., Inc. v. Estate of Fessler***, 100 Wis. 2d 437, 447, 302 N.W.2d 414 (1981) ("[D]ue process requires that [a defendant] be given notice reasonably calculated to inform the person of the pending proceeding and to afford him or her an opportunity to object and defend his or her rights."), *abrogated on other grounds by* ***Sears, Roebuck & Co. v. Plath***, 161 Wis. 2d 587, 468 N.W.2d 689 (1991). It is true, as Musick points out, that Davis was present at both days of trial. But he was present as a witness rather than as a party. He testified on Musick's behalf in the dispute between Musick and Bradley over possession of the car. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that in actions seeking to affect an individual's rights, the individual must receive notice "reasonably calculated" to provide him or her the opportunity to defend his or her rights. ***Id.*** at 445-47. We conclude that notice of Musick's replevin action against Bradley did not provide Bradley with notice that she was required to defend against a claim by Davis. Accordingly, the court's order for Bradley to sell the vehicle and split the proceeds with Davis, when she had no notice Davis was

claiming an interest in the vehicle, did not comport with due process notice requirements.

¶14 Finally, Musick argues that Bradley's appeal is premature because the docket entries were not labeled "final for purposes of appeal," which she contends is required under ***Wambolt v. West Bend Mutual Insurance Co.***, 2007 WI 35, ¶34, 299 Wis. 2d 723, 728 N.W.2d 760. However, ***Wambolt*** involved a court's memorandum decision that "did not contain an explicit statement either dismissing the entire matter in litigation or adjudging the entire matter in litigation as to one or more parties," as required under WIS. STAT. § 808.03(1) to give rise to an appeal. ***Id.***, ¶50. The court said that

> [i]n order to further limit the confusion regarding what documents are final orders or judgments for the purpose of appeal, we will, commencing September 1, 2007, require a statement on the face of a document that it is final for the purpose of appeal. Absent such a statement, appellate courts should liberally construe ambiguities to preserve the right of appeal.

Id. Here, there is no ambiguity, because the docket entries dismissed Musick's replevin action and extinguished State Farm Bank's lien, thus adjudicating the entire matter in litigation as to all the parties. Moreover, under § 808.03(1)(b), docket entries in small claims actions are final dispositions which permit appeals as of right.

¶15 Thus, the docket entries in this case are final judgments giving rise to this appeal. The docket entries dismissed Musick's claim against Bradley and extinguished any claim State Farm Bank might have had against Bradley. However, Bradley has appealed from the trial court's oral order for her to sell the vehicle and split the proceeds with Davis rather than from the docket entries. To the extent the oral order and written judgments conflict, we are bound by the

court's unambiguous oral pronouncement. ***State v. Lipke***, 186 Wis. 2d 358, 364, 521 N.W.2d 444 (Ct. App. 1994) ("[I]f there is a conflict between an unambiguous oral pronouncement and [a written judgment], the oral pronouncement controls.").

¶16 We have explained why the court's oral order was erroneous. However, there has been no appeal from the judgment dismissing Musick's replevin action against Bradley, or from the judgment extinguishing State Farm Bank's claim against Bradley. Therefore, only Bradley owns and is entitled to possession of the disputed vehicle. Neither Musick nor Davis has any ownership interest in the vehicle.[8]

¶17 Additionally, we observe that Bradley's motivation in defending this lawsuit and bringing this appeal appears to be her concern over her credit report after State Farm Bank sought payment from her. We note that the court entered a docket entry extinguishing State Farm Bank's claim against Bradley, meaning that Bradley is no longer responsible for any outstanding loan from State Farm Bank. We, like the trial court, have no authority to direct action by the credit report companies to remove the loan from State Farm Bank from her credit report. All we can conclude is that the trial court's judgment means that Bradley no longer owes State Farm Bank any money as a result of the car loan she obtained from State Farm Bank in March of 2006.

¶18 In sum, we reverse the court's order for Bradley to sell the vehicle and split the proceeds equally with Davis.

[8] The record reveals that there have been further disputes between the parties over possession of the vehicle following the trial. We resolve only the issues raised on appeal, and do not address any legal consequences of the parties' actions concerning the vehicle while this appeal was pending.

By the Court.—Order reversed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.