

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 18, 2009**

David R. Schanker  
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. 2009AP1301-FT**

**Cir. Ct. No. 2008SC2948**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**EDWARD KOMES AND RACHEL KOMES,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**NORTHEASTERN ILLINOIS LAND MANAGEMENT, INC. D/B/A  
LAND MANAGEMENT,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Kenosha County:  
BRUCE E. SCHROEDER, Judge. *Affirmed.*

¶1 NEUBUAER, P.J.<sup>1</sup> Edward and Rachel Komes appeal from an amended small claims judgment granting their claim against Northeastern Illinois Land Management, Inc. d/b/a Land Management, for damages incurred as a result of their landlord's violation of WIS. ADMIN. CODE § ATCP 134.09(2)(c), but awarding only a portion of their requested attorney fees. The Komeses contend that the trial court erred in awarding only \$800 in attorney fees for obtaining a small claims judgment. Because we conclude that the trial court properly exercised its discretion in setting the attorney fees award, we affirm the amended small claims judgment.

### BACKGROUND

¶2 On July 9, 2008, the Komeses filed a small claims summons and complaint alleging that on March 26, 2008, their landlord, Land Management, entered their leased premises without notice and without authorization in violation of WIS. ADMIN. CODE § ATCP 134.09(2)(c). The Komeses sought a money judgment of \$163.70, double the amount of lost wages allegedly incurred as a result of Land Management's actions. On July 30, 2008, Land Management filed a timely answer to the Komeses' complaint alleging that the Komeses "had signed a consent to enter allowing the landlord to enter the premises for purposes of 'maintenance, inspection, repair and showing for lease or sale,' Mondays through

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<sup>1</sup> 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. All references to the Wisconsin Administrative Code are to the November 2006 register date.

Fridays from 8 a.m. to 6 p.m.<sup>2</sup> Relying on this consent, Land Management denied the Komeses' claim and requested dismissal. On August 7, 2008, the court entered a default judgment of \$2109.81 in favor of the Komeses, including the requested \$163.70 in lost wages, \$1820 in attorney fees, and service and filing fees. At Land Management's request, the matter was reopened and the parties submitted briefing on the issue of whether Land Management's form providing consent to enter was in violation of WIS. ADMIN. CODE § ATCP 134.09(2)(c).

¶3 In a written decision, the trial court concluded that Land Management had failed to obtain the informed consent demanded by law and, therefore, the entry into the leased premises was unlawful and the Komeses were entitled to double damages and reasonable attorney fees under WIS. STAT. § 100.20(5). However, the trial court then determined that the attorney fees of \$1820 incurred through the granting of the default judgment were not reasonable. While the Komeses had incurred \$960 in attorney fees for just the initial research and preparation of the complaint, the court concluded "that a reasonable fee for the time spent in assessing this matter, preparing a complaint and briefing the issue of the administrative regulation violation is \$800, which shall be added to the judgment." The Komeses filed a motion for reconsideration, which was denied.

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<sup>2</sup> Attached to Land Management's answer is a form entitled "Wisconsin Realtors® Association Request for Maintenance/Consent to Enter (For use for non-emergency maintenance only)." It is undisputed that the form was signed by both Edward Komese and Rachel Komese, but the trial court ruled that it was unenforceable because it did not conform to the requirements of WIS. ADMIN. CODE § ATCP 134.09(2)(c), governing nonstandard rental agreements. Specifically, while the Komeses signed the consent to entry, the form they signed was not incorporated into the three-page rider, the first page of which identified the provisions therein as "Nonstandard Rental Provisions." The fourth page containing the "consent to enter" provision did not also include the specific words "Nonstandard Rental Provisions." See WIS. ADMIN. CODE § 134.09(2)(c).

The court entered an amended judgment awarding \$163.70 as double damages for lost wages and \$800 in attorney fees. They now appeal the amended judgment.

## DISCUSSION

¶4 The sole issue on appeal is whether the trial court erred in its award of attorney fees. The Komeses argue that the trial court’s decision was based on erroneous considerations including the Komeses’ failure to make a pre-filing settlement offer, the technical nature of the landlord’s violation and the punitive nature of attorney fees. The Komeses request an award of \$3665 in attorney fees.<sup>3</sup>

¶5 The Komeses’ demand for attorney fees is premised on WIS. STAT. § 100.20(5), which requires the court to award a tenant twice the amount of pecuniary loss, together with costs, including reasonable attorney fees, where a landlord has violated a provision of WIS. ADMIN. CODE ch. ATCP 134.09.<sup>4</sup> 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, 275 Wis. 2d 1, 683 N.W.2d 58. A court properly exercises its

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<sup>3</sup> The Komeses concede the trial court’s ruling denying attorney fees related to the default judgment and motion to reopen and, as such, those fees are not at issue on appeal. While the Komeses do not specify the time and fees at issue, we understand the \$3665 pertains to the Komeses’ attorney fees related to initial research, drafting and filing of the summons and complaint (4.6 hours), and the remainder as fees relating to the briefing, for a total of approximately eighteen hours.

<sup>4</sup> WISCONSIN ADMIN. CODE ch. 134 was adopted under the authority of WIS. STAT. § 100.20(2), and a person who suffers monetary loss as a result of a violation of a provision of the chapter may sue under § 100.20(5). WIS. ADMIN. CODE ch. ATCP 134 (Note). Section 100.20(5) provides: “Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney’s fee.”

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’s decision “because the circuit court is familiar with local billing norms and will likely have witnessed first-hand the quality of the service rendered by counsel.” *Id.*

¶6 The supreme court has adopted a lodestar methodology, and has “direct[ed] circuit courts to follow its logic when explaining how a fee award has been determined.” *Id.*, ¶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 (2008):

- (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.

See also *Pierce v. Norwick*, 202 Wis. 2d 587, 597, 550 N.W.2d 451 (Ct. App. 1996).

¶7 Here, the trial court broke down the Komeses' initial attorney fees into roughly two parts: \$920 representing the 4.6 hours spent researching facts and preparing the complaint, and \$820 representing the 4.1 hours spent preparing for, travelling to, and attending the August 4 hearing at which the default judgment was entered. The court denied recovery of attorney fees related to the entry of the default judgment at the small claims hearing. With respect to the initial filing of the summons and complaint, the court expressed its dismay that plaintiff's counsel had already incurred \$920 in attorney fees without having made any attempt to contact the defendant to resolve the Komeses' lost wage claim of \$81.85 prior to initiating litigation. However, noting that the reality of a case governed by a fee-shifting statute is that the damages can be very little, the court recognized that it must allow a fee "so that the plaintiffs can obtain legal services to enforce their rights." The court then found that "the plaintiff is entitled to compensation for his very capable briefs on the issue in chief in the case," and concluded that "a reasonable fee for the time spent in assessing this matter, preparing a complaint and briefing the issue of the administrative regulation violation is \$800." Essentially, the trial court deemed four hours of work billed at \$200 per hour to be reasonable.

¶8 On reconsideration, the Komeses' counsel informed the court that he files a number of cases on behalf of tenants under the Wisconsin Administrative Code, often receiving referrals, and that he's been practicing for eight years. He additionally described the work he did on the case and explained his rationale in pursuing the claim. In denying his motion for reconsideration, the trial court explained that if counsel had been a new attorney, or unfamiliar with this type of law, then the initial time spent acquainting himself with the issue would have been appropriate. However, the court stated that it "would not expect [him] to put any

expansive amount of time into finding that [the consent to entry provision] is nonconforming to the code. This is a technical violation.” As to the complaint, the court noted, having done this type of work before, the complaint is “not an exercise in difficult pleading.” Acknowledging that there was “quality work done,” the court again determined that \$800 was a reasonable fee award for a case involving actual damages of \$81.85, or double damages of \$163.70.

¶9 While the Komeses contend that the trial court erred in its consideration of their failure to attempt settlement and the technical nature of the landlord’s code violation, these issues were considered in the court’s discussion of what would constitute a reasonable amount of time spent by a reasonable attorney on the issue presented. Implicit in the trial court’s discussion is its determination that the small claims matter was overlitigated. In other words, the absence of the required heading or the failure to incorporate the last page of the four-page rider to the lease did not give rise to an issue so complex as to require attorney fees representing approximately eighteen hours of work.

¶10 We therefore reject the Komeses’ contention that the trial court’s “flawed analyses” is in “derogation of the policies” set forth in *Shands v. Castrovinci*, 115 Wis. 2d 352, 357-59, 340 N.W.2d 506 (1983); including that (1) the recovery of double damages and attorney fees encourages injured tenants to bring legal actions to enforce their rights, and encourages attorneys to take this type of case when otherwise, the anticipated recovery would not justify the expense of litigation; (2) the aggregate effect of individual suits enforces the public’s rights; (3) tenant suits deter impermissible conduct by landlords and strengthen the bargaining power of tenants in dealing with landlords; and (4) private tenant actions constitute an enforcement mechanism reinforcing that of the justice department.

We see no reason that the trial court's attorney fee award of \$800 would derogate the purpose of WIS. STAT. § 100.20(5). While the trial court expressed concerns regarding the potentially punitive nature of attorney fees, it is clear from the record that the trial court was discussing unreasonable attorney fees, not reasonable. The trial court touched on the policy considerations of *Shands* and the record reflects that it based its award on the appropriate considerations set forth in *Kolupar*. While we may have arrived at a different conclusion as to reasonable fees, absent an erroneous exercise of discretion, we will not substitute our judgment for that of the trial court. *Kolupar*, 275 Wis. 2d 1, ¶22.

### CONCLUSION

¶11 In reviewing the trial court's exercise of discretion, we conclude that the trial court appropriately considered the applicable law and facts. In keeping with the "lodestar approach" set forth in *Kolupar*, the trial court determined a reasonable amount of time to have spent on the case by arriving at a figure of \$800. The court then went on to consider other relevant factors including (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 amount involved and the results obtained; and (3) the experience of the attorney. *See* SCR 20:1.5 (2008). While the Komeses complain that the trial court's analysis rested on "fundamentally flawed legal theories," regarding their failure to attempt settlement, the technical nature of the violation and the potential for attorney fees in landlord/tenant cases to be punitive, the record demonstrates that these observations by the trial court were part and parcel of what was ultimately a reasonable exercise of discretion in setting a reasonable attorney fee award. We therefore affirm the amended judgment.



*By the Court.*—Judgment affirmed.

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

