COURT OF APPEALS
DECISION
DATED AND FILED

May 18, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2786 **Cir. Ct. No. 2009SC3949**

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

RACINE RIVERSIDE MARINE, INC.,

PLAINTIFF-RESPONDENT,

V.

HANSEL M. DEBARTOLO, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County: EMILY S. MUELLER, Judge. *Affirmed*.

¶1 BROWN, C.J.[1] Hansel M. DeBartolo, Jr., appeals a judgment entered against him granting Racine Riverside Marine, Inc. a lien for unpaid

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

storage fees for his sailboat. His grounds are improper jurisdiction, lack of contract, improperly amended complaint and failure to comply with WIS. STAT. § 779.43 (governing lien rights). He also argues that sanctions should have been levied against opposing counsel for failure to appear at a March 15, 2010 hearing. We affirm the decisions of the trial court.

FACTS

¶2 On August 13, 2009, Racine Riverside brought a small claims action against DeBartolo seeking to enforce a lien for unpaid storage and service fees. The services were provided while DeBartolo's sailboat was located in Wisconsin. According to Riverside's complaint, DeBartolo began storing his boat with Riverside on October 1, 2006, and did so for a total of five storage seasons. Riverside alleged that he did not pay $4080 in storage and cradle rental fees. Prior to the beginning of each storage season, Riverside provided DeBartolo a standard rate sheet which furnished its storage and rental charges and also provided a standard contract. DeBartolo never signed the contracts but did in fact store his boat with Riverside. Prior to bringing the lien action, Riverside mailed a letter to DeBartolo advising him of the unpaid fees and possible lien action.

¶3 DeBartolo moved to dismiss the action on the grounds that there was no jurisdiction and that the action was brought in an improper venue. Specifically, DeBartolo argued that there was no jurisdiction over him because he was a citizen of Illinois and never signed a contract with Riverside. He testified that Riverside took control of his boat in the fall of 2007 and told him it would be winterized. He then testified that he told Riverside he would let its staff know in the spring when he would put the boat back into the water. He never made payments after May 2007.

¶4 DeBartolo also argued that the action was brought in an improper venue because he believed this was not a claim for a lien but a suit for a monetary judgment. Based in part on this premise, DeBartolo argued that the claim violated the Fair Debt Collection Practices Act (FDCPA), 15 USC § 1601 et seq., because the action would have needed to have been brought in the county in which he resides. In response to the motion, Riverside filed an amended complaint, affirmative defenses and counterclaim to confirm that the relief which it sought was a lien against DeBartolo's sailboat for the unpaid fees and not an action for a personal judgment against DeBartolo.

¶5 The trial court determined that Riverside could pursue the claim as one for a lien in accordance with WIS. STAT. § 779.43(3), which grants marinas lien rights under certain circumstances. The court also denied DeBartolo's motions to strike Riverside's amended complaint, affirmative defenses and counterclaim after a March 30, 2010 hearing. DeBartolo has not provided a transcript of that hearing.

¶6 A trial was held in July 2010. The record on appeal contains the trial transcript but does not contain a transcript of the court's oral decision. A subsequent written order indicates that the court granted the lien, and we can infer from DeBartolo's appeal that it also denied DeBartolo's requested sanctions. DeBartolo now appeals. He makes substantially the same arguments he did at the trial level.

DISCUSSION

¶7 DeBartolo's first argument is that the trial court did not have proper jurisdiction over the case. This argument is two-fold. First, DeBartolo argues the trial court did not have jurisdiction over him because he is a citizen of Illinois and

did not sign a contract in Wisconsin. Second, DeBartolo argues that the court lacked jurisdiction because the action was not brought in the proper venue. He argues that the lawsuit arises from a consumer transaction, which according to him, would have to have been brought in the place were he resides.

¶8 Determining whether the trial court had jurisdiction is a question of law that is reviewed de novo. *See* ***Kett v. Cmty. Credit Plan, Inc.***, 222 Wis. 2d 117, 586 N.W.2d 68 (Ct. App. 1998). ***State v. Beck***, 204 Wis. 2d 464, 467, 555 N.W.2d 145 (Ct. App. 1996). DeBartolo argues that since there was no signed contract between himself and Riverside and since he is a citizen of Illinois, he was not amenable to suit in Wisconsin. However, WIS. STAT. § 801.07(1) provides that Wisconsin courts have jurisdiction when the defendant has an interest in personal property located in Wisconsin, and the relief sought is "excluding the defendant from any interest or lien therein."

¶9 The record clearly indicates that this was an action to enforce lien rights. WISCONSIN STAT. § 779.43(3) states that "every keeper of a … marina … and every person … keeping any… boats … shall have a lien thereon and may retain the possession thereof for the amount due for the keep, support, storage or repair and care thereof until paid." The record contains a June 30, 2009 letter written by Riverside to DeBartolo. The letter indicates that Riverside intended to enforce its lien rights under § 779.43(3) for its unpaid storage and service fees. When DeBartolo did not pay the fees, Riverside brought the small claims action to enforce its lien. The amended complaint clarified that the relief sought was a lien for the unpaid storage fees.

¶10 Furthermore, the trial court heard extensive testimony that DeBartolo's sailboat was located in Wisconsin and that Riverside provided the

services for which it claimed the lien in Wisconsin. DeBartolo does not deny that his boat was located in Wisconsin during the pertinent time. Because this is an action that is attempting to exclude the defendant from his personal property that is located in Wisconsin, the trial court had jurisdiction to hear the action, regardless of DeBartolo's state of residency. *See* WIS. STAT. § 801.07(1).

¶11 DeBartolo alternatively argues that the action was brought in an improper venue. Determinations of venue are also questions of law, which we review de novo. *See* ***Irby v. Young***, 139 Wis. 2d 279, 281, 407 N.W.2d 314 (Ct. App. 1987). DeBartolo claims that the action should have been brought in the county in which he resides pursuant to the FDCPA. *See* 15 U.S.C. § 1692i(a)(2). The FDCPA requirement that DeBartolo references applies to "[a]ny debt collector who brings any legal action on a debt against any consumer…." 15 U.S.C. § 1692i(a). As we already explained, this is an action to enforce a lien, not an action against a consumer to collect a debt. *See* ***Rosado v. Taylor***, 324 F. Supp. 2d 917, 924 (explaining that "[s]ecurity enforcement activities fall outside the scope of the FDCPA because they aren't debt collection practices."). DeBartolo offers us no compelling reason that the FDCPA should apply, so we will not address it further.[2]

¶12 DeBartolo's next argument is that Riverside's amended complaint, affirmative defenses and counterclaim should have been stricken. A trial court's decision on a motion to strike will be upheld unless there is an erroneous exercise

[2] DeBartolo also argues that "the Circuit Court should have … awarded FDCPA penalty to defendant (DeBartolo)." Because we hold that the FDCPA does not apply, we do not address that issue. *See* ***Polakowski v. Polakowski***, 2003 WI App 20, ¶14 n.6, 259 Wis. 2d 765, 657 N.W.2d 102.

of its discretion. *See* ***State v. Smith***, 291 Wis. 2d 569, 573, 716 N.W.2d 482 (2006). DeBartolo argues that "because [Riverside] filed his amended complaint without leave of court while [DeBartolo's] motion was pending," the court erred "as a matter of law" in not granting DeBartolo's motion to strike. While DeBartolo claims that his motion to strike should have been granted as a matter of law, he cites to no applicable law as authority. This issue is therefore undeveloped and we decline to do DeBartolo's legal research for him. *See* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 Wis. 2d 139 (Ct. App. 1987). We affirm the trial court's ruling denying DeBartolo's motions to strike Riverside's amended complaint, affirmative defenses and counterclaims.

¶13 DeBartolo's third argument is that the circuit court erred in granting judgment against him. DeBartolo argues, in only one sentence, that there was no consent given for the sailboat's storage, there was no contract between him and Riverside and that Riverside failed to post signage as required by WIS. STAT. § 779.43(3), which states that no marina keeper "shall exercise the lien upon any … boat unless the keeper gives notice of the charges for storing … boats on a signed service order or by posting in some conspicuous place in the … marina a card that is easily readable at a distance of 15 feet." His reply brief elaborates only by referencing the record in two places: where DeBartolo testifies that Riverside was holding his sailboat "hostage," and where DeBartolo testifies that a photo accurately depicting signage is not readable at a distance of fifteen feet, as required by § 779.43(3). As legal authority, he cites only to § 779.43(3) and ***Bob Ryan Leasing v. Sampair***, 125 Wis. 2d 266, 371 N.W.2d 405, a case dealing with the requirement of consent between parties for a lien to arise.

¶14 As Riverside points out, the record does not contain the transcript from the trial court's oral decision.[3] This is an important omission because each of these assertions raise credibility issues that the trial court had to decide, i.e., did he consent or not? Did the parties agree to a contract or not? Was the sign readable or not? Because we do not have the trial court's credibility assessments, we must assume that every fact essential to the judgment of the court was in the record. *See* ***Austin v. Ford Motor Co.***, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). Thus, we assume that the trial court found his story not credible. We affirm the trial court's decision granting judgment against DeBartolo.

¶15 As his final argument, DeBartolo contends that the trial court should have awarded sanctions against Riverside for failing to appear at a hearing on March 15, 2010. This is a specious argument. The hearing was scheduled by DeBartolo, who was conveniently present. But it is unclear from the record

[3] In his reply brief, DeBartolo contends that "in this case … the trial transcript is on record," and that "[a]n appeal from a small claims court does not require such a transcript." He goes on to state that "[i]f it is the Appellate Court's opinion that a transcript is necessary … Debartolo[] requests an extension of time to supplement the record." DeBartolo also made a similarly-worded motion to supplement the record after filing his reply brief.

This is not how motions to supplement the record work. It was DeBartolo's responsibility to ensure that the record before us was complete. *See* ***State v. Marks***, 2010 WI App 172, ¶20, 330 Wis. 2d 693, 794 N.W.2d 547. WISCONSIN STAT. RULE 809.11(4) states that the appellant must request a transcript within fourteen days after the filing of a notice of appeal. If the appellant believes that a transcript is unnecessary, then RULE 809.11(4)(b) allows the appellant to forego a transcript. It is the appellant who prosecutes the appeal and when an appellant makes the decision not to have a transcript, such decision is at the appellant's peril. This court will not prosecute the appeal for the appellant. Our scope of review is confined to the record before us. *See* ***Austin v. Ford Motor Co.***, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). It is not our responsibility to let DeBartolo know, after the briefs have been completed and after the court has read the briefs and the record, if the lack of transcripts negatively affect his appeal. A motion to supplement the record does not carry with it an obligation by this court to let an appellant know that he or she made the wrong decision. To the extent that this operates to DeBartolo's disadvantage, that was a risk he took when choosing not to submit the transcripts.

whether Riverside had actual notice of the hearing and it *is* clear that DeBartolo did not serve Riverside with notice as required by WIS. STAT. §§ 801.14(2) and 802.01(2)(b). Interestingly, DeBartolo then filed motions seeking sanctions against Riverside for failing to appear at the hearing soon after it took place. The trial transcript indicates the trial court intended to make a final ruling on the motion for sanctions as part of its oral decision.

¶16 As we already stated, the appellate record lacks the transcript of the oral decision rendered by the trial court. It is well-settled law that sanctions are discretionary decisions of the trial court and those decisions will not be overturned unless there is an erroneous exercise of discretion. *See* ***Ably v. Ably,*** 155 Wis. 2d 286, 293, 455 N.W.2d 632 (Ct. App. 1990); ***Lee v. GEICO Indem. Co.***, 321 Wis. 2d 698, 706-07, 776 N.W.2d 622 (Ct. App. 2009). Without the transcripts of the trial court's decision, just as we did the preceding issue, we assume that the trial court's decision was supported by the record and affirm. *See* ***Austin***, 86 Wis. 2d at 641 ("[T]he court will assume, in the absence of a transcript, that every fact essential to sustain the trial judge's exercise of discretion is supported by the record.").

By the Court.—Judgment affirmed.

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