

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 22, 2013

Diane M. Fremgen
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. 2013AP207

Cir. Ct. No. 2012SC23

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JOHN DICKSON,

PLAINTIFF-RESPONDENT,

V.

CHRIS NAGEL D/B/A NAGEL SERVICE CENTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Crawford County:
JAMES P. CZAJKOWSKI, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ Chris Nagel appeals a judgment granting John Dickson replevin of his vehicle. Dickson filed a complaint for replevin of his vehicle, which was in Nagel's possession. Initially, the circuit court found that

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Nagel failed to return Dickson's vehicle due to unpaid storage fees and granted Nagel a garage keeper's lien under WIS. STAT. § 779.43(3). Dickson filed a motion for reconsideration. The circuit court granted Dickson's motion and reversed its initial decision. In its decision on Dickson's motion for reconsideration, the circuit court found that Nagel kept the vehicle due to unpaid repair charges that Dickson did not authorize, and that Nagel was not entitled to any storage fees. The circuit court then granted a judgment of replevin for Dickson.

¶2 On appeal, Nagel makes the following claims: (1) Dickson orally authorized all of the repairs that Nagel completed, and Nagel should therefore recover under quantum meruit for the repairs; (2) the circuit court erroneously exercised its discretion by granting Dickson's motion for reconsideration and reversing its initial judgment; and (3) the circuit court erred when it determined that Nagel was not entitled to any storage fees. For the reasons stated below, I affirm.

BACKGROUND

¶3 On June 1, 2010, Dickson's truck broke down. Dickson asked Nagel to tow the truck. Nagel, an auto technician, owns and operates Nagel Service Center, an automobile repair shop. Dickson signed a work request allowing Nagel to tow the truck and conduct diagnostic tests.

¶4 Nagel completed the diagnostic tests on July 2, 2010. He sent Dickson a bill for \$446.79 for the tow and diagnostic tests. Dickson told Nagel that he could not pay the bill. Dickson asked to pay in installments or to have Nagel tow the truck to his home until he decided whether to repair the truck. Nagel refused to do either and said that he would not return the truck until

Dickson paid the bill. Dickson paid the bill on July 12, 2011, over a year later. Meanwhile, the truck remained at Nagel Service Center.

¶5 From July 2, 2010, onward, Nagel charged Dickson an \$8 per day fee to store the truck. Nagel testified that, as a general policy, he charged customers \$8 per day for outside storage and \$10 per day for inside storage. Nagel notified customers of the storage fee policy by a sign on the door to Nagel Service Center and a disclaimer on the work request form, which stated: “All vehicles that are not scheduled for repairs, or have been repaired without being released due to non payment [sic] are subject to storage fees.”

¶6 On August 19, 2011, Nagel provided Dickson with a written estimate detailing the repairs the truck needed. Nagel estimated that the repairs would cost \$2,959.24. Dickson orally authorized \$2,900 in repairs. Dickson and Nagel also reached an oral agreement regarding the storage fees, although the parties now dispute the terms of the agreement. Under Nagel’s interpretation, Nagel agreed to waive 170 days of storage fees if Dickson paid him to completely repair the truck. Under Dickson’s interpretation, Nagel agreed to waive all the storage fees if Dickson paid him \$2,900 for the authorized repairs.

¶7 Nagel completed the authorized repairs. However, he also completed additional, unauthorized repairs for which he charged Dickson \$1,599.93. Dickson paid \$2,900 for the authorized repairs, but refused to pay for the additional repairs. In response, Nagel refused to return the truck.

¶8 On January 26, 2012, Dickson filed a complaint for replevin of the truck. He alleged that Nagel refused to return the truck because he had not paid for the unauthorized repairs. In response, Nagel claimed that he retained the truck because Dickson had not paid for the storage fees. Nagel also claimed that he had

a garage keeper's lien under WIS. STAT. § 779.43(3) due to the unpaid storage fees. Nagel claimed that Dickson owed him \$5,568 in storage fees. Dickson has not paid for any of the storage fees.

¶9 After holding a court trial, the circuit court issued its initial decision. The circuit court found that Nagel retained the truck because Dickson had not paid for the storage fees, not because Dickson had not paid for the unauthorized repairs. The circuit court ruled that Nagel was entitled to storage fees and a garage keeper's lien under WIS. STAT. § 779.43(3), and dismissed Dickson's complaint.

¶10 Dickson filed a motion for reconsideration. He argued that the circuit court misconstrued the facts in finding that Nagel refused to return the truck due to the unpaid storage fees. According to Dickson, the facts instead showed that Nagel refused to return the truck because Dickson had not paid for the unauthorized repairs. Nagel maintained that he refused to return the truck because of the unpaid storage fees. Nagel also claimed that he was not seeking payment for the additional repairs, but only for the storage fees.

¶11 The circuit court granted Dickson's motion for reconsideration. In its decision on Dickson's motion for reconsideration, the circuit court found that Nagel retained the truck because Dickson refused to pay for the unauthorized repairs; in so doing, Nagel violated WIS. ADMIN. CODE § ATCP 132.09(3). The circuit court also found that Nagel agreed to waive all the storage fees if Dickson paid him \$2,900 for the authorized repairs. The circuit court issued a judgment of replevin in favor of Dickson. Nagel now appeals.

DISCUSSION

¶12 Nagel makes a number of claims on appeal. Each claim will be discussed in turn.

¶13 First, Nagel claims that Dickson orally authorized all of the repairs he completed, and that he should therefore recover under quantum meruit for the repairs. Dickson argues that Nagel forfeited this claim by not raising it before the circuit court. Nagel does not respond to Dickson's forfeiture argument in his reply brief.

¶14 "It is well-established law in Wisconsin that those issues not presented to the trial court will not be considered for the first time at the appellate level." *Shadley v. Lloyds of London*, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838. When a party asserts a claim for the first time at the appellate level, "issues of fairness[,] notice, and judicial economy are raised." *State v. Caban*, 210 Wis. 2d 597, 605, 563 N.W.2d 501 (1997). By limiting the scope of appellate review to those issues that were presented to the circuit court, "this court gives deference to the factual expertise of the trier of fact, encourages litigation of all issues at one time, [and] simplifies the appellate task." *Id.* at 604-05.

¶15 I agree with Dickson that Nagel has forfeited his quantum meruit claim because Nagel did not raise this claim before the circuit court. Additionally, by failing to rebut Dickson's argument that he forfeited the quantum meruit claim, Nagel conceded the argument. *See Shadley*, 322 Wis. 2d 189, ¶26 ("Arguments not rebutted on appeal are deemed conceded."). Because I find that Nagel forfeited his quantum meruit claim, I will not address its merits.

¶16 The second claim that Nagel makes on appeal is that the circuit court erroneously exercised its discretion by granting Dickson’s motion for reconsideration and reversing its initial decision. Nagel argues that the circuit court had no basis for reversing its initial decision because Dickson did not introduce new evidence or testimony in his motion for reconsideration. Nagel further contends that the circuit court failed to explain why it determined that its initial decision was in error. For these reasons, Nagel argues that the circuit court’s judgment granting Dickson replevin of his vehicle should be vacated.

¶17 Motions for reconsideration are governed by WIS. STAT. § 805.17(3), which provides: “Upon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions ... and may amend the judgment accordingly.” This court “review[s] a trial court’s decision on a motion for reconsideration under the erroneous exercise of discretion standard.” *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853. The question is not “whether we would have granted [Dickson’s] motion, but whether the trial court’s decision was within the wide band of decisions that a reasonable trial court could have made.” *Kovalic v. DEC Int’l*, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994).

¶18 When reviewing a circuit court’s decision under the erroneous exercise of discretion standard, this court examines the record to determine whether the circuit court “‘employed a process of reasoning in which the facts and applicable law are considered in arriving at a conclusion based on logic and founded on proper legal standards.’” *Rohde-Giovanni v. Baumgart*, 2003 WI App 136, ¶5, 266 Wis. 2d 339, 667 N.W.2d 718 (quoted source omitted). If the circuit court used “a process of logical reasoning,” *Hartung v. Hartung*, 102

Wis. 2d 58, 66, 306 N.W.2d 16 (1981), to reach a decision that a reasonable court could reach, “we will affirm the decision even if it is not one with which we ourselves would agree.” *Kovalic*, 186 Wis. 2d at 166 (internal quotation marks and quoted sources omitted).

¶19 When the circuit court granted Dickson’s motion for reconsideration, it exercised its discretionary power under WIS. STAT. § 805.17(3) to reconsider its initial decision. Before issuing its decision on Dickson’s motion for reconsideration, the circuit court reviewed the parties’ briefs, held a motion hearing, and reviewed the testimony and exhibits from the trial. The circuit court determined that the facts revealed the following: (1) Nagel conducted unauthorized repairs on Dickson’s truck in violation of WIS. ADMIN. CODE § ATCP 132.06; (2) Nagel retained possession of the truck because Dickson refused to pay for the unauthorized repairs, not because Dickson refused to pay the storage fees; and (3) Nagel therefore violated WIS. ADMIN. CODE § ATCP 132.09(3).

¶20 The record shows that the circuit court examined the relevant facts and the applicable law and engaged in “a process of logical reasoning” before reaching its decision. *Hartung*, 102 Wis. 2d at 66. Based on the steps the circuit court took before issuing its decision on Dickson’s motion for reconsideration, I find that the circuit court did not erroneously exercise its discretion. Accordingly, I affirm the circuit court’s grant of Dickson’s motion for reconsideration and its issuance of the judgment of replevin in favor of Dickson.

¶21 Nagel’s third claim on appeal is that the circuit court erred when it found that he was not entitled to any storage fees. Nagel appears to make three arguments in support of his claim for storage fees. First, Nagel claims that he and

Dickson had an oral agreement whereby he agreed to waive 170 days of storage fees *only if* Dickson paid him to completely repair the truck, but that Dickson breached the agreement because he did not pay for all of the repairs that Nagel completed, and therefore Dickson owes him all of the storage fees. Second, Nagel argues that there was no agreement and Dickson owes him the full storage fee amount. Third, Nagel argues that, regardless what repairs Dickson paid for, Nagel agreed to waive only 170 days of storage fees and Dickson owes him for the remaining storage fees. In response to all of Nagel's arguments, Dickson counters that Nagel agreed to waive all of the storage fees if he paid \$2,900 for the authorized repairs.

¶22 In its decision on Dickson's motion for reconsideration, the circuit court determined: "At the time of the payment of the \$2900, [Nagel] had agreed to waive storage charges and therefore no storage charges were due.... [Nagel] was not entitled to further storage charges as he improperly retained possession of the vehicle when [Dickson] refused to pay for unauthorized repairs." The circuit court concluded that Nagel waived all of the storage fees.

¶23 In determining that Nagel waived all of the storage fees, the circuit court made a factual finding based on the arguments before it. This court does not reverse a circuit court's factual finding unless that finding was clearly erroneous. *See* WIS. STAT. § 805.17(2) ("[f]indings of fact shall not be set aside unless clearly erroneous"). Because Nagel has not shown that the circuit court's determination regarding the storage fees was clearly erroneous, I affirm the circuit court's finding.

CONCLUSION

¶24 For the reasons stated, the judgment granting Dickson replevin of his vehicle is affirmed.

By the Court.—Judgment affirmed.

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

