

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 8, 2014

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. 2014AP355

Cir. Ct. No. 2013FO1572

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

CITY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

v.

B. DAVIS INVESTMENT Co. LLC,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
BONNIE L. GORDON, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Brian E. Davis appeals an order of the circuit court affirming an order of the municipal court. We affirm.

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

BACKGROUND

¶2 On May 31, 2013, the City of Milwaukee (the City) issued a municipal citation against B. Davis Investment Company, LLC. The citation stemmed from Davis's failure to correct multiple building code violations.

¶3 According to the facts in the record, on August 8, 2012, Stephan Chalstrom, an inspector for the Milwaukee Department of Neighborhood Services, inspected the property located at 3616 North 61st Street, Milwaukee. Chalstrom discovered twenty-seven violations. Chalstrom issued an order to correct the violations within 90 days. The order named both B. Davis Investment Company, LLC and Davis individually.

¶4 Chalstrom returned to the property on January 16, 2013 and found only two of the twenty-seven cited violations corrected. The City issued a summons and complaint against "B. Davis Investment Co., L.L.C.[,] Brian Davis, RA." The summons ordered Davis to appear in municipal court on July 10, 2013. Davis filed an answer and counter-claim alleging abuse of process and malicious prosecution. The municipal court and Davis also corresponded multiple times regarding scheduling matters—each correspondence from the municipal court to Davis was addressed to "B. Davis Investment Co., L.L.C." The matter was eventually scheduled for a trial to take place on December 3, 2013. At no point during these correspondences did Davis inform the court or the Office of the City Attorney that B. Davis Investment Co., LLC did not own the property at issue, rather, Davis owned the property individually.

¶5 Contemporaneous with his communications with the municipal court, Davis filed a federal action against the City of Milwaukee. Davis's federal action alleged abuse of process and malicious prosecution against the City with

regard to the City's municipal action against him. In preparation for the federal action, the city attorney defending the City against Davis's federal action, Jan Smokowicz, reached out to the city attorney prosecuting the municipal case, Jay Unora. In the discussions between the two city attorneys, Smokowicz informed Unora that in November 2011, B. Davis Investment Company, LLC, sold the property at issue to Davis. Unora then researched the property using the Milwaukee County Registrar of Deeds's proprietary software and discovered a deed confirming the sale. Unora also discovered that the property was issued two separate tax keys with slightly different numbers, resulting in the City's confusion as to the real owner of the property.

¶6 The City requested that the municipal court dismiss the case without prejudice because the named defendant was not the correct owner of the property. The municipal court granted the City's request.

¶7 Davis appealed the municipal court's order to the circuit court, requesting that the circuit court change the order of dismissal without prejudice to an order of dismissal with prejudice. Davis also argued abuse of process and malicious prosecution. The circuit court affirmed the municipal court, finding that it lacked the jurisdiction to hear Davis's abuse of process and malicious prosecution claims, and that the municipal court properly dismissed the municipal action without prejudice, as the merits of the City's case were not heard. This appeal follows.

DISCUSSION

¶8 On appeal, Davis, *pro se*, reiterates the arguments he made to the circuit court. Davis's arguments are also the basis of his federal action pending against the City. Accordingly, like the circuit court, we conclude that the only

appealable issue before us is whether the municipal court erred when it dismissed Davis's case without prejudice. We conclude that the municipal court's order was proper.

¶9 A circuit court has appellate jurisdiction over municipal-court determinations that are made after a "trial," *see* WIS. STAT. § 800.14(4), or of a dismissal short of a "trial," *see* § 800.14(5). *City of Pewaukee v. Carter*, 2004 WI 136, ¶¶11-12, 276 Wis. 2d 333, 688 N.W.2d 449. Whether to grant a party's motion to voluntarily dismiss an action is subject to the discretion of the respective court. *See Clark v. Mudge*, 229 Wis. 2d 44, 48-49, 599 N.W.2d 67 (Ct. App. 1999) (whether to grant or deny a motion to dismiss made pursuant to § 805.04 is within the discretion of the circuit court).² Here, the circuit court noted that the municipal court did not hear the City's case against Davis on the merits because the City unknowingly named the wrong party in its citation. Because the municipal court did not address the building code violations that were the basis of the City's complaint, but rather dismissed the action because the wrong party was summoned, dismissal without prejudice was proper.

¶10 As to Davis's remaining claims, the circuit court properly recognized that it did not have jurisdiction over those issues because the municipal

² The City requested dismissal pursuant to WIS. STAT. § 805.04(1), which provides:

Except as provided in sub. (2m), an action may be dismissed by the plaintiff without order of court by serving and filing a notice of dismissal at any time before service by an adverse party of responsive pleading or motion or by the filing of a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is not on the merits, except that a notice of dismissal operates as an adjudication on the merits when filed by a plaintiff who has once dismissed in any court an action based on or including the same claim.

court did not have the requisite jurisdiction. Municipal court jurisdiction is limited to the resolution of alleged violations of municipal ordinances, *see* WIS. STAT. ch. 800, including ancillary issues pertinent to the municipal courts' exercise of that jurisdiction. *See City of Milwaukee v. Wroten*, 160 Wis. 2d 207, 222, 466 N.W.2d 861 (1991) ("We conclude that, once a court, including a municipal court, appropriately invokes its jurisdiction, it has the power to exercise all of its constitutional powers within the framework of that conferred jurisdiction."). Therefore, the only appealable issue before the circuit court concerned the municipal court's handling of the alleged building code violations. When the municipal court dismissed the case without prejudice, the only question properly before the circuit court was whether the municipal court erred in doing so. Consequently, that is also the only appealable issue before this court.³

By the Court.—Order affirmed.

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

³ Davis's due process and civil rights allegations are pending before the federal court—Davis has not been left without an opportunity to litigate his allegations.

