

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 10, 2016

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. 2014AP2500

Cir. Ct. No. 2014SC1661

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PATRICK K. FINNEGAN,

PLAINTIFF-APPELLANT,

V.

SHEILA A. BISSEN AND JOSHUA A. BISSEN,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: RHONDA L. LANFORD, Judge. *Reversed and cause remanded for further proceedings.*

¶1 LUNDSTEN, J.¹ Patrick Finnegan and Joshua Bissen shared a rented residence in Madison for several months. After they parted ways, Finnegan

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

brought a small claims action against Joshua Bissen and Sheila Bissen, Joshua's mother.² The circuit court agreed that Joshua owed Finnegan money, but also found that the amount was more than offset by money Finnegan owed the Bissens for rent paid by the Bissens on behalf of Finnegan. The court therefore dismissed Finnegan's action. As to the offsetting amount, the circuit court was acting on an apparent misunderstanding of the evidence. As we shall see, Finnegan points to evidence showing that he did not owe rent-related money to the Bissens, and the Bissens do not dispute Finnegan's assertions as to this evidence. Accordingly, I reverse and remand for the circuit court to reinstate Finnegan's action and to reconsider damages.

¶2 In his small claims complaint and at a trial to the circuit court, Finnegan made multiple factual allegations and sought numerous expense items from the Bissens appearing to total somewhere between about \$400 and \$1,000. Considering the subject matter, the testimony and arguments were relatively complicated. After presentation of the case, the circuit court rejected some of Finnegan's claims for expenses and found that Joshua Bissen owed Finnegan \$210.87 in expenses. The court also found, however, that Finnegan owed the Bissens \$397.50 for rent they had paid to the landlord on Finnegan's behalf plus \$50 for half of the cost of repairs to the apartment that were made by Joshua Bissen.

¶3 On appeal, Finnegan makes numerous arguments, most of which he failed to raise in the circuit court. I agree with the Bissens that such arguments are

² Why Finnegan sued Joshua Bissen's mother but not Joshua's father is unclear. There was evidence that Joshua Bissen's father was a co-signor or guarantor on Joshua Bissen's rental agreement with the landlord.

forfeited, and I decline to consider them for that reason. *See Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶45 & n.21, 327 Wis. 2d 572, 786 N.W.2d 177 (explaining that issues not raised in the circuit court are forfeited and supporting the proposition that appellate courts generally do not address forfeited issues).

¶4 Also, a number of Finnegan's arguments are undeveloped, and this is an additional reason why I decline to consider some of his arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining what constitutes an undeveloped argument and that court of appeals need not consider inadequately developed arguments).

¶5 Still, as indicated above, Finnegan does make one non-forfeited, developed argument. Finnegan argues, with appropriate quoting and citation to the record, that the circuit court erred in finding that he owed the Bissens \$397.50 for rent they paid on his behalf and, consequently, erred in using the \$397.50 amount as an offset against Finnegan's damages. The Bissens' responsive brief correctly criticizes much of Finnegan's brief-in-chief, but the Bissens do not acknowledge Finnegan's rent-offset argument nor do they attempt to rebut it. As we shall see, the apparent reason for this omission is that the Bissens do not have a viable response.

¶6 Reviewing courts defer to the circuit court's findings of fact unless those findings are clearly erroneous. *Royster-Clark, Inc. v. Olsen's Mill, Inc.*, 2006 WI 46, ¶11, 290 Wis. 2d 264, 714 N.W.2d 530. Findings of fact are clearly erroneous when they are against the great weight and clear preponderance of the evidence. *Id.*, ¶12.

¶7 The testimony regarding rent did not, initially, come in cleanly. I do not attempt a comprehensive recitation, but here is the gist. There was testimony

that the Bissens had initially fronted Finnegan's portion of the rent (\$397.50) for each of two months. And there was testimony that the Bissens believed that Finnegan paid one of these months but not the other. At one point, Sheila Bissen testified that "[w]e never received payment for the second amount of rent we paid for Mr. Finnegan." Indeed, Sheila Bissen testified that she filed a small claims action against Finnegan for that one month's rent. But she went on to say that the small claims action was dropped and that the landlord eventually realized that he had received double payment for the month in question for Finnegan's portion (i.e., payment from both Finnegan and the Bissens) and that the landlord had reimbursed the Bissens. During the course of this testimony, the circuit court aptly nailed down this rent dispute by asking Sheila Bissen if it was correct that Finnegan did not owe the Bissens any money, and Sheila agreed that that was true.

¶8 I am left uncertain why, then, the circuit court later found that Finnegan owed the Bissens \$397.50. If there is a reason why this finding is compatible with the record, the Bissens do not suggest what it is, and I cannot find it. I must conclude, then, that the circuit court's finding is contrary to the evidence.

¶9 For the reasons stated above, I reverse and remand for the circuit court to reinstate Finnegan's action and to reconsider the damages calculation in light of the discussion above.

By the Court.—Order reversed and cause remanded for further proceedings.

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

