COURT OF APPEALS
DECISION
DATED AND FILED

May 30, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2015AP2095 **Cir. Ct. No. 2011CV841**

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

TRACY BARNETT AND MOGUL ENTERPRISES, LLC,

PLAINTIFFS-APPELLANTS,

V.

HERRLING CLARK LAW FIRM AND MARK MCGINNIS,

DEFENDANTS-RESPONDENTS,

ABC INSURANCE COMPANY AND DEF INSURANCE COMPANY,

DEFENDANTS.

APPEAL from a judgment and an order of the circuit court for Outagamie County: KEVIN E. MARTENS, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Tracy Barnett and Mogul Enterprises, LLC (collectively, Barnett) sued Mark McGinnis and his former law firm, Herrling Clark, for malpractice, breach of fiduciary duties, and breach of contract.[1] The claims involved McGinnis's assistance in forming a company to purchase real property located in Outagamie County, McGinnis's participation in that company, and his subsequent acquisition of the company following his election to the Outagamie County Circuit Court. All claims against McGinnis and Herrling Clark were ultimately dismissed, the majority of which after a jury found McGinnis was not negligent in the provision of legal services and did not breach his contractual or fiduciary duties to Barnett.

¶2 Barnett raises numerous issues on appeal, and in each case we reject her position. We first conclude the circuit court properly dismissed upon summary judgment Barnett's claim that McGinnis was liable for failing to inform her of actions taken by one of her own companies. Second, we decline to address whether the court properly granted McGinnis's and Herrling Clark's motions for a directed verdict regarding the scope of damages and Herrling Clark's vicarious liability. Those matters are moot because the jury ultimately found that McGinnis had no liability to Barnett. Finally, we agree with the circuit court that Barnett's objections to McGinnis's and Herrling Clark's bills of costs were untimely filed. Consequently, we affirm the judgment and order.

[1] According to the complaint, Mogul Enterprises has assigned any and all claims it has against the defendants in this matter to Barnett. We therefore use "Barnett" to refer to both plaintiffs throughout this opinion.

BACKGROUND

¶3 McGinnis joined the Herrling Clark law firm in 1996. Between 1996 and 2005, McGinnis represented Barnett and Steven Zielsdorf individually and in their capacities as officers of First Capital Financial Services (FCF) and other business entities. Zielsdorf and Barnett owned FCF, which was in the business of providing home mortgages.

¶4 FCF had leased office space in a building owned by the Esler Revocable Trust, located in the Town of Grand Chute. In 2004, McGinnis, Barnett, and Zielsdorf endeavored to purchase the building. They each formed a limited liability company with themselves as the single member: McGinnis formed Marjen Commercial, LLC; Barnett formed Mogul Enterprises, LLC; and Zielsdorf formed Phantom Holdings, LLC. These LLCs, in turn, became equal members of another limited liability company, First Capital Properties (FCP), which ultimately purchased the Grand Chute building and entered into a lease agreement with Barnett, Zielsdorf, and some of their various companies, including FCF. Barnett and Zielsdorf personally guaranteed the lease payments FCF was to make to FCP. It is undisputed that McGinnis drafted the lease agreement, as well as the FCP operating agreement.

¶5 Soon after the building purchase, FCF experienced financial difficulties. FCF would routinely borrow money from the Business Bank through a series of notes used to finance mortgages and develop properties. Ultimately, FCF was unable to make the payments called for under the lease agreement with FCP. FCP, in turn, was unable to make mortgage payments, and the Business Bank, which had financed the Grand Chute building purchase, threatened to foreclose. This situation led to a series of meetings with the Business Bank to

stave off foreclosure. McGinnis was elected to the Outagamie County Circuit Court in April 2005, and McGinnis has alleged that he ceased practicing as an attorney on July 28, 2005, shortly before he commenced his judicial duties.

¶6 In early 2007, McGinnis was attempting to find new tenants or a buyer for the Grand Chute building. FCF and the other tenant entities agreed to vacate the building, and eventually they did so. On April 4, 2007, McGinnis, Barnett (who was then represented by separate counsel) and Zielsdorf entered into an agreement whereby McGinnis became the sole owner of FCP through Marjen Commercial. He promised to make necessary payments to the Business Bank and to negotiate a way to avoid foreclosure. As part of the agreement, McGinnis also received Barnett's and Zielsdorf's interests in Marjen Development, LLC, an entity through which the trio had purchased property in Florida in 2004. Beginning in late 2007, McGinnis rented a majority of the Grand Chute building to the Wisconsin Department of Corrections (DOC).

¶7 Barnett filed suit against McGinnis, Herrling Clark, and their insurers in May 2011. Her amended complaint asserted a substantial number of claims, primarily against McGinnis. She alleged that McGinnis had committed legal malpractice at various times in 2004 and 2005: (1) in 2004, by failing to make certain disclosures to Barnett in connection with FCP's formation and its lease agreement with FCF and by other conduct; (2) in June 2005, by failing to ensure that a trust account of Barnett's was liquidated such that the majority of the $120,000 payment ($85,000) was applied to a second mortgage on Barnett's home rather than business debts; and (3) in August 2005, by failing to inform Barnett that FCF had, at the Business Bank's request, assigned two of its mortgages (the

Gruetzmacher mortgages) to the Business Bank as security for FCF's credit line.[2] Barnett also alleged McGinnis had breached fiduciary duties he owed to her as her business partner by failing to inform her that he was negotiating with the DOC as a potential tenant before she decided to sign the April 4, 2007 agreement terminating her interest in FCP. Finally, Barnett asserted a claim for breach of the FCP operating agreement arising from McGinnis's alleged "fail[ure] to deal fairly with [FCP] or its members in connection with the 2007 agreement, engaging in transactions where he derived an improper personal profit, and engaging in willful misconduct."

¶8 McGinnis filed a motion for summary judgment, seeking dismissal of all the claims against him. Herrling Clark also filed a summary judgment motion. Although the circuit court permitted the majority of the claims to proceed, it dismissed the legal malpractice claims against McGinnis arising out of the August 2005 assignment of the Gruetzmacher mortgages. The court observed the mortgages were held by FCF, and Zielsdorf (an FCF officer) was present at the meeting where those mortgages were assigned. The court concluded there was no evidence that would support a finding that McGinnis was representing Barnett individually at the time those mortgages were assigned. Because Barnett's claims against Herrling Clark were based upon an employment relationship, the court also dismissed any claims against Herrling Clark that were premised upon McGinnis's conduct after he took office as a circuit court judge.

[2] It is undisputed that, during the June-August 2005 time period, Barnett was often medically unavailable to participate in the business.

¶9 The remaining claims proceeded to a jury trial. Barnett named as experts Jeffrey Pelegrin and Pierce Buchinder, who together prepared a summary appraisal report valuing the Grand Chute property at $1.42 million as of July 22, 2013, with a future value of $1.565 million as of July 22, 2023. McGinnis filed a motion in limine seeking to preclude Barnett from calling these individuals as witnesses or, in the alternative, to prevent them from testifying as to the value of the Grand Chute property. McGinnis asserted the appraisal was irrelevant because it did not contain any opinion regarding the value of the property when Barnett's interests were terminated in 2007, and because it did not measure the value of what Barnett claimed to have lost—i.e., the value of her ownership share in FCP.

¶10 The parties participated in mediation, which was unsuccessful. After mediation, McGinnis offered to sell Barnett the building for $1.35 million. The letter conveying the offer to sell stated it was "not an offer to settle this lawsuit; it is an offer to sell the building," albeit one that McGinnis acknowledged could affect the amount of damages if accepted. Barnett rejected the offer and then filed a motion in limine to prevent McGinnis from introducing evidence regarding his offer to sell. Barnett argued such evidence would be inadmissible evidence of a settlement offer. The circuit court denied Barnett's motion to exclude evidence of the offer to sell, deferred ruling on McGinnis's motion to exclude the expert appraisal estimating the 2023 value of the Grand Chute building, and denied McGinnis's motion to exclude the expert appraisal estimating the then-present value of the building.

¶11 Following Barnett's presentation of her case, McGinnis moved for a directed verdict dismissing all claims. McGinnis observed Barnett was seeking three categories of damages: (1) losses sustained as a result of the 2007 transfer of her ownership interest in FCP; (2) losses sustained as a result of the transfer of her

interest in Marjen Development; and (3) the loss of $85,000 based on McGinnis's alleged mishandling of her trust account in June 2005. McGinnis argued Barnett had failed to demonstrate any damages regarding the transfer of her ownership interest in FCP in 2007. He also argued there had been no evidence regarding the value of the Florida property, nor any evidence regarding how he was responsible for the misapplication of the trust account proceeds.

¶12 The circuit court granted in part McGinnis's motion for a directed verdict on the issue of damages. It agreed there was inadequate proof to sustain a damages award based on the future value of the Grand Chute building. The court noted the correct measure of damages, given the nature of Barnett's claim, was the value of her interest in FCP at the time she terminated her interest in that entity. The future value of her interest, by contrast, could be affected by any number of factors on which there had been no testimony—specifically, a potential discount for a minority ownership stake and the presence of expected or anticipated debts that were not reflected in Barnett's expert appraisal of the building alone. The court also determined there was insufficient evidence to support a damages award based on the value of Barnett's Florida investment. On both matters, the court found the jury would have to impermissibly speculate as to the amount of Barnett's damages. Although the court limited the scope of any potential damages, it declined to dismiss any of Barnett's remaining claims against McGinnis.

¶13 Herrling Clark also moved for a directed verdict, asserting there was no evidence McGinnis was acting within the scope of his employment so as to support a respondeat superior claim. The circuit court granted the motion in part. The court determined Herrling Clark had no liability for any potential negligence involved in McGinnis's drafting of the FCP operating agreement. This conclusion

was rooted in language in the operating agreement that expressly disclaimed any representation by Herrling Clark related to FCP. The court declined to direct a verdict on the remainder of Barnett's claims against Herrling Clark.

¶14 Several of Barnett's claims remained for jury decision following the motions for directed verdict. With respect to the allocation of the $85,000 payment in June 2005, the court concluded the jury could adequately determine, based on the evidence, whether McGinnis was responsible for ensuring that the money was directed to Barnett's second mortgage rather than applied to FCF's debts. The court also declined to dismiss Barnett's malpractice claims against McGinnis related to his drafting of the FCP operating agreement and the FCF/FCP lease. Finally, the court left it to the jury to determine whether McGinnis's conduct breached any contractual or fiduciary duties.

¶15 At the conclusion of the trial, the jury found McGinnis not liable to Barnett. It found that McGinnis had an attorney-client relationship with Barnett, but that he was not negligent in providing any legal services to her. The jury also found that McGinnis owed Barnett contractual and fiduciary duties, but that his conduct did not breach any of those duties.

¶16 Based upon McGinnis's trial testimony, Barnett subsequently filed a motion seeking a declaratory judgment that, in the event a sale of the Grand Chute property produced funds in excess of FCP's debts, Barnett would be entitled to a one-third share of the excess amount under the April 4, 2007 agreement. Barnett also sought an order changing the jury's answers to the three liability questions, an order for a new trial, and reconsideration of the partial grant of summary judgment. The circuit court denied these motions.

¶17 In mid-September 2015, McGinnis prepared a judgment and submitted a bill of costs totaling $15,926.96. One week later, Barnett submitted a letter objecting only to the amount of attorney fees requested, and asking that the clerk defer a ruling on costs until after she submitted her bill of costs. Nonetheless, by late September the clerk appears to have signed the judgment and allowed all of McGinnis's costs. McGinnis provided Barnett with a notice of entry of judgment dated September 29, 2015.

¶18 Barnett subsequently submitted her own bill of costs in the amount of $25,572.55. McGinnis objected, arguing Barnett's bill of costs failed to differentiate between the costs incurred in prosecuting her claims and the costs incurred in defending against a counterclaim McGinnis had filed but voluntarily dismissed at trial during Barnett's case-in-chief. The judgment clerk allowed these costs over McGinnis's objection on October 16, 2015. Herrling Clark submitted a bill of costs in the amount of $7911.08, which costs were also allowed by the clerk on October 7, 2015.

¶19 On October 26, 2015, McGinnis filed a motion to the circuit court objecting to the clerk's taxation of Barnett's costs. Following the withdrawal and substitution of Barnett's counsel, in July 2016 Barnett filed a motion in the circuit court objecting to all of Herrling Clark's costs and some of McGinnis's costs. Barnett also filed a motion to extend the time to object to the defendants' costs, representing that although she "believe[d] prior counsel's objections preserved [her] right to object to defendants' costs," the motion was a "cautionary measure" should the court deem the prior objections insufficient to preserve her challenges.

¶20 The circuit court heard the motions on July 14, 2016. It ultimately reduced Barnett's costs to $9306.38, finding that amount to be what she had

incurred in successfully defending McGinnis's counterclaim. The court deemed Barnett's objection to McGinnis's and Herrling Clark's costs untimely, and it denied her motion to extend the time to object. Barnett subsequently filed a second motion requesting that the court reduce the defendants' costs. The court did not rule on that motion. Barnett now appeals.

DISCUSSION

¶21 Barnett first argues the circuit court erroneously granted McGinnis and Herrling Clark summary judgment on her malpractice claim involving the August 2005 assignment of the Gruetzmacher mortgages from FCF to the Business Bank. We review a grant of summary judgment de novo. ***Fortier v. Flambeau Plastics Co.***, 164 Wis. 2d 639, 651, 476 N.W.2d 593 (Ct. App. 1991). A circuit court must grant a summary judgment motion if the record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2015-16).[3] Whether summary judgment is appropriate is a question of law. ***Fortier***, 164 Wis. 2d at 651-52.

¶22 Barnett argues there were disputed factual issues regarding the capacity in which McGinnis attended the August 2005 meeting and whether he owed a duty to Barnett to inform her of the mortgage assignments. Barnett contends there were adequate facts from which the jury could conclude McGinnis was representing Barnett, as her attorney, in relation to her individual capacity or

[3] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

her capacity as an FCF officer.[4] She further argues that, even if McGinnis was attending the meeting solely as FCF's attorney, he had a duty to "inform her what had transpired" because he advised Zielsdorf that FCF could accomplish the assignment with only his signature.[5] Barnett asserts that, because she was unaware of the assignments, she subsequently satisfied the mortgages on FCF's behalf, resulting in a fraud claim against her that caused her to incur $124,000 in attorney fees.

¶23 We agree with the circuit court's well-reasoned conclusion that there was insufficient evidence to warrant a trial on Barnett's claims related to the August 2005 transaction. At its core, Barnett's claim is premised upon the notion that McGinnis had a duty to inform her that FCF had assigned the Gruetzmacher mortgages to the Business Bank. She argues a jury could reasonably infer this duty existed based upon the following evidentiary facts: (1) McGinnis "authorized" the assignments with only Zielsdorf's signature; (2) McGinnis had previously represented Barnett in her individual capacity and in her capacity as an FCF officer; and (3) Barnett's expert witness, Thomas Basting, opined that McGinnis had a duty to inform based upon that prior attorney-client relationship.

¶24 To the contrary, none of the three "facts" on which Barnett relies would entitle her to a trial on her claim, even viewing all disputed factual matters

[4] To the extent Barnett is arguing McGinnis owed a duty to her as an FCF officer that was greater than his duty to the company itself, she has not adequately developed this argument and we decline to consider it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

[5] Barnett argues this advice was in contravention of an FCF corporate borrowing resolution that required both her and Zielsdorf's signatures on such documents. It is undisputed that Barnett was not present at the August 2005 meeting.

in the light most favorable to Barnett. *See* ***Johnson v. Rogers Mem'l Hosp., Inc.***, 2005 WI 114, ¶30, 283 Wis. 2d 384, 700 N.W.2d 27. As an initial matter, the mortgages belonged to FCF, not to Barnett individually. As even Barnett has admitted, she had no personal interest in the transaction involving the Gruetzmacher mortgages. Although Barnett claims McGinnis had "implied consent" to act on Barnett's behalf, Barnett has directed us to nothing in the appellate record showing that to be the case—certainly nothing demonstrating that McGinnis actually signed the assignments on Barnett's behalf or that he was acting in Barnett's stead as an FCF officer.[6]

¶25 In her reply brief, Barnett asserts, without citation to the appellate record, that the failure of notice "affected her right to veto the transfer of company assets." However, nowhere has she asserted she would actually have vetoed the transfer or refused to sign off on the assignments. Rather, her argument is that McGinnis should have told her about the assignments, and that his failure to do so caused her substantial damages when a fraud claim was subsequently brought against her.

¶26 This argument runs contrary to the law of agency. It is undisputed that Zielsdorf, an FCF principal, was present at the August 2005 meeting and authorized the mortgages to be assigned. "A corporation is charged with constructive knowledge of all material facts of which its agent receives notice while acting within the scope of employment, even if the agent did not actually communicate the knowledge to the corporation." ***Admiral Ins. Co. v. Paper***

[6] We note that elsewhere in her reply brief, Barnett takes the somewhat incongruous position that McGinnis "participated" in the FCF assignment without Barnett's consent.

Converting Mach. Co., 2012 WI 30, ¶53, 339 Wis. 2d 291, 811 N.W.2d 351. Because FCF, through Zielsdorf, had constructive knowledge of the assignments, McGinnis cannot be liable for Barnett's subsequent mistaken satisfaction of the mortgages—an action she undisputedly took in her capacity as an FCF officer.

¶27 Lastly, Barnett argues "Basting's expert opinions alone provided sufficient support for the denial of summary judgment as to McGinnis' professional negligence for not notifying Barnett of the Gruetzmacher assignments." Whether a duty exists is a question of law. ***Cook v. Continental Cas. Co.***, 180 Wis. 2d 237, 245, 509 N.W.2d 100 (Ct. App. 1993).[7] A circuit court need not defer to an expert witness's opinion on a question of law. *See* ***Town of East Troy v. Town & Country Waste Serv., Inc.***, 159 Wis. 2d 694, 707 n.7, 465 N.W.2d 510 (Ct. App. 1990); *see also* ***Wisconsin Patients Comp. Fund v. Physicians Ins. Co. of Wis.***, 2000 WI App 248, ¶8 n.3, 239 Wis. 2d 360, 620 N.W.2d 457 ("[T]he only 'expert' on domestic law is the court."). Here, the circuit court correctly determined that McGinnis had no duty to Barnett in her individual capacity because the assignment of the Gruetzmacher mortgages was a transaction involving only FCF.

¶28 Next, Barnett asserts the circuit court erroneously granted portions of McGinnis's and Herrling Clark's motions for a directed verdict concerning certain damages related to her claims. A motion for a directed verdict tests the

[7] Barnett argues that ***Cook v. Continental Casualty Co.***, 180 Wis. 2d 237, 245, 509 N.W.2d 100 (Ct. App. 1993), stands for the proposition that whether a duty exists is a question of fact. The opinion clearly states that the question of duty is one of law; however, "[w]hether the attorney has breached the applicable standard of care in representing the client 'is a question of fact to be determined through expert testimony and usually cannot be decided as a matter of law.'" ***Id.*** at 246 (citation omitted).

sufficiency of the evidence. *See* WIS. STAT. § 805.14(4). "A verdict should only be directed against a plaintiff where plaintiff's evidence is insufficient to sustain a verdict after giving it the most favorable construction it will reasonably bear." ***Chart v. General Motors Corp.***, 80 Wis. 2d 91, 110, 258 N.W.2d 680 (1977). Our review uses this same standard. ***Millonig v. Bakken***, 112 Wis. 2d 445, 450, 334 N.W.2d 80 (1983).

¶29 Barnett argues none of the matters should have been resolved by directed verdict. She asserts she "had provided sufficient evidence of [her] damages for the loss of the [Grand Chute] building, for the loss of the Florida property investment, and for Herrling Clark's liability for McGinnis's actions in drafting FCP's operating agreement in 2004." Whatever merit these arguments might have, all of them are rendered moot by the jury verdict finding that McGinnis was not negligent and that he did not breach his contractual and fiduciary duties.

¶30 The mootness doctrine forecloses review of an issue when it will have "no practical effect on the underlying controversy." ***PRN Assocs. LLC v. DOA***, 2009 WI 53, ¶25, 317 Wis. 2d 656, 766 N.W.2d 559. The special verdict here asked the jury to reach damages questions only if it found liability. Because the jury found no liability, it had no occasion to answer the damages questions. Thus, even if we agreed with Barnett's arguments regarding the future value of the Grand Chute building and the value of the Florida investment property, she still would recover nothing.

¶31 Barnett asserts the directed verdict on the damages issue somehow "prevented the jury from adequately evaluating liability." This assertion is apparently based on the notion that it would be "difficult" for a jury to find

liability as of 2007 because the Grand Chute building was worth less at that time than when the parties purchased it. However, ascertaining the relevant time period to measure damages is a separate issue from whether McGinnis committed malpractice or breached his contractual or fiduciary duties. Ultimately, Barnett fails to persuade us that the jury would have answered the liability questions differently—particularly because she had the opportunity to fully present her case before the directed verdict on the damages issue.[8]

¶32 The issue of whether the circuit court properly directed a verdict for Herrling Clark is also moot. The only basis for Herrling Clark's potential liability was the doctrine of respondeat superior, under which an employee's actions are imputed to his or her principal when the employee is acting within the scope of his or her employment. *See* ***James Cape & Sons Co. ex rel. Polsky v. Streu Constr. Co.***, 2009 WI App 144, ¶10, 321 Wis. 2d 522, 775 N.W.2d 277. Even if we were to reverse the directed verdict granted to Herrling Clark, the jury's finding of no liability would stand as to McGinnis. Because McGinnis was not negligent in the provision of legal services, there is no basis presented on which Herrling Clark could be liable.[9]

[8] Barnett also suggests rescission of the April 4, 2007 agreement would have been an appropriate remedy. However, given the jury's finding of no liability on McGinnis's part, we need not address whether Barnett would have been entitled to rescission under other circumstances.

[9] Barnett asserts the jury was not asked to determine Herrling Clark's liability because the circuit court had granted the motion for a directed verdict. Contrary to this assertion, question number four of the special verdict form (which the jury was only to reach if it found McGinnis negligent in the provision of legal services) asked whether "such negligence of Mark McGinnis occur[red] in the course of performing legal services as an employee of Herrling Clark Law Firm, LTD?"

¶33 Barnett also briefly suggests the circuit court's discretionary decision to admit evidence of McGinnis's offer to sell the Grand Chute building to Barnett prevented a fair adjudication. McGinnis sought to introduce the evidence of his offer price, and Barnett's rejection of his offer, to show that the appraisals by Barnett's experts were not reflective of the building's real value. Although Barnett hints at her position that the offer was a part of settlement negotiations, any such argument is foreclosed by the plain terms of the offer letter itself, in which McGinnis made clear the building's sale would not dispose of the litigation.[10] Accordingly, the circuit court did not err in admitting this evidence.

¶34 Finally, Barnett argues the circuit court erred by refusing to reduce the taxable amount of McGinnis's and Herrling Clark's respective costs. Barnett theorizes that, regardless of the timeliness of her objection, a court can allow only those costs authorized by WIS. STAT. § 814.04, and her objection is to unauthorized costs. In essence, Barnett's position is that a party may always obtain reversal of unauthorized costs. She argues the court should have reduced McGinnis's costs by approximately fifty percent, representing the amount of costs McGinnis incurred in prosecuting his counterclaim before ultimately dismissing it at trial. She also contends Herrling Clark and McGinnis were aligned in interest, such that their costs were duplicative.

¶35 We conclude the circuit court acted appropriately in declining to consider Barnett's challenges to the defendants' costs. Under WIS. STAT. § 814.10(3), the party opposing the taxation of a particular item of costs must file

[10] Barnett never truly develops an argument on appeal that the sale offer was inadmissible as evidence of settlement negotiations. Indeed, as McGinnis points out, her brief-in-chief failed even to cite the relevant statute, which is WIS. STAT. § 904.08.

an objection with the clerk. The clerk's decision "may be reviewed by the court on motion of the party aggrieved made and served within 10 days after taxation." Sec. 814.10(4). The circuit court review "shall be founded upon" the matters presented to the clerk, and "[n]o objection shall be entertained on review which was not made before the clerk, except to prevent great hardship or manifest injustice." ***Id.***

¶36 The clerk allowed McGinnis's costs on September 21, 2015, and Herrling Clark's costs on October 7, 2015. Barnett failed to challenge the clerk's taxation of costs in the circuit court until July 2016, well after the ten-day period provided for in WIS. STAT. § 814.10(4). Barnett suggests cases involving counterclaims are not subject to the ten-day limitations period. However, nothing in WIS. STAT. § 814.035, the statute pertaining to costs upon counterclaims, provides for a different time period or renders inapplicable the time period specified in § 814.10(4). Put simply, if a party wishes to object to a bill of costs, it must present that objection to the clerk and, if the costs are allowed over that objection, very shortly thereafter to the circuit court. Barnett failed to do so here, and she also does not develop any argument regarding hardship or manifest injustice. Accordingly, Barnett cannot obtain review of the costs, regardless of whether they were for items not specifically authorized by statute.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.