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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT: II

CITY OF PORT WASHINGTON,
PLAINTIFF-RESPONDENT,

v.

APPEAL NO. 2021AP000449 FT,
2021AP000450 FT

CIRCUIT COURT CASE NO.
2020CV000386,
2020CV000387

SANDRA J. KOZIOL,
DEFENDANT-APPELLANT.

APPEAL FROM VERBAL ORDER FOR JUDGMENT DISMISSING MID-
MORAINÉ MUNICIPAL COURT CONVICTION APPEAL TO CIRCUIT COURT
AND APPEAL FROM WRITTEN ORDER ON MOTION TO RECONSIDER DATED
MARCH 19, 2021 OF THE OZAUKEE COUNTY CIRCUIT COURT, THE
HONORABLE STEVEN M. CAIN, PRESIDING

DEFENDANT-APPELLANT'S REPLY BRIEF

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ARGUMENT

The Respondent, City of Port Washington ("City") in its brief states that the Circuit Court did not interpret § 800.14(1) to require that Appellant, Sandra Koziol ("Koziol") have additional proof of mailing the notices of appeal to the City Attorney. But, in fact, that is exactly what the Circuit Court did. The Circuit Court found that although Koziol filed in both circuit court cases exact copies of a letter with the Notices of Appeals that was forwarded to the City on December 16, 2020, (R. 10, pp. 2, 4-5, 20CV387), that evidence was not sufficient. The trial court, in saying that the copies of the letter and attachments "doesn't cut it" is exactly stating that it required further evidence to support that assertion. Koziol did not just "say it" but gave proof in the form of the copies of the letter to the City.

The Appellant, Sandra Koziol's ("Koziol") argument remains the same. § 801.14(1), Wis. Stats., states as follows:

Appeals from judgments, decisions on motions brought under s. 800.115, or determinations regarding whether the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29(1)(d), may be taken by either party to the circuit court of the

county where the offense occurred. The appellant shall appeal by giving the municipal court and other party written notice of appeal and paying any required fees within 20 days after the judgment or decision. No appeals may be taken from default judgments.

Koziol maintains that the trial court erred in concluding that Koziol did not perfect her appeals to the circuit court from the decisions of the municipal court based on the Circuit Court's decision that copies of the document forwarding it the Notice of Appeals to the City was insufficient. The above statute language does not require that the written notice shall be mailed by certified mail, registered mail, personal service or any other type of mail with a proof of delivery. The statute clearly states that an appellant need only provide the other party with written notice of the appeal within 20 days after the judgment or decision, and, therefore, the copy of the letter and attached Notice of Appeals should be sufficient proof. The City alleges it did not receive the letter and Notice of Appeals from Koziol and it is unknown why the City did not receive it as the post office does not track every single piece of mail it handles. The City cites *United State v. Freeman*, 402 F. Supp. 1080, 1082 E.D. Wis. 1975) wherein it states "This evidence raises a

rebuttal presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt." The City did not present evidence that it did not receive the letter and notice of appeals, but rather it just alleges it did not, just as Koziol alleges the proper notice was sent. The City continues to state that because Koziol's counsel keeps all of its records via a paper file and does not save everything on its computer, the letter provided to the court as evidence is not credible. Koziol continues to argue that the signed copy of the transmittal letter and accompanying notices should be considered credible evidence of mailing.

Koziol filed a Motion for Reconsideration on February 2, 2021, one day after the hearing and oral decision on the City's Motion to Dismiss. (R. 11, pp. 1-6, 20CV387.) With that filing was an Affidavit of Mailing signed by Ms. Plutowski, counsel's office staff who mailed the original letter and notices of appeals to the City. The Motion for Reconsideration was filed under § 806.07 Wis. Stats. for relief from the order to dismiss. § 806.07 Wis. Stats. covers a motion as was filed and, although subparagraph (h) was not specifically mentioned, the motion was filed as the

decision to dismiss the appeal to the circuit court was not in the interest of justice as was pointed out in Koziol counsel's letter of March 1, 2021 to the Court, filed as additional information to be included with the Motion for Reconsideration. (R. 15, pp. 1-9, 20CV387.)

The Court in its oral ruling on the Motion for Reconsideration states that the Affidavit of Mailing filed with the Motion for Reconsideration would not be considered because it was not filed with the original letter and notices of appeals filed with the court in response to the City's Motion to Dismiss. However, the court also states that "So in this case it's not created at the time of mailing. It was, you know, I am not saying it's improper to do it after the fact. I think that's certainly feasible." (R. 35, p. 16, 20CV387.) Although not filed with the original submission of the letter to the City Attorney forwarding copies of the Notices of Appeals with the Circuit Court, counsel herein believes it should be considered as evidence of said mailing. The City then attempts to request the Appeals Court to review Local Rules 204.2 and 204.5. This reference was never brought before the Circuit Court; was never argued by the City or the

Circuit Court and should not be reviewed herein. However, if this Court does take the rules into consideration, Koziol states that the Affidavit of Mailing was specific to the Motion for Reconsideration and in response to the Circuit Court's order to dismiss.

CONCLUSION

Koziol's counsel informed the court that no mail was returned to Koziol's counsel's office and, therefore, there was no reason to believe that the City had not received the letter forwarding the Notices of Appeals to the City. As per the cases and statutes stated in Koziol's brief, there is no requirement at the time of mailing to send the letter and notices via certified mail, registered mail or otherwise with a proof of delivery. At the end of his oral decision on February 1, 2021, the Circuit Court states: "Well, it's not here. So I don't have that. And in the absence of that I have to dismiss the matter. So the matter is dismissed. That concludes this hearing." (R. 34, p.8, 20CV387.)

The statement made by the Circuit Court at the end of the Motion to Dismiss hearing on February 1, 2021, implies that had the Circuit Court received an Affidavit of Mailing

it would not have dismissed the appeal. Koziol's counsel immediately filed an Affidavit of Mailing with its Motion to Reconsider the very next day in response to the Court's comment. In addition to filing it's Motion for Reconsideration, Koziol's counsel filed a letter to be reviewed and taken into consideration at it's motion for reconsideration. In that letter, Koziol's counsel outlines the arguments of why upholding the motion to dismiss and denying Koziol's Motion for Reconsideration would result in a great injustice to Koziol.

Upon the arguments contained in Koziol's brief and herein, and in the interest of justice for Defendant, Sandra Koziol, Koziol moves the Court to reverse and remand this matter back to the trial court for entry of an Order that the circuit court has jurisdiction to hear the appeal taken directly from the municipal court.

Dated at Saukville, Wisconsin this 6th day of June, 2021.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8)(b) and (c) as modified by this Court's order dated April 9, 2021, for a brief and appendix produced with a monospaced Courier New font. The length of the brief is 6 pages.

Dated: June 6, 2021.

Attorney Perry P. Lieuallen

State Bar No. 1015094

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Signed this 6th day of June, 2021.

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