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**COURT OF APPEALS**

# **In the Court of Appeals of Wisconsin**

## **District IV**

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*Dane County,*

**Plaintiff-Respondent,**

**v.**

*Jeramiah Bradley,*

**Defendant-Appellant**

**Appeal No. 2025AP000172**

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**Appeal from the Judgment of the Dane County Circuit  
Court, The Hon. Mario White**

## **Brief of Appellant**

**John R. Monroe**  
**Attorney for Appellant**  
**156 Robert Jones Road**  
**Dawsonville, GA 30534**  
**678-362-7650**  
**State Bar No. 01021542**  
[\*\*jrm@johnmonroelaw.com\*\*](mailto:jrm@johnmonroelaw.com)

## Contents

Table of Authorities.....	3
Statement of Issues.....	4
Statement on Oral Argument and Publication .....	5
Argument .....	7
I. Chapter 778 Covers Forfeiture Actions and § 778.20 Addresses Cost Shifting.....	7
II. The Circuit Court Misinterpreted the Statute .....	8
III. The County’s Arguments Miss the Mark .....	10
A. The County Does Not Offer an Alternative Interpretation .....	11
B. This is Not a Sixth Amendment Issue.....	12
C. There was a “Judgment” for Bradley .....	13
Conclusion.....	14
Certificate of Service .....	145
Certifications:.....	16

**Table of Authorities****Cases**

Chris Hinrichs & Autovation Ltd. v. Dow Chem.Co., 2020 WI 2.....	10
<i>Tri City Nat'l Bank v. Fed.Ins.Co.</i> , 2004 WI App 12,.....	13

**Statutes**

Wis.Stat. § 778.015 .....	7
Wis.Stat. § 778.10 .....	7
Wis.Stat. § 778.20 .....	passim
Wis.Stat. § 806.01(1)(a).....	13
Wis.Stat. § 814.04 .....	12
Wis.Stat. §§ 778.01.....	7
Wis.Stat. ch. 778.....	7

**Statement of Issues**

1. Is a prevailing defendant in a forfeiture action entitled to recover costs pursuant to Wis.Stat. § 778.20?

Circuit Court answer: No

**Statement on Oral Argument and Publication**

Appellant Jeramiah Bradley (“Bradley”) does not believe oral argument is necessary in this case. While this is an issue of great statewide interest, the issue is straightforward, and it is not likely that oral argument would assist the Court in deciding the case.

Bradley believes that the opinion in the case should be published. Bradley seeks a ruling of first impression<sup>1</sup> in this state, and one that will have an effect on many Wisconsinites who successfully defend themselves in forfeiture actions.

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<sup>1</sup> There are no *published* decisions addressing the issue.

### **Statement of the Case**

This is an action seeking review of the denial of a bill of costs filed pursuant to Wis.Stat. § 778.20 after Bradley successfully defended himself in a forfeiture action brought against him by Respondent Dane County (the “County”). The facts of the case are uncontested. The Complaint sets out the County’s allegations that gave rise to its forfeiture action, but the facts necessary for the resolution of this case are procedural only and contained in the record on appeal:

1. The County commenced this forfeiture action in Dane County Circuit Court on October 24, 2024. Doc. 3.
2. The County alleged in the Complaint that Bradley had violated Wis.Stat. §§ 948.605(20)(a) and 939.52(3)(b) and was subject to a forfeiture of not more than \$1,000. *Id.*
3. Bradley filed a motion to dismiss the complaint [Doc. 5] and an amended motion to dismiss [Doc. 7].
4. The Circuit Court held a hearing on the motion to dismiss on January 24, 2025. Docs. 14, 24.
5. When the Circuit Court called the case, the County conceded the issue and the Circuit Court granted the motion to dismiss. Doc. 24, p. 3.
6. Bradley then moved for an award of costs under § 778.20. *Id.*

7. The Circuit Court heard arguments on the motion and took the issue under advisement. *Id.*, p. 8.
8. On January 27, 2025, the Circuit Court entered a written order denying the motion for costs. Doc. 17.

### **Argument**

#### **I. Chapter 778 Covers Forfeiture Actions and § 778.20 Addresses Cost Shifting**

Wis.Stat. ch. 778 covers actions brought in circuit court for forfeitures for civil offenses. Wis.Stat. §§ 778.01 and 778.015. Actions for forfeitures imposed by a statute must be brought in the name of the State. Wis.Stat. § 778.015. Actions for forfeitures imposed by a municipal ordinance must be brought in the name of the municipality. Wis.Stat. § 778.10.

Wis.Stat. § 778.20 provides:

In all actions brought under s. 778.10 the town, city, village, or corporation in whose name such action is brought shall be liable for the costs of prosecution; and, if judgment be for defendant, for all the costs of the action and judgment shall be entered accordingly. In all other actions brought under the provisions of this chapter, except as provided in s. 778.04, the county in which the forfeiture was incurred

shall be liable for the costs of the prosecution, and, if judgment be for defendant, for all the costs of the action.

Thus, for actions brought under a municipal ordinance, a prevailing defendant is entitled to costs against the municipality. For actions brought under a statute, a prevailing defendant is entitled to costs against the county where the action was brought.

## II. The Circuit Court Misinterpreted the Statute

In the present case, the County (incorrectly) brought an action in its own name for forfeiture under a state statute. Because this was a statutory forfeiture action, the County district attorney should have brought this case in the name of the state. This mistake, however, does not change the outcome in this case. Under Wis.Stat. § 778.20, the County is liable for costs to Bradley whether it brings an action in its own name (as for a county ordinance violation) or it brings an action in the name of the state.

The Circuit Court, however, erred in its interpretation of law. It found, “The County has not initiated a civil action to collect any forfeiture imposed against the defendant. The case was dismissed. No forfeiture was imposed.” Doc. 17, p. 2. The Circuit Court appears to have concluded that Chapter 778 is a means by which a governmental



entity can collect a judgment for forfeiture imposed in some other case., as opposed to being the means for obtaining a judgment for forfeiture in the first instance.

An extrapolation of the Circuit Court's interpretation illustrates that the interpretation renders Wis. Stat. § 778.20 meaningless. In a typical case where a forfeiture action is brought and the defendant either concedes the action or contests it and loses at trial, the judgment against the defendant "shall include costs and direct that if the judgment is not paid the defendant, if an individual, shall be imprisoned...." Wis.Stat. § 778.09. Presumably the Circuit Court would accept this outcome because in that case, a "forfeiture was imposed." Wis.Stat. § 778.20's "all the costs of the action" language would not apply because there would not be a judgment for the defendant.

On the other hand, if the defendant contests the complaint and wins, either at trial or (as in this case) because the plaintiff concedes the case, the Circuit Court says the cost-shifting language does not apply

because “no forfeiture is imposed.” Thus, the cost-shifting language of Wis.Stat. § 778.20 *never* applies.

As a fundamental tenet of statutory interpretation, where possible we render no word in a statute surplusage.... None should needlessly be given an interpretation that causes it to have no consequence.” *Chris Hinrichs & Autovation Ltd. v. Dow Chem.Co.*, 2020 WI 2, ¶ 98. Because the Circuit Court’s interpretation makes the entire cost-shifting structure have no consequence, that interpretation should be avoided.

### III. The County’s Arguments Miss the Mark

The County opposed the imposition of costs under Wis.Stat. § 778.20 on three grounds. First, the County said, “My reading of [the statutes] is not that it provides a mechanism for which a defendant can recover costs for a then-dismissed action. Essentially, if that were the case, then anytime someone gets a speeding ticket and it gets dismissed, they would be able to sue the County for costs, which I don’t think is the legislative intent here.” Doc. 24, p. 3. Next, the County argued (apparently in opposition to the item in the Bill of Costs pertaining to attorney’s fees) that the Sixth Amendment right to counsel does not apply in forfeiture actions because Bradley could have represented

himself. *Id.* Finally, the County argued that the Circuit Court's oral announcement that it was granting Bradley's motion to dismiss did not constitute a judgment for Bradley. Doc. 24, p. 9.

Bradley will address each point in turn.

A. The County Does Not Offer an Alternative Interpretation

The County argued, without citation to any authority, that it did not read Wis.Stat. § 778.20 as permitting a defendant in a dismissed forfeiture action to recover costs. The County did not suggest an alternative interpretation, viable or otherwise, as to what the legislature intended. The County did identify a single float in a parade of horrors: That Bradley's interpretation would permit any defendant in a dismissed speeding ticket to recover costs. That is, of course, what the statute provides. But the reality is not the dire circumstance the County predicts. That is because, as the County also correctly observed, "we see [pro se defendants] quite frequently in ... these cases." Doc. 24, p. 5.

The Bill of Costs [Doc. 16] contains only four items: 1) jury fees, 2) attorney fees, 3) a judgment docketing fee, and 4) an electronic filing fee. A pro se defendant is not likely to take on a jury trial by himself, so they rarely pay jury fees. Likewise, a pro se defendant in a typical

forfeiture case would not both with electronic filing. He also would have attorney's fees. With no costs to collect a judgment for, there would be no judgment docket fee. Therefore, while every defendant, pro se or otherwise, who successfully defends against a forfeiture (including a speeding ticket), theoretically can recover costs under Wis.Stat. § 778.20, in reality the typical defendant would not have costs to recover.

**B. This is Not a Sixth Amendment Issue**

Even though Bradley never invoked the Sixth Amendment (and it is not clear why he would have), the County argued that the Sixth Amendment does not apply in this case. While the argument was not developed, it appears the County was arguing that, because Bradley had no Sixth Amendment right to counsel, he was precluded from recovering attorney's fees under Wis.Stat. §§ 778.20 and 814.04.

This argument is meritless. Wis.Stat. § 814.04 **only** applies in civil cases – i.e., cases where the Sixth Amendment does not apply. Yet Wis.Stat. § 814.04 has as whole subsection devoted to recovery of attorney's fees in civil cases. Wis.Stat. § 814.04(1). The County's

argument that Wis.Stat. § 814.04 does not apply to civil cases because the Sixth Amendment does not apply to civil cases is nonsensical.

Despite the fact that the legislature clearly intended for defendants to recover costs in a forfeiture action, the Circuit Court's interpretation is "heads, the government wins; tails, the defendant loses."

C. There was a "Judgment" for Bradley

The County's final argument was that Bradley did not obtain a judgment. The County did not develop this argument or cite any authority for it.

A "judgment" is defined as "the determination of the action." Wis.Stat. § 806.01(1)(a). When a trial court grants a motion to dismiss, it is in essence entering a judgment on the pleadings. *Tri City Nat'l Bank v. Fed.Ins.Co.*, 2004 WI App 12, ¶ 34. In the present case, the Circuit Court orally granted Bradley's motion to dismiss. Doc. 24, p. 3 ("And so with that, I'll grant the request to dismiss the action.") The Circuit Court clearly made a "determination of the action" in dismissing it. That was, "in essence," a judgment on the pleadings.

**Conclusion**

Wis.Stat. § 778.20 is clear that a prevailing defendant in a forfeiture action is entitled to an award of costs. The Circuit Court erred in concluding otherwise, so the decision of the Circuit Court should be reversed and the case remanded with instructions to determine the proper amount of costs to award to Bradley.

**Electronically signed by:** \_\_\_\_\_ John R. Monroe  
Attorney for Appellant

**Certificate of Service**

I certify that this Brief is being filed electronically, and a notice of filing will  
be sent automatically to:

Cecilia DeMarco  
215 S. Hamilton Street, Ste 3000  
Madison, WI 53703

Electronically signed by:

John R. Monroe

**Certifications:**

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) as modified by the court's order for a brief and appendix produced with a proportional serif font. The length of this brief is 2,067 words.

Electronically signed by:

John R. Monroe