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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2025AP172

DANE COUNTY,

Plaintiff-Respondent,

vs.

JEREMIAH BRADLEY,

Defendant-Appellant.

PLAINTIFF-RESPONDENT'S BRIEF

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY,
BRANCH 7, THE HONORABLE JUDGE MARIO WHITE, PRESIDING

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STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The plaintiff-respondent requests neither publication nor oral argument.

STATEMENT OF THE ISSUE

The circuit court granted a voluntary dismissal of a state forfeiture case brought by a District Attorney's office. Afterwards, the defendant sought for recoupment of costs citing to Wis. Stat. Chapter 778. The circuit court denied his claim for costs.

The issue presented is whether Wis. Stat. §§ 778.10 or 778.20, or even the entire Chapter 778, apply to voluntarily dismissed state forfeiture actions brought by a District Attorney.

The circuit court answered: No.

This Court should answer: No.

ARGUMENT

The defendant's appeal rests on a misunderstanding of Wis. Stat. Chapter 778 and the forfeiture process. As a result, the Court should affirm the circuit court's decision to deny costs.

On October 24, 2024, Dane County¹ filed a forfeiture complaint citing the defendant for a state forfeiture violation of Wis. Stat. § 948.605(2)(a), possession of a firearm within 1000 feet of grounds of a school. R. 3.

At a hearing on January 24, 2025, the circuit court held a hearing on the defendant's motion to dismiss. R. 24. At the outset of the hearing, to the benefit of the defendant, the State opted to dismiss the citation in lieu of proceeding with the motion hearing. *Id.* p. 3. In particular the following exchange between the plaintiff-respondent and the Court occurred:

"[THE PROSECUTOR:] the State concedes on that basis and 3 will be dismissing the forfeiture action accordingly.

THE COURT: All right. And then so with that, I'll grant the request to dismiss the action." *Id.*

¹ The plaintiff-respondent agrees with opposing counsel that this action was erroneously brought by the county and not the State of Wisconsin given that the charged forfeiture is a state forfeiture.

In sum, the case was voluntarily dismissed by the plaintiff-respondent. This procedural fact—the voluntary dismissal—was further codified in the Court's written decision on costs. R. 17, p. 2 ("The State conceded it could not prevail on the matter and moved to dismiss at the motion hearing.") Immediately after the dismissal discussion, the defendant moved to request costs under Wis. Stat. § 778.20. R. 24, p. 3.

In its written decision, the circuit court denied the defendant's motion for costs. R. 17. It aptly pointed out the distinction between an action such as the present case, where a District Attorney's Office brings a forfeiture action versus a forfeiture action for already-incurred costs as it relates to Wis. Stat. Chapter 778. R. 17, p. 2. Because the plaintiff-respondent never commenced a Chapter 778 forfeiture action, the circuit court found the defendant's request for costs under Wis. Stat. § 778.20 inapplicable and thus denied the motion. *Id.*

- I. The circuit court correctly determined that the underlying case was not brought pursuant to Wis. Stat. Chapter 778.

This is not a Wis. Stat. Chapter 778 action. The defendant erroneously asserts that all cases involving a forfeiture must be brought under that chapter. He is, with

respect, wrong. Wis. Stat. § 778.01 describes the types of civil actions covered under its respective chapter; it reads: "[w]here a forfeiture imposed by statute shall be incurred it may be recovered in a civil action unless the act or omission is punishable by fine and imprisonment or by fine or imprisonment. The word forfeiture, as used in this chapter, includes any penalty, in money or goods." As the circuit court correctly pointed out, this action contained no attempt to recover an incurred forfeiture.

The Court could have further pointed to another illustration within Wis. Stat. Chapter 778 for why it is inapplicable. The defendant-appellant argues that the underlying forfeiture was brought under Wis. Stat. § 778.10. It is a necessary part of his argument since any request for costs under Wis. Stat. § 778.20 requires that the action be brought under Section 778.10. See Wis. Stat. § 778.20 ("In all actions brought under s. 778.10 the town, city, village or corporation in whose name such action is brought shall be liable...")

This is not, however, a forfeiture under Section 778.10. The defendant was cited under Wis. Stat. § 948.605(2)(a), a state forfeiture. A state forfeiture is not brought under "any ordinance ... of a county, town, city,

or village, or of any other domestic corporation." *Id.* The plaintiff-appellant instead cited the defendant under its prescribed statutory duty pursuant to Wis. Stat. § 978.05(2), as with any state forfeiture citation.

II. Regardless, because the circuit court never awarded the defendant a judgment, Wis. Stat. § 778.20 does not apply.

The defendant's argument further fails because he misunderstands what constitutes a judgment in a state-prosecuted forfeiture action. There are two types of judgments in a criminal or state forfeiture action: conviction and acquittal. Wis. Stat. § 972.13.

A dismissal, regardless of whether a voluntary one made by the prosecution or a dismissal pursuant to a defendant's motion to dismiss, is not a judgment. Chapter 778 envisions judgments for both parties because substantively it covers different types of actions wholly separate from District Attorney offices bringing forfeiture charges against persons.

To argue that his case is a judgment, the defendant pivots to the civil procedure code, noting that Wis. Stat. Chapter 806 has definitions of the term judgment. He cites to a civil insurance case that analogizes ("in essence") court decisions to judgments for unknown reasons. However,

the most illustrative example of the mis-placement of his argument occurs in the last sentence of his argument section within his brief: "That was, 'in essence', a judgment on the pleadings." Def. Br. p. 13. This is a state forfeiture action brought by a prosecutor's office. There are no pleadings, plural. The defendant did not file an answer or any other pleading. One cannot have judgment on the pleadings in an area of law (prosecution-brought cases) where there are no pleadings, plural.

This Court has been presented with a similar issue before. *Dane County v. Gibbs*, 2013 WI App 73, 348 Wis. 2d 265, 2012AP2589, 2013 WL 1338039 (unpublished). In *Gibbs*, Dane County filed a civil forfeiture action under a Dane County ordinance². *Id.* ¶ 2. The parties stipulated to a dismissal. *Id.* The defendant subsequently moved for costs under Wis. Stat. Chapter 778. The court in *Gibbs* rejected the notion that Mr. Gibbs was either a prevailing party or a party for whom a judgment was entered by virtue of his dismissal. *Id.* ¶¶ 4-9.

Lastly, if this Court were to adopt the defendant's interpretation of Wis. Stat. Chapter 778, it is worth

² The biggest distinction between *Gibbs* and the present case is, as covered in a prior section, this case does not involve a county ordinance or forfeiture but in fact a state forfeiture.

noting what a profound, detrimental effect it would have on the people of Wisconsin. Voluntary dismissals of forfeitures regularly occur all over the State. They occur for good reasons, often involving pretrial treatment work by defendants, community service, and other benefits to the community. The defendant's interpretation of Wis. Stat. Chapter 778 would shut the door on that practice, lest the State and counties engage in a practice that would endanger them to costs that would frankly exceed the cost of forfeiture actions to the convicted defendants themselves. No forfeiture would ever end without trial or plea. It is inconceivable that the legislature would have ever intended such an outcome.

CONCLUSION

For the foregoing reasons, the plaintiff-respondent asks this Court to affirm the circuit court's denial of the defendant-appellant's request for costs



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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 7 pages.

Dated this 26th day of March 2025.



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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 26th day of March 2025.



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