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COURT OF APPEALS

In the Court of Appeals of Wisconsin

District IV

Dane County,

Plaintiff-Respondent,

v.

Jeramiah Bradley,

Defendant-Appellant

Appeal No. 2025AP000172

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

Reply Brief of Appellant

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Argument

I. Chapters 778 and 799 Apply to Forfeiture Actions

Appellee Dane County appears to misunderstand the application of Wisconsin's several ***procedural*** statutes affecting forfeiture cases. Instead, Dane County argues that ***substantive*** statutes control this case.

Wis.Stat. § 799.01(1)(b) provides, subject to exceptions not applicable here, “[T]he procedure in this chapter is the exclusive procedure to be used in circuit court in...[a]ctions to recover forfeitures except as a different procedure is prescribed in chs. 23, 66, 345 and 778, or elsewhere, and such different procedures shall apply equally to the state, a county or a municipality regardless of any limitation contained therein.” That is, ch. 799 is the “default” procedural chapter for all forfeitures, including the present one. In addition, ch. 778 covers forfeitures in circuit court for violations of state statutes. Wis.Stat. §§

778.01, 778.015, and 778.02. Thus, chs. 799 and 778 are the procedural chapters that apply to the present case.

Dane County argues, without support to authority, that Ch. 778 only applies to “a forfeiture action for already-incurred cost” and not to “a forfeiture action.” Brief of Dane County, p. 2. Dane County fails to develop or even explain this argument. Dane County argues that this case was brought under Wis.Stat. § 948.605(2)(a). But that statute is merely the offense-defining statute. It is not a procedural statute as chs. 778 and 799 are. Dane County does not identify *any* procedural statutes applicable to the present case.

II. Costs to Prevailing Defendants in Forfeiture Cases is not New

The Supreme Court has previously addressed awarding costs to a defendant in a forfeiture case where multiple procedural statutes apply. In *Milwaukee v. Leschke*, 57 Wis. 2d 159 (1972), the Court ruled that prevailing defendants in a municipal ordinance violation case are entitled to costs. First, the Court observed that municipal ordinance violation cases are governed by chs. 66 and 299 (1972)¹. The Court

¹ Ch. 299 was renumbered to ch. 799 by 1979 c. 32, s. 64. It remains as ch. 799 today.

ruled that ch. 66 did not address costs to a prevailing defendant, so the costs provisions of ch. 299 (now 799) apply. 57 Wis.2d at 164.

As noted above, the present case is a forfeiture action for a violation of a state statute. Therefore chs. 778 and 799 apply. Wis.Stat. § 778.20 specifies that a prevailing defendant is entitled to costs. Dane County argues that ch. 778 does **not** apply, although it cites no authority for this position. Neither does it provide a different statute that applies to statutory forfeiture actions. Ch. 778 covers all forfeiture actions in circuit court for violations of statutes that are not criminal and impose only a forfeiture. Wis.Stat. §§ 778.01, 778.015, 778.02, and 778.10; *State v. Roggensack*, 15 Wis.2d 625, 630-631 (1962) (“Forfeitures, including penalties imposed by statute, have long been recoverable in civil actions in this state by express authority of sec. 288.01 which, in substance, as been in existence since 1849....[W]here a statute provides only for a fine, it may be enforced under sec. 288.01”)².

If ch. 778 does not apply, as Dane County argues, then the default procedural statute for forfeiture actions, ch. 799, applies. Wis.Stat. §

²² On July 19, 1979, ch. 228 was renumbered to ch. 778 by 1979 c.32, s. 56.

799.25 provides for costs in favor of the party recovering judgment.

Wis.Stat. § 799.25 explicitly lists jury fees and statutory attorney's fees, two of the items for which Bradley seeks a cost award.

III. Dane County Brought This Case Under Wis.Stat. § 778.

Dane County builds a straw man by arguing that Bradley believes Dane County brought the present case under Wis.Stat. § 778.10 (pertaining to municipal forfeiture actions). Dane County apparently comes to this conclusion by reading only the first sentence of Wis.Stat. § 778.20 (pertaining only to municipal ordinance violations – “In all actions brought under s. 778.10”) The second sentence of Wis.Stat. § 778.20 is what applies in the present case: “In all other actions brought under the provisions of this chapter, ... 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.” Dane County fails to explain why this sentence, quoted in Bradley's opening brief, does not apply.

Dane County also mistakenly claims, “The defendant-appellant argues that the underlying forfeiture was brought under Wis.Stat. §

778.10”³. Not so. Bradley clearly argued in his opening brief, “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.**”⁴ [emphasis added].

Finally, Dane County claims it prosecuted Bradley pursuant to Wis.Stat., ¶ 978.05(2). But that statute merely describes the authority and function of the various district attorneys in the state. Once again, Dane County fails to cite the applicable procedural statute, no doubt because Dane County does not want to concede that this was a ch. 778 case.

Dane County’s brief is short on authority. The only case Dane County cites is an unpublished decision, *Dane County v. Gibbs*, 2013 WI App 73 (unpublished).⁵ In *Gibbs*, this Court declined to award costs to Gibbs after the parties **stipulated** to a dismissal. The Court placed great emphasis on the stipulation. *Id.*, ¶ 8 (“Because dismissal was by

³ Brief of Dane County, p. 3.

⁴ Bradley Brief, p. 8.

⁵ Unpublished decisions are not binding and may be cited for their persuasive value only. Wis.Stat. § 809.23(3(b)).

stipulation , this court assumes that dismissal was mutually beneficial to both parties.”)

In the present case, however, the dismissal was **not** the result of a stipulation. Instead, Bradley had to file a motion to dismiss and Dane County conceded the matter at the hearing on the motion. Moreover, the *Gibbs* does not discuss how the procedures of ch. 799 apply (including the application of jury fees (§ 799.25(9)) and attorney fees (§ 799.25(10))).

IV. Forfeiture Actions are Civil

Dane County chides Bradley for referring to a civil case to support his arguments. Dane County Brief, p. 4. Dane County appears to have lost sight of the fact that forfeiture actions **are** civil actions. Wis.Stat. § 778.01 (“Where a forfeiture imposed by statute shall be incurred it may be recovered in a civil action...”); *Bayside v. Bruner*, 33 Wis.2d 533, 536 (1967) (“As a civil action, a forfeiture procedure is one in which rules of civil, not criminal, procedure apply.”)

Once again, Dane County fails to provide any citation to authority when it claims, “One cannot have judgment on the pleadings in an area

of law (prosecution-brought cases) where there are no pleadings, plural.” Dane County Brief, p. 5. This Court ruled, however, that forfeiture actions **are** subject to judgment on the pleadings, even where the only pleadings were a citation and a plea of not guilty. *Village of Fremont v. Koga*, 2024 WI App 37 (2024) (unpublished). Thus, Dane County’s unsupported assertion is contrary to established law.

V. Dane County’s Policy Argument Fails

Lastly, Dane County argues “what a profound, detrimental effect it would have on the people of Wisconsin [if this Court rules in Bradley’s favor]. Dane County Brief, p. 6. Dane County predicts, “No forfeiture would ever end without trial or plea.” Of course, one can just as easily argue that it is a profound, detrimental effect on the people of Wisconsin if Dane County is in the habit of bringing frivolous forfeiture cases against the people.⁶

⁶ Dane County conceded at the hearing on Bradley’s Motion to Dismiss that it charged Bradley with carrying a firearm on the grounds of a school but that Wis.Stat. §948.61(1)(b) clearly does not include school administration buildings (where Bradley was) in the definition of a school. That is, Dane County knew or should have known before it ever filed a complaint against Bradley that it lacked a factual basis for the complaint and never should have filed it.

Moreover, it is clear from *Leschke* that costs to defendants in forfeiture actions have been imposed for a long time.

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
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Certificate of Service

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

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Certifications:

I hereby certify that filed with this brief is an appendix that contains all unpublished opinions of this Court.

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 1,9049 words.

Electronically signed by:

John R. Monroe