CHAPTER 752

COURT OF APPEALS

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752.01 Jurisdiction. (1) The court of appeals has appellate jurisdiction as provided by law.

(2) The court of appeals has original jurisdiction only to issue prerogative writs.

(3) The court of appeals may issue all writs necessary in aid of its jurisdiction.

History: 1977 c. 187.

The court of appeals does not have jurisdiction to entertain an original action unrelated to its supervisory or appellate authority over circuit courts. State ex rel. Swan v. Elections Bd. 133 Wis. 2d 87, 394 N.W.2d 732 (1986).

Jurisdiction of the Wisconsin court of appeals. Hazeltine. 69 MLR 545 (1986).

A Shift in the Bottleneck: The Appellate Caseload Problem Twenty Years After the Creation of the Wisconsin Court of Appeals. Garlys. 1998 WLR 1547.

Wisconsin court of appeals: 1983 internal operating procedures. WBB Nov. 1983.

752.02 Supervisory authority. The court of appeals has supervisory authority over all actions and proceedings in all courts except the supreme court.

History: 1977 c. 187.

The court of appeals is authorized to exercise its supervisory authority over a chief judge who is ruling on a substitution request. James L.J. v. Walworth County Circuit Court, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94−2043.

752.03 Number of judges. There shall be 16 court of appeals judges. Three judges shall be elected from the district specified in s. 752.17, 4 judges shall be elected from each of the 2 districts specified in ss. 752.13 and 752.15 and 5 judges shall be elected from the district specified in s. 752.19.

History: 1977 c. 187; 1985 a. 29; 1989 a. 63; 1991 a. 32, 71; 1993 a. 16; 2007 a. 97.

752.04 Elections. Court of appeals judges shall be elected by district on an at−large basis for terms of 6 years. Terms shall commence on August 1 next succeeding each election and shall terminate on July 31. A court of appeals judge shall reside within the district in which he or she is elected. Only one court of appeals judge may be elected in a district in any year.

History: 1977 c. 187.

752.05 Administrative headquarters. The court of appeals shall have administrative headquarters in Madison.

History: 1977 c. 187.

752.07 Chief judge. The supreme court shall appoint a court of appeals judge to be the chief judge of the court of appeals for a term of 3 years.

History: 1977 c. 187.

752.11 Districts. (1) The court of appeals is divided into districts as follows:

(a) District I consists of the judicial circuit for Milwaukee County.

(b) District II consists of the judicial circuits for Kenosha, Racine, Walworth, Waukesha, Washington, Ozaukee, Sheboygan, Manitowoc, Fond du Lac, Green Lake, Winnebago and Calumet counties.

(c) District III consists of the judicial circuits for Door, Kewaunee, Brown, Oconto, Marinette, Forest and Florence (a combined 2−county circuit), Outagamie, Menominee and Shawano (a combined 2−county circuit), Langlade, Marathon, Lincoln, Oneida, Vilas, Taylor, Price, Iron, Ashland, Bayfield, Sawyer, Rusk, Chippewa, Eau Claire, Trempealeau, Buffalo and Pepin (a combined 2−county circuit), Dunn, Pierce, St. Croix, Barron, Polk, Burnett, Washburn and Douglas counties.

(d) District IV consists of the judicial circuits for Rock, Green, Jefferson, Dodge, Dane, Lafayette, Iowa, Grant, Richland, Crawford, Sauk, Columbia, Marquette, Waushara, Waupaca, Portage, Wood, Adams, Juneau, Jackson, Clark, Monroe, Vernon and La Crosse counties.

(2) The court shall hear cases in any city where it has chambers or where it is specifically required to sit and such other locations as the supreme court may designate by rule for the convenience of litigants.

History: 1977 c. 187, 449.

752.13 District I. The court chambers for the court of appeals in district I are located in Milwaukee.

History: 1977 c. 187.

752.15 District II. The court chambers for the court of appeals in district II are located in Waukesha. The court shall also sit in Fond du Lac and Racine.

History: 1977 c. 187.

752.17 District III. The court chambers for the court of appeals in district III are located in Wausau. The court shall also sit in Eau Claire, Superior and Green Bay.

History: 1977 c. 187.

752.19 District IV. The court chambers for the court of appeals in district IV are located in Madison. The court shall also sit in La Crosse and Stevens Point.

History: 1977 c. 187.

752.21 Venue. (1) Except as provided in sub. (2), a judgment or order appealed to the court of appeals shall be heard in the court of appeals district which contains the court from which the judgment or order is appealed.

(2) A judgment or order appealed from an action venued in a county designated by the plaintiff to the action as provided under s. 801.50 (3) (a) shall be heard in a court of appeals district selected by the appellant but the court of appeals district may not be the court of appeals district that contains the court from which the judgment or order is appealed.

History: 1977 c. 187; 2011 a. 61.

752.31 Disposition of cases. (1) Except as otherwise provided in this section, the court of appeals shall sit in panels of 3 judges to dispose of cases on their merits.

(2) Appeals to or other proceedings in the court of appeals in the following types of cases shall be decided as specified in sub. (3):

(a) Cases under ch. 799.

(b) Municipal ordinance violation cases.

(c) Cases involving violations of traffic regulations, as defined in s. 345.20 (1) (b), or nonmoving traffic violations, as defined in s. 345.28 (1), and cases under s. 343.305 and ch. 351.

(d) Cases under chs. 51 and 55.

(e) Cases under chs. 48 and 938.

(f) Misdemeanors.

(g) Cases involving civil forfeitures.

(h) Cases involving contempt of court under ch. 785.

(3) A case specified under sub. (2) shall be decided by one court of appeals judge, except that any party on appeal or other proceeding in the court of appeals may move in writing to the chief judge of the court of appeals that the case be decided by a 3−judge panel. The chief judge may grant or deny the request ex parte. Oral arguments permitted on any appeal which is decided by a single court of appeals judge may be heard by telephone or in the county where the case or action originated.

(4) If a request for a 3−judge panel is granted under sub. (3), the district attorney handling the case under s. 978.05 (5) shall transfer all necessary files and papers relating to the case to the attorney general.

History: 1977 c. 187; 1979 c. 32 s. 92 (16); 1979 c. 192; 1981 c. 152, 165, 391; 1983 a. 189 s. 329 (34); 1985 a. 29, 102; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1989 a. 31; 1991 a. 122; 1995 a. 77.

Judicial Council Note, 1979: Sub. (2) is amended to clarify that the judge in those cases in which a single court of appeals judge determines the case also has the authority to issue any necessary writs required in the case. The term "other proceedings" includes petitions for supervisory writs and original jurisdiction prerogative writs. Sub. (2) has also been amended to clarify that, in cases decided by a single court of appeals judge, the case is decided by the judge rather than heard. Some single−judge appeals are not heard as oral argument may not take place in the case.

Sub. (3) is amended to clarify that a single−judge appeal is decided rather than heard by the judge. The prior statutory provision that, upon a timely request, a case specified in sub. (2) shall actually be heard in the county where the case or action originated remains unchanged. Language has also been added to sub. (3) to clarify that the procedure to request the chief judge of the court of appeals to have a single−judge case be decided by a 3−judge panel also applies to other proceedings in the court of appeals, which may include petitions for supervisory writs and original jurisdiction prerogative writs. [Bill 396−S]

Judicial Council Note, 1981: Sub. (2) is amended to provide that cases under ch. 55, like cases under ch. 51, are decided as specified in sub. (3) and to clarify that cases under s. 343.305 are also decided as specified in sub. (3). Cases under ch. 55 and forfeitures are to be decided in the same manner as the other types of cases specified in sub. (2). [Bill 737−A]

Judicial Council Note, 1985: Sub. (2) (c) is amended to clarify that appeals in habitual traffic offender cases may be decided by one court of appeals judge. [85 Act 102]

Judicial Council Note, 1988: The amendment to sub. (3) allows oral arguments permitted in 1−judge appeals to be heard by telephone conference or in the county where the action originated, at the discretion of the judge. [Re Order effective Jan. 1, 1988]

Sub. (2) (d) and (3) provide that appeals in protective placement cases under ch. 55 are heard by a single court of appeals judge while the general rule under sub. (1) is that cases disposed of on the merits, including guardianship orders under ch. 54, are heard by a 3−judge panel. When an appeal is taken from a single action granting both a guardianship and protective placement petition, the appeal is to be decided by a 3−judge panel. Waukesha County v. Genevieve M. 2009 WI App 173, 322 Wis. 2d 131, 776 N.W.2d 640, 09−1755.

752.35 Discretionary reversal. In an appeal to the court of appeals, if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record and may direct the entry of the proper judgment or remit the case to the trial court for entry of the proper judgment or for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court, not inconsistent with statutes or rules, as are necessary to accomplish the ends of justice.

History: 1977 c. 187.

In relying solely on affidavits of persons who could have been produced at a postconviction hearing but were not, there was an insufficient basis on which the court of appeals could have exercised its discretion. State v. McConnohie, 113 Wis. 2d 362, 334 N.W.2d 903 (1983).

The court of appeals erred as matter of law in granting a new trial. Although a juror incompletely responded to material questions on voir dire, the litigant failed to demonstrate that the juror more probably than not was biased against the litigant. The criteria for discretionary reversal is discussed. State v. Wyss, 124 Wis. 2d 681, 370 N.W.2d 745 (1985).

The court of appeals error−correcting function is discussed. State v. Schumacher, 144 Wis. 2d 388, 424 N.W.2d 672 (1988).

In reviewing a discretionary reversal by the court of appeals, the supreme court uses the abuse of discretion standard. State v. Johnson, 149 Wis. 2d 418, 439 N.W.2d 122 (1989), confirmed, 153 Wis. 2d 121, 449 N.W.2d 845 (1990).

The court's authority under this section is discussed. Vollmer v. Luety, 156 Wis. 2d 1, 456 N.W.2d 797 (1990).

Discretionary reversal is not applicable to judicial review of LIRC orders under the Worker's Compensation Act, ch. 102. There is no power to reopen a matter that has been fully determined under the Act. Kwaterski v. LIRC, 158 Wis. 2d 112, 462 N.W.2d 534 (Ct. App. 1990).

An appeal of an unsuccessful collateral attack under s. 974.06 does not allow discretionary reversal of an order or judgment that was the subject of a collateral attack. State v. Allen, 159 Wis. 2d 53, 464 N.W.2d 426 (Ct. App. 1990). But see State v. Armstrong, 2005 WI 119, 283 Wis. 2d 639, 700 N.W.2d 98, 01−2789.

Reversal on grounds that the real controversy was not fully tried is discussed. State v. Hicks, 202 Wis. 2d 150, 549 N.W.2d 435 (1996), 94−2256. See also State v. Jeffrey A. W. 2010 WI App 29, 323 Wis. 2d 541, 780 N.W.2d 231, 09−0645.

This section does not apply to proceedings for judicial review under ch. 227. Habermehl Electric, Inc. v. DOT, 2003 WI App 39, 260 Wis. 2d 466, 659 N.W.2d 463, 02−1573.

A reviewing court upholds the findings of fact by a trier of fact unless they are clearly erroneous. The determination of whether a party has met his or her burden is a matter of fact, not law. The reason given by the court of appeals in this case for invoking the power of discretionary reversal was that the defendant had "met his burden," which is going too far for a reviewing court on a question of fact. State v. Kucharski, 2015 WI 64, 363 Wis. 2d 658, 866 N.W.2d 697, 13−0557

This section should be used only in an exceptional case, after all other claims have been weighed and determined to be unsuccessful. In exercising discretionary reversal, the court of appeals must engage in an analysis setting forth the reasons that the case may be characterized as exceptional. State v. McKellips, 2016 WI 51, ___ Wis. 2d ___, ___ N.W.2d ___, 14−0827.

State v. Wyss: A new appellate standard for granting new trials in the interest of justice. 1987 WLR 171.

A Fearless Search for the Truth No Longer: *State v. Henley* and Its Destructive Impact on New Trials in the Interest of Justice. Mark. 2012 WLR 1367.

752.37 Enforcement of judgments and determinations. The court of appeals has all power and authority to enforce its judgments and determinations and to exercise its jurisdiction.

History: 1977 c. 187.

752.39 Referral of issues of fact. In actions where the court of appeals has taken original jurisdiction, the court may refer issues of fact to a circuit court or referee for determination.

History: 1977 c. 187.

752.41 Decisions. (1) In each case, the court of appeals shall provide a written opinion containing a written summary of the reasons for the decision made by the court.

(2) Officially published opinions of the court of appeals shall have statewide precedential effect.

(3) The supreme court shall determine by rule the manner in which the court of appeals determines which of its decisions shall be published.

History: 1977 c. 187.

Only the supreme court has the power to overrule, modify, or withdraw language from a published opinion of the court of appeals. Cook v. Cook, 208 Wis. 2d 166, 560 N.W.2d 246 (1997), 95−1963.

The noncitation rule and the concept of stare decisis. Walther. 61 MLR 581 (1978).

752.61 State assumption of costs. The state shall pay for all costs of implementation and operation of the court of appeals. Payments shall be made under s. 20.660.

History: 1977 c. 187.