

Assembly Bill 304

Published
June 29, 1966.

Chapter 560

AN ACT to repeal 299.13; to amend 299.01 (intro. par.) and 299.14 (1); and to repeal and recreate 299.02, 299.11, 299.12 and 299.21 of the statutes, relating to venue, service of summons and jury procedure.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 299.01 (intro. par.) of the statutes is amended to read:

299.01 (intro. par.) Subject to the limitations of ss. 299.11, *and* 299.12 ~~and 299.13~~, the procedure in this chapter shall be used in county court in the following actions:

SECTION 2. 299.02 of the statutes is repealed and recreated to read:

299.02 COUNTERCLAIMS AND CROSS COMPLAINTS. (1) If a counterclaim or cross complaint is filed, which arises out of the transaction

or occurrence that is the subject matter of the plaintiff's claim and which is beyond the limitations of s. 299.01, the person filing the same shall pay the additional clerks' fee required by s. 59.42 (2) and an additional \$4 suit tax, and the entire matter shall be tried under Title XXV procedure.

(2) If a counterclaim or cross complaint is filed, which does not arise out of the same transaction or occurrence that is the subject matter of the plaintiff's claim and which is beyond the limitations of s. 299.01, the court shall dismiss the same and proceed under this chapter.

SECTION 3. 299.11 and 299.12 of the statutes are repealed and recreated to read:

299.11 VENUE (1) The venue of actions in which the procedure of ch. 299 is used is as follows:

(a) In tort actions and actions growing out of the negligent operation of a motor vehicle, the county where the cause of action arose, or where the defendant resides.

(b) In contract actions, the county where the defendant resides or is personally served.

(c) In actions for garnishment, any county in which the garnishee resides or, if not a resident of the state, is found; or, the county in which the summons in the principal action has issued or where the judgment therein is entered.

(d) In actions for unlawful detainer, replevin or to enforce a lien on personal property, the county in which real property is located or personal property is customarily kept.

(e) In actions for a forfeiture, the county in which the act occurred on which the action for forfeiture is based.

(f) In actions to recover a tax, the county in which the tax was levied.

(2) "County" means a county in this state.

(3) For foreign corporations, "residence" in this section refers to any county in which a corporation carries on substantial business activity; for domestic corporations "residence" refers to the county in which the corporation has its principal office.

(4) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any one of them.

(5) When, in any action under this chapter, it appears from the return of service of the summons or otherwise that the county in which the action is pending is not a proper place of trial of such action under this section, the court shall, on motion of a party or on its own motion, on the return day of the summons or prior to taking any other action on the case, determine the correctness of the venue. If venue is correct the case shall continue. If venue is not correct, the action shall be dismissed unless the defendant appears and waives the improper venue.

299.12 SERVICE OF SUMMONS. (1) Except as otherwise provided in this chapter, all provisions of Title XXV with respect to jurisdiction of the persons of defendants, the procedure of commencing civil actions, and the mode and manner of service of process, shall apply to actions and proceedings under this chapter.

(2) Personal service of process to obtain a personal judgment must be made within the state. Except as provided in s. 299.16 there shall be no service by publication.

(3) Service may be made by mail by leaving the original and necessary copies of the summons with the clerk of court, together with 50 cents for each defendant to cover the expense of mailing, except that a municipality need not advance the mailing fee, but shall be exempt from payment of such fee until the defendant pays costs pursuant to s. 299.25. The court may by rule require the use of registered or certified mail with return receipt requested, in which event the fee prescribed shall be \$1.50 for each

defendant. The clerk shall mail a copy to each defendant at his last known address as specified in the summons. Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons is returned unopened to the clerk prior to the return date. All mailing of summonses shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address. Service by mail to obtain a personal judgment shall be limited to the county where the action is commenced.

(4) Any county court may by rule require that service of summons in some or all actions be made as prescribed in subs. (1) and (2).

(5) Section 345.09 shall not apply to actions under this chapter.

SECTION 4. 299.13 of the statutes is repealed.

SECTION 5. 299.14 (1) of the statutes is amended to read:

299.14 (1) In any action, where service of summons is made by mailing, a defendant, at any time within 15 days of receiving actual knowledge of the pendency of the action or of the entry of judgment therein against him (if judgment has been entered), *but not more than one year after judgment was entered*, may, by written verified petition, on forms provided by the court, petition to set aside the judgment if one has been entered and for an opportunity to be heard upon the merits. Thereupon the court shall set the matter for hearing at a time that will give the parties reasonable opportunity to appear and, if judgment has been entered, shall stay all proceedings on the judgment. At the time of the hearing the questions raised by the petition shall first be heard and determined by the court. If the court grants the petition, the court shall proceed to try the matter upon the merits, or, if judgment has been entered, shall vacate the judgment and proceed to try the matter upon the merits. If the court denies the petition, it shall, if judgment has been entered, revoke its order staying proceedings thereon or, if a judgment has not been entered, it may, ~~in its discretion,~~ give the defendant opportunity to be heard upon the merits.

SECTION 6. 299.21 of the statutes is repealed and recreated to read:

299.21 TRIAL. (1) DETERMINATION OF METHOD OF TRIAL. In the absence of a jury demand, trial shall be to the court.

(2) TRIAL BY COURT. If trial is to the court, the case may, with the consent of all the parties, be tried on the return day.

(3) TRIAL BY JURY. (a) *Demand*. Any party may, upon payment of the fees specified in par. (b), file a written demand for trial by jury at the time of joining issue or within 20 days thereafter. Such demand shall specify whether trial is to be by a jury of 6 or 12. If no party demands a trial by a jury of 12, the right to trial by a jury of 12 is waived forever.

(b) *Fees*. The fee for a 12-man jury is \$24, plus additional suit tax of \$4 and additional clerk's fee of \$6, or a total of \$34. The fee for a 6-man jury is \$12.

(4) 12-MAN JURY; PROCEDURE. If there is a demand for a trial by a jury of 12, the parties shall proceed as if the action had originally been begun as a proceeding under Title XXV; the plaintiff shall, when no complaint has previously been served and filed, accordingly file and serve a written complaint within 20 days of the jury demand, and the court shall place the case on the trial calendar of the county court, or forthwith transfer the case to circuit court for trial.

(5) 6-MAN JURY; PROCEDURE. If a 6-man jury is demanded, in counties having a population of 500,000 or more, the jury shall be drawn from the circuit court jury panel and selected in accordance with the procedure set forth under Title XXV. In all other counties, such juries shall be se-

lected as provided in s. 957.054, except that any party may demand trial by a county-wide jury and that the clerk shall select, by lot, the names of sufficient persons qualified to serve as jurors as will provide to each party entitled to separate peremptory challenges the number of challenges specified in s. 957.054.

SECTION 7. STATUTORY CHANGE. (1) Wherever the reference to "299.13 (2)" appears in section 299.16 (1) and (2) of the statutes, "299.12 (1) and (2)" is substituted.

(2) Where the reference to "299.13 (1)" appears in section 299.25 (3) of the statutes, "299.12 (3)" is substituted.

Approved June 17, 1966.
