

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 3, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0485

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

RIPPLE MANAGEMENT,

Plaintiff-Respondent,

v.

JEANNE HANKINS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
ERVIN M. BRUNER, Reserve Judge. *Affirmed.*

VERGERONT, J.¹ Jeanne Hankins appeals from a judgment of eviction. It appears that she is contending that the trial court erred in ordering eviction because: (1) she paid her rent; (2) her landlord, Ripple Management, did not keep certain promises it made to her when she first moved in; and (3) Ripple Management discriminated against her because of her disabilities. We affirm the judgment.

¹ This appeal is decided by one judge pursuant to § 752.31(2)(a), STATS.

Ripple Management initiated an eviction action against Hankins, contending that it had properly served her with a non-renewal notice as provided by the lease and that she failed to vacate the premises at 910 Ann Street #203, Madison, Wisconsin. The matter was tried to the court. Hankins and the property manager for Ripple Management testified. The court found that the tenancy was properly terminated by the service on Hankins of a non-renewal notice dated September 7, 1995, stating that she must vacate the premises by November 30, 1995. The lease provided that the lease could be terminated upon sixty days' notice. The judgment of eviction was entered on February 6, 1996. The record contains no stay of the eviction.

Ripple Management contends that the appeal is moot because it is undisputed that Hankins vacated the premises on February 13, 1996. Hankins did not file a reply brief. A proposition asserted by a respondent on appeal and not disputed by the appellant's reply brief is taken as admitted. See *Schlieper v. DNR*, 188 Wis.2d 318, 322, 525 N.W.2d 99, 101 (Ct. App. 1994). We take as admitted the assertion that Hankins has vacated the premises and conclude on that basis that the appeal is moot. See *State ex rel. Watts v. Combined Community Servs. Bd.*, 122 Wis.2d 65, 71, 362 N.W.2d 104, 107 (1985) (case is moot where the determination sought cannot have any practical effect on a then-existing controversy).

Although the appeal is moot, we have nevertheless reviewed the record to determine whether there is any merit to Hankins's challenges to the judgment of eviction. We conclude there is not.

Because the lease permits termination of the lease upon sixty days' notice and requires no cause for such a termination, timely payment of rent is not a defense to this termination. The other two issues Hankins raises--promises not kept and discrimination based on disabilities--involve credibility determinations. The trial court heard the conflicting testimony of the property manager and Hankins on these issues, and the matter of credibility was argued to the court. Although the court did not make a finding on credibility, we may assume such a finding was implicitly made in favor of its decision. See *State v. Hubanks*, 173 Wis.2d 1, 27, 496 N.W.2d 96, 105 (Ct. App. 1992), cert. denied, 114 S. Ct. 99 (1993). We therefore assume the trial court rejected Hankins's testimony on these issues based on its assessment of her credibility. In a trial to the court, the trial court is the ultimate arbiter of the credibility of the witnesses.

Fidelity & Deposit Co. v. First Nat'l Bank, 98 Wis.2d 474, 485, 297 N.W.2d 46, 51 (Ct. App. 1980).²

Hankins also appears to object to Ripple Management's treatment of her since the judgment of eviction was entered. This court's independent review of the record is confined to those matters properly included in the record on appeal. See *State v. Aderhold*, 91 Wis.2d 306, 314, 284 N.W.2d 108, 112 (Ct. App. 1979).

By the Court. — Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

² In concluding that the trial court could properly reject Hankins's contentions of promises not kept and discrimination based on its assessment of the credibility of the witnesses, we do not decide that either is a legally-sufficient defense to the eviction action.