

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 12, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2016AP2441

Cir. Ct. No. 2015SC740

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

LISA HOFFMAN,

PLAINTIFF-APPELLANT,

V.

JAMES CURRAN AND LOUANN CURRAN A/K/A NAN CURRAN,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Jefferson County:
DAVID WAMBACH, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ Lisa Hoffman appeals pro se from a judgment awarding her landlords, James and LouAnn Curran, damages of \$1,001.65 for unpaid utility charges. On appeal, Hoffman argues that the circuit

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

court erred (1) in awarding the Currans damages for unpaid utility charges, and (2) in denying her motion to recuse the judge for bias. For the reasons set forth below, I reject Hoffman’s arguments and affirm.

I. BACKGROUND

¶2 Hoffman entered into an eighteen-month residential lease agreement with Cedarland, Inc., owned and operated by the Currans. At the end of the lease term, the Currans notified Hoffman that her \$800 security deposit would be applied to repair damages to the residence and that Hoffman owed \$686.57 for outstanding utility bills.

¶3 Hoffman filed a small claims action to recover her \$800 security deposit and the Currans counterclaimed for \$1,001.65 in additional damages. After a hearing before a court commissioner, the court assessed the total cost of repairs at \$1,667.75 and, after application of Hoffman’s \$800 security deposit, awarded the Currans damages of \$867.75. Hoffman filed a demand for trial before the circuit court.

¶4 Before the trial was scheduled, Hoffman requested a substitution of judge and the case was assigned to Judge Wambach. Hoffman then filed a motion asking Judge Wambach to recuse himself on the grounds that, in a different hearing on a different matter, Judge Wambach espoused “personal feelings and beliefs about the credibility of [Hoffman].” The circuit court denied the motion.

¶5 At the trial before the circuit court, Hoffman and the Currans disputed whether the obligation to pay water and trash utility charges was a part of the lease agreement. Hoffman and the Currans each presented a different version of what they believed to be the governing lease agreement.

¶6 James Curran testified that the lease version he presented was the governing agreement between the parties. James Curran's version was a photocopy of a standard lease form, with the amounts allocated for the water and trash utilities handwritten in blank boxes and containing the signatures of the parties. James Curran testified that he had emailed Hoffman this "red-lined" copy of the lease at her request. James Curran testified that Hoffman faxed this lease back with her signature and that the timestamp by the fax machine on this lease supported his testimony. Over Hoffman's objection, the circuit court admitted into evidence the photocopied signed lease containing the handwritten utility charges as an admissible duplicate under WIS. STAT. §§ 910.02 and 910.03.

¶7 Hoffman testified that the governing lease agreement that she signed did not contain the handwritten amounts allocated for the water and trash utility charges. The circuit court admitted into evidence Hoffman's copy of the lease without the handwritten utility amounts and without any signatures. Hoffman testified that she signed the lease and left it at the residence for the Currans to pick up. Hoffman testified that she received a version of the lease with handwritten utility amounts after she asked to add her adult child to the lease. Hoffman testified that she spoke with LouAnn Curran after receiving the new handwritten version and told LouAnn that she would not sign this new agreement. Hoffman testified that she never faxed anything to the Currans' office or signed the lease with the handwritten additions. Counsel for Hoffman suggested that the Currans' version of the lease agreement containing the utility amounts had been manipulated.

¶8 The circuit court made the following factual findings: James Curran's testimony was more "believable and of greater weight;" the photocopied lease with handwritten utility amounts was the governing lease agreement between

the parties; and the photocopied lease had not been manipulated. Based in large part on the “compelling” nature of the fax machine timestamp on the Currans’ photocopied lease, the court found that the Currans’ withholding of Hoffman’s security deposit had been proper in light of the outstanding utility charges. The court awarded the Currans \$1,001.65 in damages.

¶9 After trial, Hoffman filed a motion to reconsider, which the circuit court denied.

II. DISCUSSION

¶10 Hoffman argues that the circuit court erred (1) in awarding the Currans damages for unpaid utility charges, and (2) in denying her motion to recuse the judge for bias. I address and reject each argument in turn.²

A. *Award of Damages*

¶11 Hoffman argues that the circuit court erred in awarding damages to the Currans for unpaid utility charges for two reasons: (1) the circuit court improperly admitted the photocopied lease into evidence; and (2) the circuit court erroneously relied on the photocopied lease in its factual determinations.

² Hoffman did not file a reply brief, which could be taken as her concession that the Currans’ arguments in support of the circuit court’s judgment are correct. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant’s failure to respond in reply brief to an argument made in response brief may be taken as a concession). However, I proceed to address Hoffman’s arguments on the merits. *See Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (the court has discretion to allow some leniency for pro se appellants).

1. *The Admission of the Photocopied Lease*

¶12 Hoffman argues that the circuit court erred in admitting the photocopied lease into evidence because: (1) the Currans were obligated under WIS. STAT. § 910.02 and under the common law best evidence rule to produce the original lease containing the handwritten utility charges; and (2) the photocopied lease did not have probative value under WIS. STAT. § 799.209 because the authenticity of that lease “is genuinely questionable” under WIS. STAT. § 910.03.

¶13 The decision of what evidence to accept and in what form is committed to the circuit court’s discretion, and will only be disturbed if this court finds “an erroneous exercise of discretion.” *State v. Kandutsch*, 2011 WI 78, ¶23, 336 Wis. 2d 478, 799 N.W.2d 865. To sustain a discretionary ruling, we need only find that the circuit court “examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion.” *Id.* (quoted source omitted).

¶14 Small claims actions are governed by WIS. STAT. ch. 799. WISCONSIN STAT. § 799.209 provides for the admission of evidence in small claims actions and states in relevant part: “The proceedings shall not be governed by the common law or statutory rules of evidence The court or circuit court commissioner shall admit all other evidence having reasonable probative value, but may exclude irrelevant or repetitious evidence or arguments.” Evidence has probative value when it has a tendency to establish a consequential proposition tied to the substantive law governing the charge, claim, or defense. 7 Daniel D. Blinka, *Wisconsin Practice: Wisconsin Evidence*, § 401.1 (4th ed. 2017); *State v. Sullivan*, 216 Wis. 2d 768, 786, 576 N.W.2d 30 (1998) (in assessing probative value, courts must consider “whether the evidence has a tendency to make a

consequential fact more probable or less probable than it would be without the evidence”).

¶15 The plain language of WIS. STAT. § 799.209 unambiguously states that small claims proceedings, such as this one, are not governed by statutory or common law rules of evidence. Thus, I reject Hoffman’s argument that the Currans were obligated under WIS. STAT. § 910.02 or the common law best evidence rule to produce the original version of the photocopied lease.

¶16 Even if the rules of evidence applied, the circuit court properly exercised its discretion in admitting the photocopied lease under those rules. The court found that under WIS. STAT. § 910.03 the photocopied lease was admissible because, in light of James Curran’s testimony and the faxed timestamp, there was no genuine question as to the document’s authenticity. The court examined the relevant facts, applied a proper standard of law, and used a rational process to reach a reasonable result.

¶17 Finally, the photocopied lease has reasonable probative value. One of the critical issues in this case was whether the governing lease agreement between Hoffman and the Currans obligated Hoffman to pay for water and trash utility charges. The photocopied lease has probative value because it tends to prove or disprove a disputed consequential fact; whether Hoffman signed a lease agreement that contained an obligation to pay for water and trash utility charges. Hoffman’s argument to the contrary is really a challenge to the weight of the photocopied lease, which I address in the section that follows.

2. *Reliance on the Photocopied Lease*

¶18 Hoffman argues that the circuit court improperly relied on the photocopied lease in making its factual determination that Hoffman was obligated to pay for water and trash utility charges. A circuit court’s findings of fact based on the admitted evidence will not be overturned unless the finding was clearly erroneous. *See Royster-Clark, Inc. v. Olsen’s Mill, Inc.*, 2006 WI 46, ¶¶11-12, 290 Wis. 2d 264, 714 N.W.2d 530. “As part of our analysis, we will accept the circuit court’s determination as to weight and credibility.” *Jacobson v. American Tool Cos., Inc.*, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1988).

¶19 Hoffman argues that the photocopied lease “should not have been relied upon” by the circuit court and that “even if admitted,” this court “should not place any weight upon, the photocopy exhibit.” Hoffman disputes the authenticity of the photocopied lease because a horizontal line appears on top of the document which, Hoffman argues, indicates that “one sheet of paper [was] superimposed over another” while making a photocopy.

¶20 The circuit court found that the photocopied lease embodied the governing agreement between Hoffman and the Currans based on the testimony of James Curran, which the court found “to be more believable and of greater weight” than Hoffman’s testimony. It is the function of the circuit court, not this appellate court, to weigh the credibility of the witnesses, fairly resolve conflicts in their testimony, and draw reasonable inferences from basic facts to ultimate facts. *Rivera v. Eisenberg*, 95 Wis. 2d 384, 388, 290 N.W.2d 539 (Ct. App. 1980).

¶21 The circuit court acknowledged Hoffman’s argument about evidence manipulation, stating that “there are times in which [manipulation of evidence] happens, but I’m finding as a matter of fact this is not one of those times.” The

court based this determination on the “compelling” nature of the photocopied lease with the faxed timestamp, and found Hoffman’s claims of manipulation to be unsubstantiated in the record. Accordingly, I conclude that the court’s findings of fact relating to the weight of the photocopied lease were not clearly erroneous.

B. Hoffman’s Motion to Recuse

¶22 Hoffman challenges the circuit court’s denial of her motion to recuse because of bias. Hoffman argues that the court should have granted her motion to recuse “based upon a documented determination from another case ... that Lisa Hoffman herein was delusional and not credible.” However, Hoffman’s argument that Judge Wambach was biased is neither developed nor supported by citations to the record or to legal authority; therefore I do not consider it further. *See State v. McMorris*, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 (the appellate court may “choose not to consider ... arguments that lack proper citations to the record”); *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“Arguments unsupported by references to legal authority will not be considered.”).

III. CONCLUSION

¶23 For the reasons stated, the circuit court’s judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

