

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 1, 2007

David R. Schanker
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. 2006AP1384

Cir. Ct. No. 2005SC22143

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

PLAINTIFF-APPELLANT,

v.

ROSALIE SAMPLE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEAN W. DIMOTTO, Judge. *Reversed.*

¶1 Wedemeyer, P.J.¹. American Family Mutual Insurance Company appeals from a judgment entered ordering it to pay \$1602.67 to Rosalie Sample,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).(2003-04)

following an automobile accident between Sample and American Family's insured, David G. Foti. Because Sample failed to comply with the rules of appellate procedure, we summarily reverse the judgment.

BACKGROUND

¶2 This case involves an automobile accident, which occurred on February 24, 2004. Sample was driving her vehicle west on West Sheridan Avenue, and Foti was driving his vehicle south on North 73rd Street. The two vehicles collided at the intersection of the two streets.

¶3 American Family initiated the lawsuit to recover amounts it paid its insured for property damage and car rental expenses. Sample contested the claim. An evidentiary hearing was held before Milwaukee County Court Commissioner Grace Flynn on November 28, 2005. Flynn found in favor of American Family and awarded \$1054.70 plus court costs. Sample appealed Flynn's decision to the circuit court and filed a counterclaim for \$5000.

¶4 In April 2006, a circuit court trial was held. At the conclusion of the trial, the circuit court found Foti 80% liable and Sample 20% liable, and found Sample's damages to be \$2000. The circuit court then reduced that amount for Sample's 20% liability and entered judgment in the amount of \$1600. American Family now appeals.

DISCUSSION

¶5 American Family filed a brief in this matter, and argued the merits of why the circuit court erred in ruling that its insured was more liable for this accident than Sample. Namely, it argued that when two vehicles approach an intersection at "approximately" the same time, the rules of the road state that the

vehicle to the right (which was Foti) has the right of way. Based on this, American Family contends the trial court erred in finding as a matter of law that its insured was more liable than Sample.

¶6 This court declines to address the merits of this case, because Sample failed to file an appellate brief. On December 1, 2006, this court issued a notice to Sample that she was delinquent in filing her response brief as required by WIS. STAT. § 809.19.² She was warned that unless she filed a brief or requested an extension for filing within five days of the court's order, the appeal would be disposed of summarily and may be summarily reversed, pursuant to WIS. STAT. § 809.83(2). On December 13, 2006, this court received a request from Sample for a sixty-day extension, which was granted by an order dated December 19, 2006.

¶7 Three days before that extension deadline expired, Sample requested another extension, asking for an additional 120 days to file her response brief. By order dated January 29, 2007, this court granted an extension of forty-five days. The order also advised Sample that if she failed to file her brief within this time period, the appeal would be submitted without her response brief and may be summarily reversed pursuant to statute.

¶8 On March 30, 2007, this court issued an order stating that Sample failed to file her brief by March 8, 2007, and as a result this appeal would be submitted for decision without a response brief, and that the judgment could be summarily reversed.

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶9 The Rules of Appellate Procedure state that a respondent *shall* file a brief within a certain time period. *See* WIS. STAT. § 809.19(3). WISCONSIN STAT. § 809.83(2) provides the consequences for failing to comply with the appellate rules: “Failure of a person to comply with a court order or with a requirement of these rules, ...is grounds for dismissal of the appeal, summary reversal ... or other action as the court considers appropriate.”

¶10 Here, Sample failed to comply with the rules of appellate procedure despite repeated extensions granted by the court. This court afforded Sample with sufficient opportunity to correct the noncompliance to no avail. Accordingly, this court orders, as a consequence for Sample’s failure to comply with the rules of appellate procedure, that the judgment in this case be summarily reversed.

By the Court.—Judgment reversed.

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

