

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 11, 2002**

Cornelia G. Clark  
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. 02-0468  
STATE OF WISCONSIN**

**Cir. Ct. No. 01 SC 8833**

**IN COURT OF APPEALS  
DISTRICT I**

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**SUKHBINDER SINGH,**

**PLAINTIFF-APPELLANT,**

**v.**

**METRO AREA PROPERTIES, INC.,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
KITTY K. BRENNAN, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.<sup>1</sup> Sukhbinder Singh appeals from a trial court order denying his request for free transcripts pursuant to *State ex rel. Girouard v. Circuit Court*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990). Singh claims the trial court's finding that there are no meritorious issues for him to appeal is clearly

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

erroneous. Because the trial court's findings are not clearly erroneous, this court affirms.

## I. BACKGROUND

¶2 This appeal arises from a landlord-tenant dispute. On March 5, 2001, Metro Area Properties, Inc., removed Singh's personal property from an apartment he had been renting. He filed a summons and complaint to retrieve the property. The trial court ruled in his favor and awarded him \$400, plus costs. Singh was unhappy with the award, and wanted to appeal the trial court's decision to this court.

¶3 Singh made a request to receive free transcripts for the appeal on the basis that he was indigent. The trial court conducted a *Girouard* hearing and found: (1) that Singh was indigent; but (2) that his case lacked arguable merit. The trial court entered an order denying Singh's request for free transcripts for the appeal. Singh appeals from that order.

## II. DISCUSSION

¶4 The law is that an indigent litigant is entitled to a waiver of fees for payment of a transcript if the litigant can state a claim with arguable merit. *Id.* at 159. Singh claims that the trial court erred when it found that his claim lacked arguable merit. He argues the following issues have merit: (1) whether the trial court's credibility determination that his landlord had not lost or damaged his property was correct; (2) whether the trial court failed to award him all the statutory costs to which he was entitled; (3) whether the trial court should have awarded him compensation for mental and emotional distress; (4) whether the trial court should have awarded him compensation in the form of punitive damages;

(5) whether the trial court should have awarded him compensation for his claim that the landlord invaded his privacy; and (6) whether he should be awarded frivolous costs on the landlord's counterclaim. Based on the foregoing, Singh asks this court to reverse the trial court's order. This court declines his invitation.

¶5 This issue involves a mixed question of fact and law. This court will not reverse the trial court's findings unless they are clearly erroneous. WIS. STAT. § 805.17(2) (1999-2000).<sup>2</sup> Whether a claim has arguable merit, however, is a question of law, which this court reviews independently. *State ex rel. Hansen v. Circuit Court*, 181 Wis. 2d 993, 998, 513 N.W.2d 139 (Ct. App. 1994). When the record does not contain a transcript pertinent to an issue, this court assumes that every fact essential to sustain the trial court's decision regarding that issue is supported by the record. *Suburban State Bank v. Squires*, 145 Wis. 2d 445, 451, 427 N.W.2d 393 (Ct. App. 1988).

¶6 First, Singh claims there is merit to his claim that the landlord lost or damaged his property. This court rejects his contention. The trial court made a credibility ruling on this issue and specifically found that Singh's assertions were incredible. This court is not in any position to overturn the trial court's credibility ruling. Moreover, the ruling was based on the testimony at trial, a transcript of which is not contained in the record. Therefore, this court assumes the transcript supports the trial court's ruling.

¶7 Second, Singh argues there is merit to his claim that the trial court failed to award him appropriate costs. This court rejects his contention. The

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

record reflects that Singh was awarded \$400, *plus costs*. It was his responsibility to follow subsequent procedures to ensure that a judgment was entered for the statutorily permitted costs.

¶8 Third, Singh argues there is merit to his claim for mental and emotional distress caused by the landlord. This court rejects his contention. The trial court found that Singh did not make such a request at trial and is not entitled to it. This court presumes that the trial transcript supports the trial court's findings.

¶9 Fourth, Singh argues there is merit to his claim seeking punitive damages and invasion of privacy. This court rejects his contention. The trial court found that Singh did not make such a request at trial and is not entitled to recover punitive damages. This court presumes that the trial transcript supports the trial court's findings.

¶10 Fifth, Singh argues there is merit to his claim that the landlord's counterclaim was frivolous. This court rejects his contention. Singh argues that because the landlord's counterclaim was dismissed, it must have been frivolous. This is insufficient to support a claim of frivolousness. The burden of proving frivolousness falls upon the party making the assertion. *Kelly v. Clark*, 192 Wis. 2d 633, 659, 531 N.W.2d 455 (Ct. App. 1995). “[W]hen a frivolous action claim is made, all doubts are resolved in favor of finding the claim nonfrivolous[,]” *id.* at 649 (citation omitted), and the party bearing the burden must overcome this presumption, *id.* at 659. Indeed, our supreme court pointed out: “A claim is not frivolous merely because there is a failure of proof.... Nor is a claim frivolous merely because it was later shown to be incorrect ... or because it lost on the merits.” *Stern v. Thompson & Coates, Ltd.*, 185 Wis. 2d 220, 243-44, 517

N.W.2d 658 (1994). Singh failed to make the requisite showing in order to raise an arguably meritorious claim on this issue.

¶11 Accordingly, this court concludes that the trial court did not err when it ruled that Singh lacked any arguably meritorious issues for appeal.

*By the Court.*—Order affirmed.

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

