

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 4, 2011

A. John Voelker
Acting 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 Nos. 2009AP2020
2010AP160
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2008CV14229
2007CV15881**

**IN COURT OF APPEALS
DISTRICT I**

RAY PERINE,

PLAINTIFF-RESPONDENT,

v.

THOMAS WILD,

DEFENDANT-APPELLANT,

J. MANUEL RANEDA AND THE LAW OFFICES OF J. MANUEL RANEDA, LLC,

GARNISHEES-APPELLANTS.

RAY PERINE,

PLAINTIFF-RESPONDENT-CROSS-APPELLANT,

v.

THOMAS WILD,

DEFENDANT-THIRD-PARTY

PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

v.

MELISSA STANKE, JAMES R. MILLER, VIRGINIA FUCHS, ONE WORLD REALTY, LLC, GINA KONONOV, ROBBINS & LLOYD MORTGAGE CORPORATION AND SECURITY LENDING GROUP, LLC,

THIRD-PARTY DEFENDANTS.

APPEAL from orders of the circuit court for Milwaukee County: DENNIS P. MORONEY and THOMAS R. COOPER, Judges. *Affirmed in part; dismissed in part and summarily reversed in part subject to the directives in the Raz v. Brown order within this opinion.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 FINE, J. We *sua sponte* consolidate these two appeals. See WIS. STAT. RULE 809.10(3). In 2009AP2020, Thomas Wild, J. Manuel Raneda, Esq., and The Law Offices of J. Manuel Raneda, LLC, appeal the Honorable Dennis P. Moroney’s June of 2009 order in a garnishment proceeding requiring “that by June 18, 2009, [Raneda and his Law Offices] shall pay to the Clerk of Circuit Court the sum of \$8,700.00 ... for disbursement to [Ray Perine].” In 2010AP160, Wild appeals the Honorable Thomas R. Cooper’s October of 2009 order that: (1) denied Wild’s motion for WIS. STAT. RULE 802.05 costs; (2) required “Raneda to turn over to ... Perine the sum of \$8,700”; and (3) required that “Raneda shall pay to ... Ray Perine the reasonable attorneys’ fees and costs ... incurred since September 3, 2008” in the amount of “\$24,130.35.” Perine cross-appealed in 2010AP160, challenging that part of the circuit court’s order granting Raneda’s “motion ... for a stay of execution on the fee award [so that] no interest will run on the fee award while an appeal remains pending.”

¶2 On the appeals: (1) we hold that our disposition of the 2010AP160 appeal moots the garnishment appeal; (2) we summarily dismiss that part of the 2010AP160 appeal relating to Raneda because he did not personally appeal from that order, and therefore we do not have jurisdiction on the issues he attempts to assert; and (3) we affirm that part of the order in the 2010AP160 appeal relating to Wild because the circuit court did not erroneously exercise its discretion in denying Wild’s WIS. STAT. RULE 802.05 motion for costs.

¶3 On the cross-appeal, we issue a *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 625, 660 N.W.2d 647, 652, order within the text of this opinion, the effect of which will summarily reverse that part of the order cross-appealed from unless the cross-respondent files a response brief within the time ordered in this opinion.

I.

¶4 These appeals arise from an eviction dispute between Wild and Perine. Perine bought Wild’s home so that it would not go into foreclosure and then rented the home back to Wild. When Wild stopped paying rent in late 2007, Perine filed an eviction action. Wild counterclaimed, alleging that he had been defrauded. On January 16, 2008, during a court hearing, Raneda (who was Wild’s lawyer in all of these proceedings), suggested to the court that Wild could make his rental payments into Raneda’s “escrow account” until the matter was resolved. The circuit court approved Raneda’s suggestion and ordered Wild to “deposit into a trust account all past due rents and to continue making monthly deposit into the trust account until the matter was fully resolved.”

¶5 On January 31, 2008, Raneda filed an affidavit averring that:

- he had deposited “two Cashier’s Checks for a total amount of \$5,100 ... received from Thomas Wild, payable to the ‘Client Trust Account of Attorney J.M. Raneda.’ I have deposited these funds into my IOLTA trust account, where they will remain until further order of the court.”
- “Wild provided these monies in accordance with my understanding of the court’s ruling of January 16, 2008.”
- “Wild has stated that he will continue to make monthly payments in the amount of \$1,500 payable to my client trust account, until further order from the Court.”
- “I will retain the funds that I receive from Mr. Wild in my client trust account until further order from the court.”

¶6 Wild deposited a total of \$8,700 into Raneda’s client trust account before he stopped payments. Unbeknownst to the circuit court or to Perine, in February and May of 2008, Raneda withdrew the \$8,700 in his client trust account to pay himself attorney’s fees.

¶7 In June of 2008, the circuit court dismissed Wild’s claims as a sanction for failing to make the payments required by court order and evicted Wild. It also ordered him to pay restitution to Perine—specifically requiring “that the escrowed funds be turned over [to Perine].” We affirmed those orders in November of 2009. See *Perine v. Wild*, Nos. 2008AP1916 & 2008AP2331, unpublished slip op. (WI App. Nov. 3, 2009).

¶8 At the September 3, 2008, hearing on Wild’s motion for relief pending appeal, the circuit court (Judge Cooper) ordered Raneda to “keep holding” the escrowed money:

The money’s to be held. I am telling Raneda to keep holding it. I don’t think I’m prepared to order it released to you. You start a collection proceeding for that based upon my order that Raneda holds it.

....

I am ordering Raneda to hold it and [Perine] start collection proceedings.

....

Your client has turned money over to you. You are to hold it, Mr. Raneda, pending further action by a court proceeding[].

¶9 Consistent with the circuit court’s direction, Perine started a garnishment action to recover the \$8,700 from the escrow account. During a scheduling conference in the garnishment action, Raneda told the court that he had previously removed the escrowed money. The circuit court (Judge Moroney) found that the “moneys should have remained on deposit” and ordered Raneda to pay the \$8,700 to Perine. Raneda paid the \$8,700 but appealed the order, claiming the garnishment was invalid and the money should be returned.

¶10 Meanwhile, in response to discovering that Raneda did not hold the \$8,700 in escrow, Perine filed a motion asking the circuit court (Judge Cooper) to find Raneda in contempt for violating circuit court orders to hold the money. Judge Cooper found that Raneda’s conduct “certainly creeps up to” the contempt line, but did not cross it. Judge Cooper found that Raneda:

[H]ad a duty to disclose on September 3rd that the money was not there. If that disclosure would have been made at that time, I’m clear in my mind that I would have

taken action and I would have not said that this was a matter for collection;

....

[Perine’s lawyer] had to commence a garnishment action and run up extra costs to his client.

So I am not finding you in contempt. I am, however, finding that your failure to disclose that the money was not there created extra expense for [Perine] that you are personally responsible for.

¶11 Judge Cooper ordered Raneda to pay Perine the \$8,700 and “all fees incurred since September 3,” which were found to be \$24,130.35.

A. Appeals

¶12 Because our disposition in the contempt appeal makes the garnishment appeal moot, we discuss the contempt appeal first.

1. Contempt Appeal

a. *Raneda’s Appeal*

¶13 As we have seen, Raneda attempts to appeal that part of the circuit court’s order that makes him pay sanctions. The notice of appeal in the contempt case, signed by Raneda, however, says only: “Thomas Wild appeals to the Court of Appeals.” Raneda did not file a notice of appeal in his own name or on his own behalf. Because Raneda did not do so, we do not have jurisdiction to review his challenge to the sanctions imposed, and we dismiss that part of the appeal. *See Ford Motor Credit Co. v. Mills*, 142 Wis. 2d 215, 217–221, 418 N.W.2d 14, 15–16 (Ct. App. 1987) (where the *lawyer*, not the client, is ordered to pay costs and fees, the *lawyer* must file his or her *own* notice of appeal or include his or her *own* name in the notice of appeal filed on behalf of the client).

¶14 In an attempt to circumvent jurisdiction, Raneda asks us to amend the client’s notice of appeal by adding the words “and his attorney,” after Wild’s name. We cannot do so. *See ibid.* (“The attorney’s failure to file a notice of appeal within the time limits for appealing, *see* sec. 808.04, Stats., would deprive us of jurisdiction of an appeal he would file now. This jurisdictional defect cannot be corrected by amending appellant’s notice of appeal to substitute his attorney as the appellant.”). Accordingly, we dismiss that part of the 2010AP160 appeal relating to Raneda.

b. Wild’s Appeal

¶15 Wild argues that the circuit court should have granted his WIS. STAT. RULE 802.05 motion, asserting that Perine’s contempt motion was frivolous. We do not agree. We review a circuit court’s decision denying a RULE 802.05 sanctions motion under a deferential standard. *Donohoo v. Action Wisconsin, Inc.*, 2008 WI 56, ¶34, 309 Wis. 2d 704, 720, 750 N.W.2d 739, 747. “A discretionary decision by the circuit court will be sustained where the court ‘examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *Ibid.* (quoted source omitted).

¶16 To support his claim, Wild argues that: “Perine and his Attorneys Knew or Should Have Known that There Was No Basis to Request \$25,130.35 in Attorney’s Fees and Costs.” By making this argument, Wild, in essence, attacks the sanctions Raneda was ordered to pay (but did not appeal) and which we dismissed for lack of jurisdiction. Perine responds to Wild’s argument by pointing out that: (1) Wild does not cite any authority to support his argument; (2) “Every clause of [Wild’s claim above] is wrong or misleading”; and (3) “Perine was

clearly the prevailing party in the contempt proceeding” and thus entitled to the fees awarded. Wild has not shown that the circuit court erroneously exercised its discretion. Indeed, Wild has not supported his argument with legal authority or a developed argument. *See State v. Shaffer*, 96 Wis. 2d 531, 545–546, 292 N.W.2d 370, 378 (Ct. App. 1980) (Arguments unsupported by references to “legal authority specifically supporting the relevant propositions” will not be considered.); *Vesely v. Security First National Bank of Sheboygan Trust Dep’t*, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593, 598 n.5 (Ct. App. 1985) (we do not address arguments that are not developed).

2. Garnishment Appeal

¶17 Wild claims the circuit court’s garnishment order was invalid because his trust account did not have any of Perine’s money at the time this action was filed. This claim is moot. *See State v. Walker*, 2008 WI 34, ¶14, 308 Wis. 2d 666, 677, 747 N.W.2d 673, 678 (an appeal is moot when “our decision will not affect the underlying controversy”). Appellate courts generally will not consider moot issues. *See State ex rel. Riesch v. Schwarz*, 2005 WI 11, ¶12, 278 Wis. 2d 24, 30, 692 N.W.2d 219, 222. Although “there are exceptions to the rule of dismissal for mootness,” such as where “the issue has great public importance, a statute’s constitutionality is involved, or a decision is needed to guide the [circuit] courts,” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 688, 608 N.W.2d 425, 427 (citation omitted), that is not the case here.

¶18 As we have seen, Raneda did not personally appeal Judge Cooper’s order obligating him to pay Perine the \$8,700. Thus, that order stands and Raneda is bound by it. The garnishment appeal involves the same \$8,700. Therefore,

irrespective of whether the garnishment order was valid, Raneda is still obligated to pay that money to Perine. As such, “our decision will not affect the underlying controversy,” making the appeal from the garnishment order moot. *See Walker*, 2009 WI 34, ¶14, 308 Wis. 2d 677, 747 N.W.2d at 678.

B. Cross-Appeal

¶19 In his cross-appeal, Perine challenges that part of Judge Cooper’s order granting Raneda’s “motion ... for a stay of execution on the fee award [so that] no interest will run on the fee award while an appeal remains pending.” Wild, however, did not file any brief in response to the cross-appeal. The “[f]ailure to file a respondent’s brief tacitly concedes that the trial court erred,” *State ex rel. Blackdeer v. Levis Township*, 176 Wis. 2d 252, 260, 500 N.W.2d 339, 341 (Ct. App. 1993) (quoted source omitted), and allows this court to assume that the respondent concedes the issues raised by the appellant, *Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 108–109, 279 N.W.2d 493, 499. We will not act as both advocate and judge, *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992), by independently developing a litigant’s argument, *Gardner v. Gardner*, 190 Wis. 2d 216, 239–240 n.3, 527 N.W.2d 701, 709 n.3 (Ct. App. 1994).

¶20 If a respondent fails to brief an appeal, we may exercise our discretion and summarily reverse the circuit court, provided we determine that the respondent has abandoned the appeal or has acted egregiously or in bad faith. *Raz*, 2003 WI 29, ¶18, 260 Wis. 2d at 625, 660 N.W.2d at 653; *see also Blackdeer*, 176 Wis. 2d at 259–260, 500 N.W.2d at 341 (summary reversal is appropriate sanction for a respondent’s violation of briefing requirements).

¶21 We conclude that a responsive brief is necessary to the resolution of this cross-appeal. The failure to file such a brief constitutes an abandonment of the right to contest the appeal. Therefore, pursuant to *Raz*, 2003 WI 29, ¶36, 260 Wis. 2d at 631, 660 N.W.2d at 655, we are ordering the filing of a cross-respondent's brief.

¶22 IT IS ORDERED that Raneda shall file a cross-respondent's brief within 30 days of the date of this opinion. If a cross-respondent's brief is not filed within that time period, that part of Judge Cooper's order staying execution on the fee award is hereby summarily reversed. *See* WIS. STAT. RULE 809.83(2). If Raneda timely files a cross-respondent's brief, then Perine will have 15 days to file a reply, consistent with WIS. STAT. RULE 809.19(6)(d).

By the Court.—Orders affirmed in part; summarily dismissed in part, and summarily reversed in part subject to the directives in the *Raz v. Brown* order in this opinion.

Publication in the official reports is not recommended.