

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 19, 2005**

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. 04-0494  
STATE OF WISCONSIN**

**Cir. Ct. No. 01SC032016**

**IN COURT OF APPEALS  
DISTRICT I**

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**COMMUNITY FINANCIAL SERVICES CENTER CORPORATION,**

**PLAINTIFF-RESPONDENT,**

**v.**

**CARL RUCKER,  
D/B/A RUCKER DETECTIVE AGENCY,**

**DEFENDANT-APPELLANT.**

**KENNETH TRAMMEL,**

**DEFENDANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

¶1 CURLEY, J.<sup>1</sup> Carl Rucker, d/b/a Rucker Detective Agency, appeals the trial court's order, entered after a *Girouard* hearing,<sup>2</sup> denying Rucker's request to waive the payment for the transcripts of the underlying small claims action. This court affirms.

### I. BACKGROUND.

¶2 The underlying matter of this appeal started as a small claims collection case. Community Financial Services Center Corporation (Community Financial) sued Rucker and another over a \$164 bad check written by Rucker that was returned marked "NSF." Ultimately, the trial court granted Community Financial's summary judgment motion and entered a judgment of over \$1000 against Rucker. Rucker appealed the trial court's judgment against him. Community Financial responded and, in its brief, sought frivolous costs pursuant to WIS. STAT. RULE 809.25(3). This court affirmed the summary judgment and granted Community Financial's request for frivolous costs. As a consequence, this court remanded the matter to the trial court for the assessment of appropriate and reasonable costs and fees.

¶3 In response to this court's directive, the trial court held a hearing and entered an order determining that the additional frivolous costs, fees and attorney's fees amounted to over \$2000. Following this development, Rucker indicated that

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

All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

<sup>2</sup> *State ex rel. Girouard v. Circuit Court for Jackson County*, 155 Wis. 2d 148, 454 N.W. 2d 792 (1990).

he intended to appeal the trial court's determination, but first he petitioned the trial court seeking the waiver of the costs of the transcripts. As a result, the trial court held a hearing, following the two-prong procedure outlined in *Girouard*, *see id.* at 159, that dictates that before waiving the costs of transcripts needed for appeal purposes, the court should determine whether the petitioning party is indigent and then determine whether the petitioning party has an arguably meritorious claim on appeal. The trial court found that Rucker did not have an arguably meritorious issue on appeal and, as a result, refused to waive the transcript fees:

THE CASE WAS REMANDED TO THIS COURT FOR A DETERMINATION OF REASONABLE ATTORNEY'S FEES ON THE APPEAL AND COSTS. THIS COURT DID HOLD A HEARING ON DECEMBER 1, 2003 AND MADE THE DETERMINATION OF REASONABLE ATTORNEY'S FEES ON APPEAL. THIS WOULD BE THE ONLY ISSUE THAT MR. RUCKER COULD APPEAL. IT IS APPARENT TO THIS COURT THAT HE WISHES TO USE THIS APPEAL AS A JUMPING OFF POINT TO RELITIGATE THE ISSUES ALREADY DECIDED ON THE PREVIOUS APPEAL. IT IS CLEAR FROM THE GIROUARD DECISION THAT "A MERITLESS ASSERTION BY A PUTATIVE APPELLANT WILL NOT FURNISH A FOUNDATION FOR A JUDICIALLY ORDERED WAIVER OF FEES." GIROUARD, PAGE 159.

BASED ON THE FOREGOING IT IS HEREBY ORDERED THAT THE DEFENDANT'S REQUEST FOR WAIVER O[F] TRANSCRIPT FEES BE AND HEREBY IS DENIED.

Rucker now appeals.<sup>3</sup>

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<sup>3</sup> Rucker attempts to raise other issues not properly before this court. They will not be addressed.

## II. ANALYSIS.

¶4 As indicated above, an indigent defendant may be entitled to waiver of the cost of the transcripts if he or she has an arguably meritorious claim on appeal. See *Girouard*, 155 Wis. 2d at 159. However, “a meritless assertion by a putative appellant will not furnish a foundation for a judicially ordered waiver of fees.” *Id.* As such, whether a claim has arguable merit is a question of law that this court reviews *de novo*. *State ex rel. Hansen v. Circuit Court for Dane County*, 181 Wis. 2d 993, 998, 513 N.W.2d 139 (Ct. App. 1994).

¶5 Rucker’s entire argument regarding this issue consists of the following:

See trial court file cover already in the hands of appeals court. The denial of free transcripts by the trial court was contrary to the requirements of the Statutory of Appellate Procedure which dictate that the lower court must provide appellant with free transcripts transcripts [sic].

His argument concerning the sole issue properly before this court—whether the trial court properly denied Rucker’s request to waive payment of the transcript fees—consists of his assertion that the “lower court must provide appellant with free transcripts.” He is incorrect. Under the holding in *Girouard*, the trial court can waive the payment of the transcript fees *only if* the party is actually indigent *and* establishes that he or she has an arguably meritorious appellate issue. Here, the trial court stated in its oral decision:

I listened very closely to Mr. Rucker as he recited the reasons for desiring to ... take this to appeal. He feels that he has been wronged by the check cashing business. He wants to make an example of this. He wants to seek to set things right.

MR. RUCKER: To clear my name also.

THE COURT: To clear your name. Well, Mr. Rucker is not going to be able to do that on the appeal of this case in its present posture. An appeal which attempts to do that is an appeal which would not in this court's estimation have any merit. So that if Mr. Rucker chooses to pursue an appeal on that basis, he certainly is free to do so, but he has not shown himself to be entitled to have the public finance the costs of his transcripts to do so.

This court agrees. This court previously determined that Rucker's earlier appeal was frivolous. Indeed, Rucker admitted that he is not solely challenging the trial court's determination of frivolous costs and fees; rather, he is appealing on principle.

I am not fighting Mr. Wynn. I have never prevailed in any courtroom in Milwaukee County on anything. I don't fight merely to win. I fight because I want to demonstrate a shameful condition, number one, so anybody throughout history can look at any record that I have down here and you can see that there has never been any justice, no democracy or anything like that.

Unfortunately for Rucker, the matters which he now seeks to appeal have been resolved against him. The sole question is whether he has a meritorious claim regarding the determination of frivolous fees and costs. He has not provided this court with an arguably meritorious argument stating why the trial court's decision on the frivolous fees and costs was incorrect. Consequently, this court affirms the trial court.

*By the Court.*—Order affirmed.

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

