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**DISTRICT IV**

February 22, 2024

To:

Hon. Patricia A. Barrett  
Circuit Court Judge  
Electronic Notice

Carrie Wastlick  
Clerk of Circuit Court  
Sauk County Courthouse  
Electronic Notice

Sophie Crispin  
Electronic Notice

Mitch  
Electronic Notice

Riley McGee  
83 Pilgrim Dr.  
Wisconsin Dells, WI 53965

North Freedom Apts. LLC  
208 E. Grand St., Ste. 1  
Chilton, WI 53014

You are hereby notified that the Court has entered the following opinion and order:

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2023AP631

North Freedom Apts. v. Riley McGee (L.C. # 2023SC251)

Before Blanchard, J.<sup>1</sup>

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Constance Garcia-Estrada appeals a judgment evicting both her and Riley McGee from one apartment unit owned by North Freedom Apartments, LLC (“North Freedom”) and granting a money judgment in the amount of \$4,304.50 jointly against Garcia-Estrada and McGee in North Freedom’s favor. On this court’s own motion, this appeal is disposed of summarily

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

pursuant to WIS. STAT. RULE 809.21(1), under the authority provided in WIS. STAT. RULE 809.83(2).<sup>2</sup>

In October 2021, Garcia-Estrada and McGee jointly executed a month-to-month lease for one apartment unit owned by North Freedom. In December 2022, Garcia-Estrada provided notice to North Freedom that she intended to vacate the unit by the end of the next month. According to Garcia-Estrada, the notice terminated her tenancy as of January 31, 2023, and she vacated the unit before that date. McGee remained in the unit.

In February 2023, North Freedom commenced this eviction action, seeking to evict both Garcia-Estrada and McGee from the unit based on nonpayment of rent and utilities dating back to December 1, 2022. After a hearing on March 30, 2023, the circuit court determined that Garcia-Estrada did not properly terminate her tenancy, and the court entered a judgment for eviction and a money judgment with each judgment jointly against Garcia-Estrada and McGee. The money judgment includes unpaid rent and utility charges accrued through March 2023, late fees on those arrears, and statutory costs.

Garcia-Estrada filed a notice of appeal and a timely appellant's brief seeking reversal. Garcia-Estrada contends that she properly terminated her tenancy and vacated the unit before North Freedom brought this eviction action, and therefore the eviction judgment against her should be reversed, as well as the money judgment against her insofar as it requires her to pay

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<sup>2</sup> WISCONSIN STAT. RULE 809.21(1) provides that, "upon its own motion or upon the motion of a party," this court "may dispose of an appeal summarily." Further, WIS. STAT. RULE 809.83(2) provides in pertinent part that a party's failure "to comply with a court order or with a requirement of these rules, other than the timely filing of a notice of appeal or cross-appeal, does not affect the jurisdiction of the court over the appeal but is grounds for ... summary reversal ...."

arrears that accrued after she terminated the tenancy. North Freedom did not timely file a respondent's brief, nor did it provide any explanation for not doing so.

On January 8, 2024, this court sent a notice of delinquent brief to the parties, noting that no respondent's brief had been filed as required under WIS. STAT. RULES 809.19 and 809.82. This court ordered that, "unless within five days of the date of this order, the Brief of Respondent(s) is served and filed or an extension is requested under [WIS. STAT. RULE] 809.14, with good cause shown why the brief has not been timely filed, the judgment or order appealed from will be disposed of summarily and may be summarily reversed under [RULE] 809.83(2)."

North Freedom failed to file a brief or otherwise respond to the delinquency order. On January 29, 2024, this court issued an order requiring the clerk to submit the appeal to this court to determine whether the appeal may be decided based solely on Garcia-Estrada's brief and the record.

On February 6, 2024, having still not received filings of any kind from North Freedom, this court issued an order advising the parties that if North Freedom did not file a brief "within five days of the date of this order," the court "will summarily reverse the judgment and order appealed from, as to only appellant Constance Garcia Estrada." The February 6 order noted the following:

The "[f]ailure to file a respondent's brief tacitly concedes that the trial court erred," *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993), and allows this court to assume that the respondent concedes the issues raised by the appellant. See *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979) ....

When a respondent fails to brief an appeal, this court may exercise its discretion and summarily reverse the circuit court,

provided the court determines that the respondent has abandoned the appeal or has acted egregiously or in bad faith. *See Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647; *see also Blackdeer*, 176 Wis. 2d at 259-60 (summary reversal is appropriate sanction for a respondent’s violation of briefing requirements).

Despite this court’s repeated notices and warnings, North Freedom has not filed a response brief as of the date of this order, nor has it requested an extension of time to do so. Based on this history, I conclude that North Freedom has abandoned this appeal. *See Raz*, 260 Wis. 2d 614, ¶18 (“the court of appeals may not grant summary reversal of a circuit court order on appeal as a sanction without a finding of bad faith, egregious conduct, or a *litigant’s abandonment of the appeal*” (emphasis added)); *id.*, ¶36 (when “the court of appeals elects to impose the drastic sanction of summary reversal for failure to file a response brief, it may do so only after unequivocally ordering the filing of a brief and clearly stating the consequences for failure to comply”).<sup>3</sup>

Accordingly, I summarily reverse the eviction judgment solely as to Garcia-Estrada. As to the \$4,304.50 money judgment against her and McGee, Garcia-Estrada does not specify exactly what dollar amount of that judgment she challenges in this appeal. She contends that she should not be liable for arrears that accrued after she terminated the tenancy on January 31, 2023. The total money judgment of \$4,304.50 includes \$2,425 in arrears that accrued after that date. Therefore, I summarily reverse the money judgment with directions that the circuit court enter new money judgments as set forth below, which will account for the fact that Garcia-Estrada does not dispute that she owes arrears for the period before she terminated the tenancy.

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<sup>3</sup> This court has received no filings of any kind from defendant Riley McGee. I assume that he does not oppose the relief that Garcia-Estrada seeks in this appeal.

Pursuant to WIS. STAT. RULE 809.83(2), the judgment of eviction against both Garcia-Estrada and McGee and the money judgment against both of them are summarily reversed. The cause is remanded to the circuit court with directions to vacate these two judgments and to enter a judgment of eviction solely against McGee, a money judgment of \$2,425 solely against McGee, and a money judgment of \$1,879.50 jointly against Garcia-Estrada and McGee.

Therefore,

IT IS ORDERED that the judgment of eviction is summarily reversed pursuant to WIS. STAT. RULE 809.83(2).

IT IS FURTHER ORDERED that the money judgment is reversed and remanded to the circuit court with directions.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*