COURT OF APPEALS
DECISION
DATED AND FILED

June 26, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2634 **Cir. Ct. No. 2011SC30149**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

SAMEX 1, LLC, ALEX SANTANOVSKY AND VANYSHTGOK SEMYON,

PLAINTIFFS-RESPONDENTS,

V.

BRUCE BUSCHMAN AND DOROTHY BUSCHMAN,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Dismissed*.

¶1 FINE, J. Bruce and Dorothy Buschman appeal the "eviction judgment" entered by the circuit court. They were periodic tenants and were properly served with a twenty-eight-day notice to vacate. The Buschmans contend that the circuit court improperly prevented them from asserting at the eviction hearing that the eviction was an unlawful retaliation for them having made, as

phrased by their brief on this appeal, "requests for accommodation of their disabilities" because they had not formally filed a complaint before they were served with the eviction papers, even though Mr. Buschman also testified that he had also complained to the City of Milwaukee about defects in the premises, which is also a protected tenant-activity for which a landlord may not retaliate. *See* WIS. STAT. § 704.45(1) (unlawful retaliatory eviction).

¶2 In their responsive brief, Samex 1 LLC, Alex Santanovsky, and Vanyshtgok Semyon, the landlords, assert that the Buschmans have "vacated the premises," and, therefore, the eviction action is moot. (Uppercasing omitted.) The Buschmans have not filed a reply brief to contest the landlords' assertion. Accordingly, although we have some difficulty with the trial court's summary rejection of the Buschmans' complaints, the eviction appeal is moot. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (matter not refuted deemed admitted).[1]

By the Court.—Appeal dismissed.

This opinion will not be published.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

[1] If this appeal were not moot, our resolution of the appeal would have been difficult, if not impossible, because the transcript is not very helpful; there are more than two-dozen instances of "(Indiscernible)" or "(indiscernible)" in but a twenty-one page transcript. Additionally, one of the sworn witnesses is merely identified as "A FEMALE." (Bolding omitted.) The circuit court is responsible for the court reporter assigned to its court, and must ensure that this does not happen again. *See* WIS. STAT. § 752.02 ("The court of appeals has supervisory authority over all actions and proceedings in all courts except the supreme court.") The circuit court must ensure that whatever electronic recording is made is sufficient for the purposes of an appeal. *See* ***ibid.*** A copy of this opinion shall be sent to the Honorable Jeffrey A. Kremers, Chief Judge, Circuit Court, Milwaukee County.