

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 20, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals, *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0145

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

JASON K. CROWELL
and DANA R. CROWELL,

Plaintiffs-Respondents,

v.

STEPHEN KAO,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Racine county:
DENNIS J. FLYNN, Judge. *Affirmed.*

ANDERSON, P.J. We affirm the trial court's decision that Stephen Kao intentionally misrepresented his knowledge of a water leak in a house he sold to Jason K. and Dana R. Crowell and that he is accountable for the costs of repairs. We do not address the merits of the appeal because we are affirming the trial court on the grounds that Kao has failed to follow the most

basic rules of appellate practice.¹ We also dismiss the Crowells' request that they be awarded costs and reasonable attorney's fees on the basis that this is a frivolous appeal.

Kao defended himself in the trial court and proceeds with this appeal pro se. The Wisconsin Supreme Court requires pro se litigants to satisfy all of the procedural requirements that govern appeals. *Waushara County v. Graf*, 166 Wis.2d 442, 452, 480 N.W.2d 16, 20, cert. denied, 113 S. Ct. 269 (1992). In explaining why pro se litigants are not granted leniency with regard to procedural rules or substantive law, the supreme court wrote: [Pro se litigants] are bound by the same rules that apply to attorneys on appeal. The right to self-representation is "[not] a license not to comply with relevant rules of procedural and substantive law." While some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law. [Citations omitted.]

Id.

¹ If we were to address the merits, we would adopt the learned trial court's decision. The court's bench decision is supported by substantial and credible evidence that Kao was informed about the water leak by the Racine Water and Wastewater Utilities more than one year before he sold the house to the Crowells, that he intentionally failed to disclose his knowledge and that the Crowells relied upon his representations to their detriment. See § 805.17(2), STATS. In the process of finding the controlling facts, the trial court exercised its discretion in weighing the evidence and determining the credibility of the witnesses. See *Rucker v. DILHR*, 101 Wis.2d 285, 290, 304 N.W.2d 169, 172-73 (Ct. App. 1981). The trial court applied the appropriate law to the issues raised by the evidence and reached suitable conclusions of law.

Kao's initial brief and reply brief are inadequate in every respect. The briefs fail to fulfill the basic requirements established for an appellant's brief in RULE 809.19, STATS. Kao's main brief does not have a table of contents, a table of cases, statutes and other authorities, RULE 809.19(1)(a); a statement of the issue presented or a synopsis of the trial court's ruling, RULE 809.19(1)(b); a statement on oral argument or publication, RULE 809.19(1)(c); a coherent statement of the case, RULE 809.19(1)(d); a rational legal argument supported by citation to pertinent parts of the record and legal authority, RULE 809.19(1)(e); and Kao's appendix does not include the findings or opinions of the trial court, RULE 809.19(2).

The rules of appellate procedure were not developed to make it impossible for a pro se appellant to represent himself or herself; they are not an insurmountable barrier erected to frustrate citizens. The rules of appellate procedure were developed to compel an appellant to focus an appellate court's attention on the issues of fact and law that the appellant contends were mistakenly decided by the trial court. Compliance with the rules is required because a high-volume intermediate appellate court is an error-correcting court that cannot take time either to sift the record for facts that might support an appellant's contentions, *Keplin v. Hardware Mut. Casualty Co.*, 24 Wis.2d 319, 324, 129 N.W.2d 321, 323 (1964); or develop legal argument on behalf of the appellant. *State v. Gulrud*, 140 Wis.2d 721, 730, 412 N.W.2d 139, 142-43 (Ct. App. 1987).

Kao has failed to make a good faith effort to comply with the rules of appellate procedure and his noncompliance has left us in the dark as to what

factual findings and conclusions of law he believes were erroneously made. We affirm the decision of the trial court because we are at a loss to know what factual findings made by the trial court are a misuse of discretion because they are not supported by substantial and credible evidence. In addition, Kao's failure to develop any legal argument accompanied by citation to relevant authority impedes our ability to consider whether the trial court reached the correct conclusions of law.

We decline the Crowells' request that we find this to be a frivolous appeal under RULE 809.25(3), STATS., and award them reasonable costs and attorney's fees. Because we have not reached the merits of the appeal, it is not possible to determine whether Kao knew or should have known that the appeal was without any reasonable basis in the law. *See* RULE 809.25(3)(c)2. And, the record is devoid of any substantial or credible evidence that Kao has maintained this action for the purpose of harassing the Crowells. *See* RULE 809.25(3)(c)1. This action was commenced by the Crowells who sought a de novo review in the trial court after the court commissioner dismissed their original pro se small claims action. Upon this state of the record, we could not hold with any confidence, that Kao has maintained this action for the purpose of harassing the Crowells.

By the Court. – Judgment affirmed.

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