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DISTRICT I

February 4, 2025

To:

Hon. Thomas J. McAdams
Circuit Court Judge
Electronic Notice

Michael F. Torphy
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals Processing
Division
Electronic Notice

Janeese Ray

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

2023AP776

Petitioner v. Janeese Ray (L.C. # 2023CV741)

Before White, C.J., Donald, P.J., and Colón, J.

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).

Janeese Ray, *pro se*, appeals from an order of the circuit court that imposed a two-year harassment injunction against her. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ The order is summarily reversed as a sanction against Petitioner, *see* WIS. STAT. RULE 809.83(2), and the cause is remanded with directions to vacate the injunction.

In a petition for a temporary restraining order, Petitioner alleged that on January 25, 2023, Ray followed Petitioner in a vehicle as Petitioner was driving. When Petitioner asked Ray

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

why she was following her, Ray allegedly “looked at [Petitioner] and she took her gun out and shot it in the air.” As Petitioner called the police, Ray supposedly went down the street to get someone else. When Ray returned, “the other person told [Petitioner] to get out of [her] car so they could beat [her] ass.” Petitioner also described a pattern of Ray’s behavior “going on since 2020.”

A court commissioner entered a temporary restraining order on January 30, 2023, but dismissed the petition after a hearing on February 9, 2023, concluding Petitioner had failed to meet the burden of proof. Petitioner sought *de novo* review from the circuit court, which heard testimony from Petitioner and Ray on April 12, 2023.² The circuit court found there was “reasonable cause to believe” Ray had “engaged in harassment with intent to harass or intimidate” Petitioner and entered an injunction directing Ray to cease or avoid harassing Petitioner, avoid Petitioner’s residence and/or any premises temporarily occupied by Petitioner, avoid contact that harasses or intimidates Petitioner, and avoid contacting Petitioner.

Ray appeals, challenging the sufficiency of the evidence. Among other things, she alleges that Petitioner sought the injunction in retaliation for Ray successfully obtaining a similar injunction against Petitioner, and that the evidence Petitioner presented to the circuit court was “only mimicking what she saw in [Ray’s] previous injunction against her.”

Ray filed her appellant’s brief and appendix on September 7, 2023, resulting in a statutory deadline of October 9, 2023, for Petitioner’s responsive brief. *See* WIS. STAT. RULE 809.19(3). Petitioner did not file a brief by that deadline. By order dated October 20, 2023, we

² No transcript of the hearing was obtained for the appeal.

directed Petitioner to file the brief within five days or request an extension for good cause. Petitioner requested an extension, which we granted through November 29, 2023.

Petitioner then submitted a document via facsimile on November 28, 2023. By order dated November 30, 2023, we declined to accept the document as a respondent's brief; briefs cannot be filed by facsimile and there were several other deficiencies. We extended the Petitioner's briefing deadline to December 29, 2023. On December 22, 2023, Petitioner requested a further filing extension, which we granted through March 28, 2024.

On March 26, 2024, Attorney Michael F. Torphy filed a notice of appearance on Petitioner's behalf and requested a filing extension. We granted an extension through April 29, 2024, but the filing deadline was not met. By order dated May 9, 2024, we informed Petitioner, through Attorney Torphy, that the respondent's brief was again delinquent. On our own motion, we extended the filing deadline through May 23, 2024, and cautioned Petitioner and counsel that failure to file a respondent's brief puts the appeal at risk of summary reversal. There was no response to the May 9, 2024 order.

By order dated June 3, 2024, we expanded our warning about the consequences for failing to file a respondent's brief. We explained that 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) (citation omitted), and allows this court to assume that the respondent concedes the issues raised by the appellant, *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). Thus, 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 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).

Our June 3rd order also acknowledged, however, that “other judicial interests may not be served by summarily reversing an order on procedural grounds.” Therefore, the matter was ordered submitted to the court without a respondent’s brief. We cautioned Petitioner that if the court determined that a respondent’s brief was necessary, we would issue a further order directing Petitioner to file a respondent’s brief or face summary reversal.

In an order dated November 29, 2024, we concluded that a responsive brief was indeed “necessary to the resolution of this appeal.” Pursuant to the supreme court’s directive in *Raz*, 260 Wis. 2d 614, ¶36, we stated that failure to file the respondent’s brief constituted abandonment of the appeal, and we directed Petitioner to file her respondent’s brief within fifteen days or “this court will summarily reverse the judgment or order appealed from.” *See id.*; *see also* WIS. STAT. RULE 809.83(2).

To date, no respondent’s brief has been filed. Therefore,

IT IS ORDERED that the circuit court’s order appealed from is summarily reversed as a sanction for Petitioner’s failure to file the respondent’s brief, and the matter is remanded to the circuit court with directions to vacate the injunction against Ray.

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

Samuel A. Christensen
Clerk of Court of Appeals