**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

July 8, 1997

**NOTICE**

**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, STATS.**

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

**No. 95-2725**

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

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**RICKY MANNERY,**

**PLAINTIFF-APPELLANT,**

**V.**

**BEST LEASING CO., INC.,**

**DEFENDANT-RESPONDENT,**

**BEST GROUP, INC., CHRYSLER CORPORATION AND GOTHAM INSURANCE CO.,**

**DEFENDANTS.**

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APPEAL from an order of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Although this case's trial and appellate history is complex, we apply Occam's Razor and treat this matter in its present posture as the parties have treated it in their briefs on appeal—we discuss only Ricky Mannery's appeal from the order dismissing his complaint against Best Leasing Co., Inc. *See* ***Reiman Assocs., Inc. v. R/A Advertising, Inc.***, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (issues not briefed are deemed abandoned).[1]

Mannery commenced this suit seeking recovery for damages he allegedly sustained when he fell through a roof while working on an asbestos-removal project. An entity apparently identified with Best Leasing was the general contractor on the job and hired Mannery's employer. After much procedural wrangling and shadow-boxing, Mannery filed an amended summons and complaint against, among others, Best Leasing. Best Leasing contended that it was served with only a summons, and moved for an order dismissing it from the case. The trial court heard testimony from the process server and from the Best Leasing officer who was allegedly served, and granted Best Leasing's motion on two grounds. First, the trial court found that Mannery's process server had not served Best Leasing or its officers with the amended complaint. Second, the trial court also concluded that the amended summons and complaint naming Best Leasing was filed after expiration of the appropriate statute of limitations. We affirm on the first ground. Accordingly, we need not address Mannery's arguments that the relation-back provision of the Wisconsin Statutes, RULE 802.09(3), STATS., applies. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed); ***State v. Blalock***, 150

[1] Some of the issues were narrowed by this court's order of April 11, 1996.

Wis.2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989) ("cases should be decided on the narrowest possible ground").

The process server, a former Detroit police officer working for a process-serving company in Detroit, testified that he went to the offices of Best Leasing in Detroit, and personally served two of the company's officers with the amended summons and complaint. He also testified that he had executed the affidavits-of-service in blank, permitting the company's secretary to fill in the blanks based on his notations in the file. The officer of Best Leasing, however, testified that he and the other officer "served" received only a summons from the process server, and that the amended complaint was not given to them. The trial court credited the testimony of Best Leasing's officer, and found in its oral decision "that no complaint was attached to the summons that was served on the defendant Best Leasing."

RULE 801.02(3), STATS., with exceptions not here relevant, requires that authenticated copies of the summons and complaint "be served together." Moreover, although RULE 801.09(2), STATS., appears to permit a summons to direct that the defendant demand a copy of the complaint if one is not served with the summons, the summons served on the officers of Best Leasing did not so direct. Rather, the summons, consistent with RULE 801.02(3), indicated that the complaint was "attached." The trial court found as a fact that the complaint was not served upon Best Leasing.

A trial court's findings of fact may not be set aside on appeal unless they are "clearly erroneous." RULE 805.17(2), STATS. Although the trial court's oral decision mistakenly characterizes one of the exhibits, an affidavit executed by the process server memorializing his version of the events, as what it termed the

process server's "spurious affidavits" of service, we cannot, in light of the flat-out testimony by the Best Leasing officer that he and the other officer were served only with a summons, conclude that the trial court's finding consistent with that testimony was "clearly erroneous."[2] Accordingly, we must affirm.

Best Leasing's brief does not contain record references in its statement of facts. This is a violation of the rules. *See* RULES 809.19(1)(d) & 809.19(3)(a), STATS. Accordingly, Best Leasing will not be permitted its costs on this appeal. *See* RULE 809.83(2), STATS.

*By the Court*.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[2] We recognize that whether service was made is the dispositive issue, not whether the affidavits of service were proper. *See* ***Gehr v. Sheboygan***, 81 Wis.2d 117, 122, 260 N.W.2d 30, 33 (1977). Nevertheless, under the "clearly erroneous" standard, we are bound by the trial court's assessment of the witnesses' credibility and its belief in the testimony of the Best Leasing officer that neither he nor his associate was served with a complaint.