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DISTRICT II

October 9, 2013

To:

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Circuit Court Judge
Waukesha County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2013AP572

State of Wisconsin ex rel. Aman Singh v. David Schwarz
(L.C. #2012CV664)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Aman Singh appeals from a circuit court order denying his motion to reconsider its previous order which had denied his motion to reopen his case for certiorari review. 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 (2011-12).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

In 2011, the department of corrections revoked Singh's probation. Singh petitioned for certiorari review in the circuit court. He initially failed to pay the required filing fee. After belatedly doing so, the court informed Singh that he needed to serve an authenticated copy of his petition on the respondent. Singh did not do this. Accordingly, the court dismissed his petition on July 10, 2012, for failure to diligently prosecute.

Several months later, Singh filed a motion to reopen the case so that he could proceed with his petition. Following a hearing on Singh's motion, the circuit court denied it in a written order on November 20, 2012.

Singh subsequently filed a motion to reconsider the circuit court's decision. Following another hearing on Singh's motion, the circuit court denied it in a written order on March 4, 2013. This appeal follows.²

On appeal, Singh contends that the circuit court erred in denying his motion to reconsider.³ We review a circuit court's decision on a motion for reconsideration for an erroneous exercise of discretion. *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853.

Here, the circuit court's written order indicates that it denied Singh's motion for reconsideration "for the reasons as stated on the record." Unfortunately, we are unable to discern

² Singh filed his notice of appeal on March 7, 2013. Thus his appeal is timely only as to the March 4, 2013 order. *See* WIS. STAT. § 808.04(1). Although the respondent submits that the November 20, 2012 order is also before us due to the tolling provision of WIS. STAT. § 805.17(3), that provision does not apply, as there was no court trial on Singh's motion to reopen the case.

³ Although Singh makes other arguments as well, we do not address any that are beyond the scope of this limited appeal.

what those reasons are, as the record does not include a transcript of the hearing on Singh's motion.

As the appellant, Singh was responsible for ensuring that the record is complete on appeal. *State ex rel. Darby v. Litscher*, 2002 WI App 258, ¶5 n.4, 258 Wis. 2d 270, 653 N.W.2d 160. When the record is incomplete, we must assume that the missing material supports the circuit court's ruling. *Id.* Given the state of the record in this case, we cannot say that the circuit court erroneously exercised its discretion in denying Singh's motion for reconsideration.⁴

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

⁴ After this case was submitted on briefs, Singh moved for release pending appeal. That motion is now denied as moot.