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**DISTRICT II**

March 8, 2017

To:

Hon. Charles H. Constantine  
Circuit Court Judge  
Racine County Courthouse  
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Racine, WI 53403

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Clerk of Circuit Court  
Racine County Courthouse  
730 Wisconsin Ave.  
Racine, WI 53403

John Doe  
7501 W. Wind Lake Rd., Unit 7  
Wind Lake, WI 53185-2277

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

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2016AP723

Otter Creek Farms LLC v. John Doe (L.C. #2011SC5624,  
2014CV940)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

John Doe appeals the dismissal of his petition for waiver of fees and costs under WIS. STAT. § 814.29 (2015-16).<sup>1</sup> Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. § 809.21. We summarily affirm.

Underlying all of Doe's arguments is an eviction action (No. 2011SC5624) in which the circuit court granted a judgment of eviction against Doe. Doe did not appeal. The court later granted a judgment on damages as a result of the eviction. Doe challenges the damages

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

judgment of October 3, 2014,<sup>2</sup> and Doe petitioned the court for a waiver of fees and costs, requesting that Racine County pay for the cost of transcripts. The circuit court denied Doe's request for the county to pay. Doe appealed, and we reversed, finding that Doe's petition "taken at face value, is sufficient evidence by itself to establish poverty." We further concluded, citing *State ex rel. Rilla v. Circuit Court for Dodge Cty.*, 76 Wis. 2d 429, 433, 251 N.W.2d 476 (1977), that if on remand the circuit court found that Doe's appeal was not "arguably meritorious," the court could deny the fee waiver. See also *State ex rel. Girouard v. Circuit Court for Jackson Cty.*, 155 Wis. 2d 148, 157, 159, 454 N.W.2d 792 (1990) (requiring a finding of both indigency and arguable merit for a fee waiver under WIS. STAT. § 814.29).

Upon remand, the circuit court denied Doe's request, finding that "there is no merit to the appeal filed by [Doe]" and there is no basis to order the county to pay the costs of the transcripts. The court concluded that Doe's appeal was not meritorious given that Doe "intentionally" failed to comply with the court's scheduling order directing Doe to submit evidence of damages prior to trial. As Doe presented no evidence in support of his damages claim, his appeal was not arguably meritorious.

We agree with the circuit court's analysis, and we accordingly adopt and incorporate by reference the circuit court's decision of March 10, 2016, as our decision. We summarily affirm the decision of the circuit court on the grounds that Doe's appeal does not present arguably

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<sup>2</sup> Doe's appeal in case No. 2014AP2464 was held in abeyance first pending resolution of case No. 2015AP67 and then pending resolution of this case.

meritorious issues, and Doe's request for waiver of fees and costs pursuant to WIS. STAT. § 814.29 is denied.

Upon the foregoing reasons,

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*