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DISTRICT II

May 17, 2017

To:

Hon. Thomas J. Gritton
Circuit Court Judge
Winnebago County Courthouse
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Oshkosh, WI 54903-2808

Peter J. Ludwig
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Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

LST Wolf Express, Inc.
W7874 Church Rd.
Van Dyne, WI 54979

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

2016AP1438

LST Wolf Express, Inc. v. Timothy B. Sievert (L.C.#2015CV1026)

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

LST Wolf Express, Inc. prevailed in the circuit court and obtained a money judgment of \$25,000 against Timothy B. Sievert. Sievert appealed to this court. LST Wolf failed to file its respondent's brief or request an extension of time to do so. 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 (2015-16).¹

We notified LST Wolf on December 1, 2016, that its brief was delinquent. LST Wolf did not reply or ask for an extension. On December 20, 2016, we again provided LST Wolf with an opportunity to file a brief and further warned LST Wolf that if it did not file a brief by

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

January 9, 2017, the appeal would be submitted to this court without a respondent's brief. The "[f]ailure to file a respondent's brief tacitly concedes that the trial court erred," *State ex rel. Blackdeer v. Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (citation omitted), and allows us to assume that the respondent concedes the issues raised by the appellant, *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). We warned LST Wolf that if it failed to file a brief, we may exercise our discretion and summarily reverse the circuit court provided we determine that the respondent has abandoned the appeal, acted egregiously, or acted in bad faith. *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647. Under WIS. STAT. RULE 809.83(2), "[w]e may summarily reverse a judgment or order if the respondent fails to file a brief." *Levis*, 176 Wis. 2d at 260 (citation omitted).

We conclude LST Wolf has abandoned the appeal and tacitly concedes Sievert's argument of error. LST Wolf failed to respond to our December 1, 2016 notice of delinquent brief, which provided LST Wolf an opportunity to submit a brief. LST Wolf also failed to respond to our December 20, 2016 order allowing the respondent's brief to be filed by January 9, 2017. Accordingly, we summarily reverse the circuit court's grant of a money judgment to LST Wolf and remand to vacate the money judgment and dismiss LST Wolf's complaint with prejudice.

IT IS ORDERED that the judgment of the circuit court is summarily reversed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals