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**DISTRICT IV**

December 26, 2018

To:

Hon. John W. Markson  
Circuit Court Judge  
Dane County Courthouse, Br. 1  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2054

Jeffrey T. Ziegler v. Eugene N. Theis (L.C. # 2015CV3143)

Before Lundsten, P.J., Sherman, and Blanchard, JJ.

**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).**

Jeffrey Ziegler, pro se, appeals a circuit court judgment awarding damages to Ziegler in Ziegler's action against Eugene Theis for Theis's alleged negligence in damaging Ziegler's vehicle. 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(1) (2015-16).<sup>1</sup> We affirm. Additionally, we grant Theis's motion for sanctions against Ziegler for bringing a

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

frivolous appeal. We remand for the circuit court to determine the amount of costs and reasonable attorney fees to be awarded Theis under WIS. STAT. RULE 809.25(3).

Ziegler brought this action against Theis, alleging negligence and other claims. The circuit court dismissed the other claims but allowed the negligence claim to proceed. However, as a sanction for Ziegler's abuse of process in a small claims action alleging the same negligence claim, the circuit court denied Ziegler a jury trial and instead held a bench trial. The court awarded Ziegler damages but in a lower amount than Ziegler sought.

On appeal, Ziegler argues that the circuit court erroneously exercised its discretion in sanctioning Ziegler for abuse of process and in failing to consider certain evidence in awarding damages. We reject these arguments along with related arguments that Ziegler makes because Ziegler has not provided a transcript of the bench trial where the circuit court imposed the sanction and determined damages. "It is the appellant's responsibility to ensure completion of the appellate record and 'when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling.'" *State v. McAttee*, 2001 WI App 262, ¶15 n.1, 248 Wis. 2d 865, 637 N.W.2d 774 (quoted source omitted); see also *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979) (when an appeal is brought on an incomplete record, scope of review is necessarily confined to the record before the court).

We turn to Theis's motion for sanctions against Ziegler for bringing a frivolous appeal. For the following reasons, we grant the motion.

An appeal is frivolous if "[t]he party ... knew, or should have known, that the appeal ... was without any reasonable basis in law or equity and could not be supported by a good faith

argument for an extension, modification or reversal of existing law.” See WIS. STAT. RULE 809.25(3)(c)2. Here, Ziegler has not sought an extension, modification, or reversal of existing law, and we see no possible equitable basis for Ziegler’s appeal. Thus, the question is whether Ziegler knew or should have known that his appeal has no reasonable basis in law.

We conclude that Ziegler knew or should have known that, without a transcript, his appeal has no reasonable basis in law. This court informed Ziegler in a previous order that, “[i]f the appeal is decided without the benefit of the transcripts, Ziegler is warned that the lack of a transcript limits review to those parts of the record available to the appellate court.” In that same order, we also warned Ziegler that, “[w]hen transcripts are missing from the record, we assume that they support affirming the trial court’s determinations.” Thus, Ziegler knew or should have known the risks of proceeding without a transcript, and the issues he now presents on appeal plainly require a transcript for appellate review.

Ziegler contends that a transcript is not necessary, and he makes several supporting assertions. Those assertions are themselves frivolous. For example, Ziegler asserts that we could hold oral argument if we conclude that additional fact finding is necessary. However, it is well established that this court is not a fact-finding court. See, e.g., **Rand v. Rand**, 2010 WI App 98, ¶23, 327 Wis. 2d 778, 787 N.W.2d 445; **Harwick v. Black**, 217 Wis. 2d 691, 703, 580 N.W.2d 354 (Ct. App. 1998).

Therefore,

IT IS ORDERED that the judgment is summarily affirmed and the cause is remanded pursuant to WIS. STAT. RULE 809.21(1). We remand for the circuit court to determine the

amount of costs and reasonable attorney fees to be awarded This under WIS. STAT. RULE 809.25(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*