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DISTRICT III

August 13, 2019

To:

Hon. William F. Kussel, Jr.
Circuit Court Judge
311 N. Main St.
Shawano, WI 54166

Sue Krueger
Clerk of Circuit Court
Shawano County Courthouse
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Shawano, WI 54166

LyndaLou G. Hoffman
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Shawano School District
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Shawano, WI 54166

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

2018AP895 LyndaLou G. Hoffman v. Cherie Schwartz
(L. C. No. 2018SC74)

Before Stark, P.J.[1]

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).

Cherie Schwartz, pro se, appeals a small claims judgment requiring her to pay LyndaLou Hoffman $2455, plus $50 in interest. Based upon our review of Schwartz's brief[2] and the appellate record, we conclude this appeal is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

[2] Hoffman did not file a response brief.

Hoffman filed a small claims summons and complaint against Schwartz in January 2018. In the complaint, Hoffman alleged that she and Schwartz had been friends for years and had made "yearly trips to music fests" with the agreement that Hoffman would use her credit card to pay for their travel expenses as they were incurred, and Schwartz would later reimburse Hoffman for her share of the expenses. Hoffman alleged there were "absolutely no problems" with this arrangement until the summer of 2015, when Schwartz failed to reimburse Hoffman for $1231.42 in travel expenses. Hoffman further alleged that Schwartz failed to reimburse her for $1548.73 in travel expenses during the year 2016. Hoffman alleged that Schwartz paid her $125 in May 2017, leaving a balance owing of $2655.15.

Schwartz did not file a written answer to Hoffman's complaint. In March 2018, the circuit court held a bench trial on Hoffman's claim, at which both Hoffman and Schwartz appeared pro se. Before taking any testimony, the court engaged in a discussion with Hoffman and Schwartz "to try to narrow the issue" for trial. In response to the court's questions, Schwartz conceded that she and Hoffman had an oral agreement that Schwartz would reimburse Hoffman for Schwartz's share of the travel expenses. Schwartz asserted, however, that she owed Hoffman only $2276, rather than $2655.15. Hoffman, in turn, produced receipts that she alleged corroborated her request for $2655.15. In response, Schwartz contended that the receipts in her possession supported her calculation of the amount owing.

The circuit court then went off the record so that the clerk could "do some quick math" and add up the amounts reflected on the receipts provided by the parties. After going back on the record, the court explained:

> While we were off record we looked at the receipts. The clerk tried to calculate what's considered receipts number two and she

> was unable to do it because it was too complicated so the Court used the calculations of both the defendant and the plaintiff.
>
> When the Court added up all the receipts which was agreed to and those in number two it came to $2,126. When I did it for the numbers that were offered by the plaintiff it came to $2,305.
>
> Both parties agree there was $150.00 that was owed yet for some other matter.
>
> I calculated that in and came up with $2,276 calculations as the defendant agreed and $2,455 as the plaintiff agreed.

The court confirmed that both Hoffman and Schwartz agreed with these calculations. The court then addressed Schwartz, stating, "I understand you are agreeing to pay $2,455[,] correct?" Schwartz responded, "Sure."

Hoffman then confirmed that she was willing to accept $2455 from Schwartz in satisfaction of her claim. However, she raised an issue regarding interest, stating:

> [B]ecause it's gone this far … I've had to pay interest on this money since this—these trips and that counts up rather quickly …. I feel it would be fair if there was a fair amount of interest that the Court would see feasible for the length of time then times the amount of money.

The circuit court attempted to pinpoint the amount of interest that Hoffman was claiming and then went off the record in order to calculate that amount. Once on the record again, the court stated, "I've looked at this [and] if the people are agreeable I will split the interest down the middle to $50.00[,] is that agreeable?" Both Hoffman and Schwartz agreed that the court could order Schwartz to pay $50 in interest. The court then reiterated, "Plaintiff has the burden of proof so the Court is going to split the difference down to $50.00. It's going to be added onto the $2,455[,] and that was agreeable to the parties?" Again, both Hoffman and Schwartz agreed to

those amounts. The court subsequently issued a written judgment requiring Schwartz to pay Hoffman $2455, plus $50 in interest.

On appeal, Schwartz argues the circuit court erred by ordering her to pay Hoffman $2455. She argues the receipts that Hoffman provided to the court "were never cross referenced with the receipts" in Schwartz's possession. She appears to believe that the documents the court reviewed contained duplicate receipts. She also asserts that she should have been given a chance to review the receipts Hoffman provided to the court and that the court should have marked the receipts as exhibits and entered them into evidence. In addition, Schwartz contends that Hoffman did not provide any documentation supporting her claim for interest and that the parties had "no verbal or written agreement" regarding the payment of interest on any amount Schwartz owed Hoffman.

Each of these arguments fails because Schwartz and Hoffman agreed on the record during the bench trial that Schwartz would pay Hoffman $2455, plus $50 in interest, in satisfaction of Hoffman's claim. An agreement made by the parties in court is binding. *See* WIS. STAT. § 807.05; *see also* ***Schmidt v. Schmidt***, 40 Wis. 2d 649, 653-54, 162 N.W.2d 618 (1968) ("[O]ral stipulations made in open court during trial, taken down by the reporter and acted upon by the parties and the court are valid and binding."). Alternatively, Schwartz waived her objections to the amounts awarded by the circuit court by affirmatively agreeing to pay those amounts rather than disputing them, in which case the court would have taken testimony and developed a record regarding the amounts owed. *See* ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995) ("We will not … blindside trial courts with reversals based on theories which did not originate in their forum."). Under these circumstances, Schwartz is bound by her agreement to pay Hoffman $2455, plus $50 in interest, and she cannot challenge those

amounts on appeal based on the circuit court's alleged procedural errors or any perceived lack of factual support for the amounts awarded.[3]

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals

[3] As noted above, Hoffman failed to file a response brief. Although we could summarily reverse on that basis, *see* WIS. STAT. RULE 809.83(2), we are not required to do so. Instead, whether to grant summary reversal as a sanction for a party's failure to file a brief is a decision left to this court's discretion. *See* ***Raz v. Brown***, 2003 WI 29, ¶14, 260 Wis. 2d 614, 660 N.W.2d 647. Here, we decline to summarily reverse based on Hoffman's failure to file a response brief because the record clearly demonstrates that Schwartz agreed in open court to pay Hoffman $2455, plus $50 in interest.

In addition, we observe that Schwartz's appellate brief violates multiple rules of appellate procedure. For instance, Schwartz's brief does not contain any citations to the appellate record, as required by WIS. STAT. RULE 809.19(1)(d) and (e). Schwartz also violated RULE 809.19(1)(e) by failing to include any citations to legal authority in the argument section of her brief. While this court may grant some leeway to a pro se litigant, he or she must still comply with relevant rules of procedural and substantive law. *See* ***Waushara Cty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).