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DISTRICT III

January 7, 2020

To:

Hon. Sarah Mae Harless
Circuit Court Judge
Eau Claire County Courthouse
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Eau Claire, WI 54703

Susan Schaffer
Clerk of Circuit Court
Eau Claire County Courthouse
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Paul F. McQuillan
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You are hereby notified that the Court has entered the following opinion and order:

2018AP2314

Tammy J. Jarecki v. Paul F. McQuillan (L. C. No. 2018SC1064)

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).

Tammy Jarecki, pro se, appeals a small claims judgment entered against Paul McQuillan. Jarecki argues that the circuit court erred by failing to award her all money damages to which she

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.

is entitled following a bench trial. Based upon our review of Jarecki's brief² and the appellate record, we conclude this appeal is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

Jarecki and McQuillan were involved in an on-and-off relationship, and they lived together at various points in that relationship, resulting in the commingling of their possessions.³ After their relationship ended and the parties no longer lived together, Jarecki requested and obtained a harassment injunction against McQuillan.

Before and after the harassment injunction's entry, but after their separation, Jarecki had problems retrieving her personal property from McQuillan. At times, McQuillan threatened to throw away all of Jarecki's items in his possession. There were instances where McQuillan, without Jarecki's knowledge or permission, brought some of Jarecki's possessions to her apartment complex and left them unsecured in the complex's common areas. When Jarecki attempted to have McQuillan return her dehumidifier, he conditioned its return on her meeting him for coffee. McQuillan also failed to return Jarecki's mountain bike even after she sought the assistance of local law enforcement.

² McQuillan failed to submit timely his response brief after this court, on our own motion, extended the deadline for him to file his brief. We could have summarily reversed the judgment based on his failure to timely submit his response brief. *See Raz v. Brown*, 2003 WI 29, ¶36, 260 Wis. 2d 614, 660 N.W.2d 647. Instead, we address the merits of Jarecki's appeal without consideration of McQuillan's delinquent response brief.

³ We rely upon some of the factual allegations in Jarecki's brief-in-chief solely to provide background for this appeal because the record does not contain the circuit court's factual findings providing the basis for the judgment.

In May 2018, Jarecki initiated the instant small claims proceeding to recover her personal property in McQuillan's possession and monies she claimed McQuillan owed her. McQuillan answered and counterclaimed. After the parties unsuccessfully participated in mediation, the circuit court held a bench trial at which both parties appeared pro se. There is no transcript of the trial in the appellate record. The court's written decision and order: (1) required McQuillan pay Jarecki twenty dollars for her mountain bike; (2) permitted Jarecki to retrieve, with the assistance of law enforcement, her possessions from McQuillan's residence at an agreed-upon date and time; and (3) denied the remainder of Jarecki's claims. The court's decision also noted that McQuillan voluntarily withdrew his counterclaim. Jarecki now appeals.

Jarecki argues the circuit court erred by denying her additional money damages. In support of her claim, Jarecki includes a number of handwritten pages in her appendix listing various personal property items she asserts have not been returned to her and which she was unable to retrieve from McQuillan's residence, together with the monetary values Jarecki attributes to each item. Jarecki also describes various expenses that she has paid—such as apartment rent and the cost to fix a crack in her vehicle's windshield—that she claims McQuillan owes her. In all, Jarecki asserts that these pages support her claim for \$687.92 in damages in addition to those awarded by the court.

Jarecki also argues at length that the circuit court erred by failing to fully consider and factor into its decision the abuse and manipulation she has endured from McQuillan. While we appreciate that Jarecki is upset with what she contends was McQuillan's manipulative and abusive treatment, we affirm the small claims judgment because her appeal suffers from a number of procedural and substantive infirmities.

First, Jarecki essentially requests us to find facts and retry her case on appeal. This court, however, only determines if the circuit court properly applied the facts it found to be supported by the record to the law. This forum is therefore not the proper one for fact-finding and rehearing the case. *See State ex rel. Swan v. Elections Bd.*, 133 Wis. 2d 87, 93-94, 394 N.W.2d 732 (1986). Jarecki makes no discernible claim of error other than her assertion that she is owed money damages in addition to those the circuit court awarded to her. She neither argues that the court made an error of law nor that it relied upon clearly erroneous facts in awarding only the damages reflected in the judgment. In all, we conclude that Jarecki's arguments are insufficiently developed, and we decline to address them because we cannot determine a legal basis for the relief she requests. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998). Although we grant pro se litigants some leeway with their appellate arguments, we cannot abandon our neutrality to develop arguments on their behalf. *See Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

Second, the appellate record lacks the transcript of the bench trial. Even if Jarecki developed an argument capable of our review, that transcript's absence substantially hinders our review of Jarecki's appeal. Jarecki improperly makes a number of factual allegations without citations to the record on appeal. *See WIS. STAT. RULE 809.19(1)(d)*. Even if we were to look past this failure given Jarecki's pro se status, we cannot confirm what facts the circuit court found without the transcript. Moreover, we cannot determine whether the court made an error of law because we do not know how the court applied the facts to the law to arrive at its decision. It is Jarecki's responsibility, as the appellant, to ensure that the record on appeal is complete. *See Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). When the

appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the circuit court's decision. *Id.* at 27. Without a transcript from the small claims hearing, we must affirm the court's decision.

Third and finally, the materials Jarecki does cite to or rely upon are only those provided to us in her appendix. We generally do not consider materials outside of the appellate record, and there is nothing that indicates the information she provides in her appendix was presented to the circuit court at trial. *See South Carolina Equip., Inc. v. Sheedy*, 120 Wis. 2d 119, 125-26, 353 N.W.2d 63 (Ct. App. 1984). Moreover, even if we could consider the materials Jarecki appended, we cannot discern if they support the amount she claims the court failed to award her due to the numerous drawn arrows, comments in the margins, and crossed-off words and numbers contained within them.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed pursuant to 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