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**DISTRICT III**

January 22, 2020

To:

Hon. John F. Manydeeds  
Circuit Court Judge  
721 Oxford Avenue  
Eau Claire, WI 54703

Randal J. Hill  
811 Garden Street  
Eau Claire, WI 54703

Susan Schaffer  
Clerk of Circuit Court  
Eau Claire County Courthouse  
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Eau Claire, WI 54703-5496

Lori L. Stellar  
2555 118th Street  
Chippewa Falls, WI 54729

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

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2019AP74

Lori L. Stellar v. Randal J. Hill (L. C. No. 2018SC1005)

Before Hruz, J.<sup>1</sup>

**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).**

Lori Stellar, pro se, appeals a small claims judgment awarding \$657.75 to Randal Hill, also pro se. Stellar argues the circuit court erred by finding in favor of Hill and by failing to award her \$800. Based upon our review of the parties' briefs 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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<sup>1</sup> 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.

Stellar rented real property from Hill beginning October 2014 through the end of February 2018. The parties signed a month-to-month residential rental agreement, and Stellar provided the requisite notice that she would not renew her lease for March 2018. Pursuant to the rental agreement, Stellar paid an \$800 security deposit at the beginning of her lease. Approximately two weeks after Stellar vacated the property, Hill sent her a notice that he was withholding \$765 from her security deposit and paying her only \$35 at that time.

The funds were apparently withheld from Stellar's security deposit because Stellar left numerous items of personal property in the property's yard after her lease ended. Stellar stated that she could not remove those items at the end of February due to the winter weather and frozen ground conditions. She communicated to Hill's assistant, Pamela Regan, that she intended to remove her items from the yard as soon as weather permitted and the ground thawed. Although the appellate record contains text messages between Stellar and Regan discussing when Stellar might be removing her property, the record lacks any express agreement permitting Stellar to keep her items on the property after the lease expired.

On April 23, 2018—approximately fifty-three days after Stellar had vacated the rental property—Hill and his employees began an eight-day cleanup of the property. That cleanup involved two trips hauling items to a junkyard and one trip hauling items to a recycling center. Hill ultimately expended \$1422.75 in labor and other costs to clean the property.

In May 2018, Stellar initiated the instant small claims proceeding to recover the \$765 Hill withheld from her security deposit. She also claimed money damages related to Hill's disposal of her personal property. Hill answered and counterclaimed, asserting Stellar owed him additional money damages because the cleanup costs exceeded the amount he withheld from

Stellar's security deposit. After the parties unsuccessfully participated in mediation, they appeared before a court commissioner. The court commissioner ruled in favor of Hill, and Stellar then demanded a de novo trial before the circuit court. In December 2018, the court held a bench trial at which both parties appeared pro se.

Following the testimony of both parties and their respective witnesses, the circuit court awarded Hill \$657.75. The court found that both parties agreed the residential lease would end after February 2018. It further found that "[a]fter that point in time there is no agreement that's on the record as far as [Stellar's] ability to keep stuff there or anything else, and there's nothing that compels a landlord to keep the material." The court observed that while Stellar disagreed with some of the testimony by the witnesses, she did not "do anything other than tell them that they're a liar ... and that's not sufficient."

Specifically, Stellar had argued that the number of trips Hill's employees conducted to haul the items to the junkyard exceeded the number of trips she believed was needed given the number of items she left on the property. The circuit court responded, "We're not going to argue this.... Their testimony was that it did take two loads, and other than say that it wasn't possible, you didn't really present anything that said that they were not telling the truth." Accordingly, the court entered a judgment of \$657.75 against Stellar, which represented the difference between the \$1422.75 in labor and other costs Hill incurred to clean the property and the \$765 he had already withheld from Stellar's security deposit. Stellar now appeals.

We affirm the circuit court's decision because Stellar's arguments on appeal are scattershot and undeveloped and as a result, 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) (stating that parties must provide legal authority to support the arguments they raise on appeal). 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.

As best as we can discern, Stellar is attempting to retry her case on appeal. She essentially repeats the same testimony and arguments that she provided to the circuit court: (1) the winter weather, the frozen ground conditions, and her work schedule prohibited her from removing her items from the property's yard until those days in April when Hill began cleaning the property; and (2) Hill and his employees lied under oath about the extent and length of their cleanup efforts.

We reject Stellar's arguments. She does not rely upon the facts that the circuit court found, but rather relies on her own narrative of what occurred. We cannot disregard a circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). We similarly cannot reject the circuit court's determinations on witness credibility, as it is in the best position to assess witness credibility when sitting as the trier of fact. See *State v. Schmidt*, 2004 WI App 235, ¶13, 277 Wis. 2d 561, 691 N.W.2d 379.

Based upon the facts found by the circuit court, which are supported by the evidence the parties presented at trial, Stellar has not proven she is entitled to the return of her security deposit. As the court explained, a rental agreement is a contract. Here, the parties contracted that Stellar would completely vacate the property when the lease expired. There is nothing in the lease that required Hill to store Stellar's items on the property after her lease ended. Indeed,

relevant provisions in both the lease and applicable state law allow for precisely what occurred here.<sup>2</sup> It is the tenant's responsibility to promptly remove personal property from the rented property. In other words, Hill was permitted to discard Stellar's items that remained on the property after she moved out, but he chose to wait until the end of April to do so.

To that end, the circuit court found that Stellar did not present sufficient evidence on two key issues. First, the court found that no oral or written agreement existed between Stellar and Hill or an authorized employee that expressly allowed her to keep her items on the property until the weather warmed enough for her to remove them. Second, the court found that Stellar did not provide any evidence, other than her own testimony, rebutting Hill's and his employees' testimony regarding how long they cleaned the property and the number of trips they took to the junkyard and recycling center while cleaning.

To the extent Stellar is suggesting that the circuit court's findings of fact are clearly erroneous because it "overlooked a lot of facts in this case," we disagree. There is nothing in the appellate record that casts doubt on the court's factual findings or credibility determinations. In

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<sup>2</sup> WISCONSIN STAT. § 704.05(5) provides:

DISPOSITION OF PERSONALTY LEFT BY TENANT. (a) *At the landlord's discretion.* 1. If a tenant removes from ... the premises and leaves personal property, the landlord may presume, in the absence of a written agreement between the landlord and the tenant to the contrary, that the tenant has abandoned the personal property and may, subject to par. (am) and s. 799.45(3m), dispose of the abandoned personal property in any manner that the landlord, in its sole discretion, determines is appropriate.

The lease between Stellar and Hill also contains a provision stating, in relevant part: "**ABANDONED PROPERTY:** Landlord will not store any items of personal property that tenant leaves behind when tenant vacates, except for prescription medication or prescription medical equipment, which will be held for seven (7) days from the date of discovery."

all, Stellar's arguments are improper because this court is not the proper forum for fact finding and rehearing her case. *See State ex rel. Swan v. Elections Bd.*, 133 Wis. 2d 87, 93-94, 394 N.W.2d 732 (1986).

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.

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