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**DISTRICT I**

August 11, 2020

To:

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Circuit Court Judge  
Safety Building Courtroom, #113  
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Kersmty LLC  
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Milwaukee, WI 53225

MG Multiservicios Milwaukee Corporation  
923 S. Cesar E. Chavez  
Milwaukee, WI 53204

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

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2019AP712

City of Milwaukee v. Kersmty LLC (L.C. # 2018CV6912)

Before Blanchard, Dugan and White, 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).**

The City of Milwaukee appeals an order dismissing the City’s garnishment action against garnishee MG Multiservicios Milwaukee Corporation (MG).<sup>1</sup> The City filed a brief-in-chief and appendix but MG did not file a respondent’s brief despite multiple orders from this court cautioning MG that failure to file a response brief put the appeal at risk for summary reversal.<sup>2</sup> Based upon our review of the appellant’s brief and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily reverse and remand to the circuit court for further proceedings consistent with this opinion.

The record shows that, in prior litigation, the City obtained a \$101,394.47 judgment against Kersmty, LLC (Kersmty). Thereafter, the City determined that Kersmty owned a piece of real property and rented space in that property to MG for \$3000 per month. The City then filed the instant garnishment action naming MG as one of two non-earnings garnishees. The circuit court next received a “Garnishee Answer” denying that the garnishee possessed any assets belonging to

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<sup>1</sup> This court has a duty to inquire into its own jurisdiction, *see Carla B. v. Timothy N.*, 228 Wis.2d 695, 698, 598 N.W.2d 924 (Ct. App. 1999), and we do so at this juncture. The order at issue disposed of the garnishment action as to MG, and therefore the order was final for purposes of appeal as to MG. *See Harder v. Pfitzinger*, 2004 WI 102, ¶¶2, 17, 274 Wis. 2d 324, 682 N.W.2d 398; *see also* WIS. STAT. § 808.03(1) (2017-18). The order did not dispose of, and indeed did not address, the garnishment action as to the debtor, Kersmty, LLC (Kersmty), or a second named garnishee, Ali Omar Investments LLC d/b/a Money Flash, a/k/a Cash for Gold (Ali Omar). Therefore, as to those parties, the order was not final or appealable as a matter of right. *See* § 808.03(1); *see also Culbert v. Young*, 140 Wis. 2d 821, 827, 412 N.W.2d 551 (Ct. App. 1987). Nonetheless, the City’s notice of appeal named as respondents Kersmty and Ali Omar as well as MG. In the absence of a final order as to Kersmty and Ali Omar, we lack jurisdiction in regard to those respondents, and we therefore dismiss the appeal as to them. *See K.W. v. Banas*, 191 Wis. 2d 354, 356-57, 529 N.W.2d 253 (Ct. App. 1995). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> We did not receive a respondent’s brief from any named respondent to this appeal. Because we dismiss the appeal as to Kersmty and Ali Omar, however, their inaction and our orders in response are not relevant to our discussion here.

Kersmty and denying indebtedness to Kersmty. The record reflects that the City treated the answer as filed on behalf of MG.<sup>3</sup>

The City pursued discovery as to MG, demanding that it produce a copy of the lease agreement between MG and Kersmty and seeking requests for admissions. The latter included requests to admit that MG owed monthly rent to Kersmty pursuant to a lease agreement, that rent was due as of the date that the City filed its garnishment action, and that rent was due on the first of the month. MG did not respond to the discovery demand. Based on MG's failure to respond, the City moved to strike MG's answer, to find that MG admitted the requests for admission, and to enter judgment in the City's favor.

The circuit court held a hearing on the City's motion. Only the City appeared. The circuit court questioned the City and found that it did not have a copy of the lease between MG and Kersmty. The circuit court also found that the City did not know whether the lease included any contingences that might excuse MG from paying rent.

Following argument by the City, the circuit court denied the City's motion in its entirety. Instead, the circuit court dismissed the action as to MG, ruling from the bench that the City failed

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<sup>3</sup> Although the signature on the Garnishee Answer is somewhat difficult to read, it appears that the signature is that of "Miguel R. Garza." No additional information, such as a Wisconsin state bar number, a law firm affiliation, an employer, or an address, appears in the signature block. No clarifying information is included in the caption of the document. Miguel R. Garza is not a party to the garnishment action. We observe that MG is styled as a corporation, which is a separate legal entity and must be represented by counsel in the courts of this state. See *Jadair Inc. v. United States Fire Ins. Co.*, 209 Wis. 2d 187, 203, 562 N.W.2d 401 (1997) ("[O]nly lawyers can appear on behalf of, or perform legal service for, corporations in legal proceedings before Wisconsin courts."). Although *Jadair* recognized an exception for actions filed in small claims court, see *id.*, the present case involves a large claim. In light of the foregoing, we are unable to identify with certainty the entity on whose behalf the "Garnishee Answer" was filed.

to demonstrate the absence of contingencies that could affect the obligation to pay rent and the length of the lease. The City filed a notice of appeal.

In this court, the City filed an appellant's brief and appendix. MG did not file a respondent's brief. By order dated August 1, 2019, we notified MG that unless it filed a respondent's brief or sought an extension within five days, the appeal would "be disposed of summarily and may be summarily reversed under [WIS. STAT.] RULE 809.83(2)." We did not receive a response to that order. On August 16, 2019, on our own motion, we further extended MG's briefing deadline. We also cautioned that if we did not receive a response by the deadline stated, the appeal would be submitted for summary disposition, which "may result in summary reversal of the judgment or order the City of Milwaukee has appealed." We again directed MG's attention to RULE 809.83(2). MG did not file a brief or otherwise contact the court by the extended deadline. Accordingly, the appeal advanced for disposition on the City's brief alone.

WISCONSIN STAT. RULE 809.83(2) provides: "[f]ailure of a person to comply with a court order or with a requirement of these rules ... is grounds for ... summary reversal." WISCONSIN STAT. RULE 809.19(3)(a) mandates that "[t]he respondent *shall* file a brief." See *id.* (emphasis added). When a respondent fails to file a brief, this court has discretion under RULE 809.83(2), to summarily reverse a circuit court order if we conclude that the respondent abandoned the appeal. See *Raz v. Brown*, 2003 WI 29, ¶¶14, 18, 260 Wis. 2d 614, 660 N.W.2d 647.

In this case, we explicitly warned MG that if it failed to file a respondent's brief, the order in MG's favor was subject to summary reversal. MG did not file a respondent's brief. "Failure to file a respondent's brief tacitly concedes that the [circuit] court erred." *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (citation omitted).

We conclude that MG abandoned this appeal and that summary reversal is appropriate in light of MG's tacit concession of error.

In reaching our conclusion, we observe that the circuit court dismissed the action as to MG based on the City's failure to demonstrate the absence of contingencies in the lease between MG and Kersmy. MG did not raise that issue, even if we assume that MG filed the "Garnishee Answer." A circuit court may not abandon its neutrality to become an advocate for one party. *See State v. Carprue*, 2004 WI 111, ¶44, 274 Wis. 2d 656, 683 N.W.2d 31; *see also State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1993) (recognizing that a court steps into the role of advocate by developing a party's argument). Accordingly, we accept MG's tacit concession of error. We remand this matter to the circuit court for further proceedings at which the City may pursue its claims and may seek to establish both its compliance with the garnishment statutes and the nature and extent of MG's liability. We add that nothing in this opinion and order should be construed as limiting the bases on which the parties to the garnishment action may pursue their claims and defenses in the circuit court.

IT IS ORDERED that this appeal is dismissed for lack of jurisdiction as to respondents Kersmy, LLC, and Ali Omar Investments LLC, d/b/a Money Flash, a/k/a Cash for Gold.

IT IS FURTHER ORDERED that, as to respondent MG Multiservicios Milwaukee Corporation, the circuit court's order is summarily reversed and the matter is remanded for proceedings consistent with this order. *See* 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