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**DISTRICT IV**

October 1, 2020

To:

Hon. Troy Nielsen  
Circuit Court Judge  
Waupaca County, Branch 1  
811 Harding St.  
Waupaca, WI 54981

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Patricia M. Kostrzak

Terrie J. Tews  
Clerk of Circuit Court  
Waupaca County Courthouse  
811 Harding St.  
Waupaca, WI 54981

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

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2019AP2021

Patricia M. Kostrzak v. Fred Kivisto (L.C. # 2019CV263)

Before Fitzpatrick, P.J., Blanchard, and Graham, 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).**

Fred Kivisto appeals from a circuit court order granting a harassment injunction to Patricia Kostrzak. Kivisto has moved to summarily reverse the circuit court's order granting the harassment injunction based on Kostrzak's failure to file a respondent's brief. This court has issued orders warning Kostrzak that a respondent is required to file a respondent's brief and that summary reversal is a potential result for failure to file the respondent's brief. This court has also advised Kostrzak that a motion to dismiss for failure to file the respondent's brief has been filed. Kostrzak has not responded to this court's orders or to the motion to dismiss. We

conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).<sup>1</sup> Based on Kostrzak's failure to file a respondent's brief, we summarily reverse the order granting the injunction. *See* WIS. STAT. RULE 809.83(2).

On September 30, 2019, Kostrzak petitioned for a harassment injunction against Kivisto. After an injunction hearing, the circuit court granted the injunction for a period of four years. Kivisto appealed.

Kivisto filed his appellant's brief on January 14, 2020. Kivisto argues in his brief that the evidence at the injunction hearing was insufficient to support the injunction. By delinquency order dated March 3, 2020, we informed Kostrzak that the respondent's brief had not been filed as required by the rules of appellate procedure. The delinquency order informed Kostrzak that, if the respondent's brief was not filed within five days or good cause shown for an extension of the time to file the brief, this appeal may be summarily reversed. On March 4, 2020, Kivisto moved for summary reversal based on Kostrzak's failure to file a respondent's brief. By order dated March 12, 2020, this court advised Kostrzak that a motion to dismiss had been filed based on Kostrzak's failure to file the respondent's brief despite the requirement that she do so under the rules of appellate procedure and this court's delinquency order. This court's March 12, 2020 order warned Kostrzak that summary reversal is a potential result for failure to file the respondent's brief, citing *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 259-60, 500 N.W.2d 339 (Ct. App. 1993). Kostrzak has failed to respond to this court's orders or to the motion to dismiss.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Under WIS. STAT. RULE 809.83(2), failure to comply with the rules of appellate procedure is grounds for summary reversal in the discretion of this court. Failure of the respondent to file a brief is a violation of WIS. STAT. RULE 809.19(3), which provides: “The respondent shall file a brief ....” This court may summarily reverse upon a finding that the respondent has abandoned the appeal. *See Raz v. Brown*, 2003 WI 29, ¶36, 260 Wis. 2d 614, 660 N.W.2d 647. Kostrzak was provided repeated warnings that she was required to file a respondent’s brief and that summary reversal is a potential sanction for failure to file the respondent’s brief. She was also provided notice that Kivisto had moved for summary reversal based on the failure to file a respondent’s brief. Kostrzak has failed to file the respondent’s brief, has made no request to extend the time to file the respondent’s brief, has not opposed the motion to dismiss, and has otherwise failed to communicate with this court regarding this appeal despite this court’s orders and the motion to dismiss. This court can only conclude that Kostrzak has abandoned this appeal. Accordingly, the order of the circuit court granting the harassment injunction is summarily reversed.

Therefore,

IT IS ORDERED that the order is summarily reversed pursuant to 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*