



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 17, 2021

To:

Hon. Daniel Steven Johnson
Circuit Court Judge
Electronic Notice

Peter Anderson
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County
Electronic Notice

Robert E. Eaton
Electronic Notice

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

2020AP1798

Mary Fish v. Nancy Villalobos (L.C. #2019CV212)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Mary Fish appeals an order dismissing her Complaint against Nancy Villalobos following a bench trial. Fish argues that she is incompetent and therefore was unable to validly transfer real property by quit claim deed to Villalobos. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In April 2019, Fish sued Villalobos in small claims court. Fish's Complaint alleged a single cause of action—theft by fraud. It said Villalobos had defrauded her in relation to obtaining Fish's signature on a quit claim deed. The circuit court scheduled a one-day bench trial for December 20, 2019. In late November 2019, the parties filed witness lists, exhibits and trial briefs, and jury instructions. None of those documents clearly suggested the parties contemplated litigating a competency issue, and the proposed exhibit list merely consisted of a tax bill and the quit claim deed at issue.

On November 27, 2019, Fish moved to adjourn the trial date due to a pending evaluation for an intellectual disability. Villalobos did not oppose the adjournment request and the trial was rescheduled to commence on August 11, 2020. During the adjournment, Villalobos sought to compel Fish to respond to her discovery requests. A guardian ad litem was appointed for Fish, but in June 2020, the guardian ad litem was allowed to withdraw after complaining that Fish's adversary counsel had delegated to her the task of providing discovery responses. The appellate record contains no further filings relating to the trial proceedings until August 5, 2020, when Fish again sought to adjourn the trial. That motion was apparently denied, and, following the trial, the circuit court entered an order dismissing Fish's claim with prejudice.

Fish argues the circuit court's decision must be reversed as a matter of law because she was incompetent to sign the quit claim deed. Fish, however, has failed to supply this court with a trial transcript, and the dismissal order contains only a perfunctory statement that it was based

on the “reason set forth on the record at the hearing.”² It is the appellant’s responsibility to ensure that the record on appeal is complete, and any missing material is presumed to support the circuit court’s ruling. *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Because of the appellant’s omissions, we lack any rationale for the circuit court’s actions, and therefore have no basis to second-guess the dismissal. *See Roy v. St. Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (“The absence of a transcript in the record compels us to accept the findings of the trial court.”).

Further, it is unclear to what extent the issue of Fish’s mental competency to sign the quit claim deed was raised during the trial. Her Complaint merely stated that she “does not understand all aspects of transactions,” and many of the pretrial filings were made before Fish’s counsel sought to adjourn the original trial date based on competency concerns. Fish’s appendix includes a document that purports to be an exhibit list for the August 11, 2020 trial, which states that Exhibit 3 was a “Psychological Evaluation” offered by the plaintiff.³ Because we lack a trial transcript, we are uncertain what document was offered. More importantly, neither the exhibit list nor the trial exhibits are in the appellate record. We will not consider any materials in an appendix that are not in the record. *Id.*

² On December 9, 2020, we entered an order noting that Fish’s statement on transcript was delinquent. Fish’s counsel had provided an uncertified statement on transcript on November 27, 2020, but never corrected the defect despite being notified by the clerk of the court of appeals. Accordingly, we ordered the clerk of the circuit court to proceed as if a statement that no additional transcripts were necessary for the prosecution of the appeal was filed and to transmit the record pursuant to the Rules of Appellate Procedure.

³ The appendix also contains numerous sealed documents that seemingly include various evaluations of Fish’s cognitive ability.

Exacerbating these issues, Fish’s appellate brief contains a statement of facts that is utterly devoid of *any* citations to the appellate record. *See* WIS. STAT. RULE 809.19(1)(d) (appellant’s brief must include “a statement of facts relevant to the issues presented for review, with appropriate references to the record”). We will not consider arguments that are not supported by appropriate references to the record. *State v. Lass*, 194 Wis. 2d 591, 604, 535 N.W.2d 904 (Ct. App. 1995). The argument section of Fish’s brief also improperly cites only to the appendix. *See United Rentals, Inc. v. City of Madison*, 2007 WI App 131, n.2, 302 Wis. 2d 245, 733 N.W.2d 322. We admonish Fish’s counsel that future violations of the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83(2).

Therefore,

IT IS ORDERED that the order of the circuit court 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