



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 IV

September 15, 2022

To:

Hon. Barbara W. McCrory
Electronic Notice

Jessica P. Long
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Trevor Long
c/o Mike Zahn
1911 Green Valley Dr.
Janesville, WI 53546

Huey P. Long Jr.
8317 E. Hwy 14
Janesville, WI 53546

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

2021AP1376

Huey P. Long, Jr. v. Trevor Long and Jessica P. Long
(L.C. # 2021SC1330)

Before Nashold, 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).

On July 28, 2021, the circuit court entered a judgment for eviction in favor of Respondent Huey P. Long, Jr. (Huey) against Appellant Jessica P. Long (Jessica). On August 5, Jessica filed her notice of appeal.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2019-20). This appeal is disposed of summarily, on the court's own motion, pursuant to WIS. STAT. RULE 809.21(1). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

On January 18, 2022, Jessica timely filed her appellant's brief.² On February 23, this court sent a notice of delinquent brief to Huey, stating that his respondent's brief had not been filed as required under WIS. STAT. RULES 809.19 and 809.83(2). This order states:

[U]nless within five days of the date of this order, the Brief of Respondent(s) is served and filed or an extension is requested under [WIS. STAT. RULE] 809.14, with good cause shown why the brief has not been timely filed, the judgment or order appealed from will be disposed of summarily and may be summarily reversed under [WIS. STAT. RULE] 809.83(2).

On March 7, 2022, Jessica filed a motion for summary reversal on the grounds that Huey had failed to file his respondent's brief. By March 7 order, this court stated that, although it had the "discretion to summarily reverse a circuit court order on appeal when a respondent fails to brief an appeal under circumstances showing abandonment or bad faith," "other judicial interests may not be served by summarily reversing on procedural grounds an order that the record plainly shows to be correct on its merits." This court therefore denied the motion for summary reversal at that time and stated that it was "submit[ting] the appellant's brief and the record to the court for review" "to determine whether the appeal may be decided based solely upon the appellant's brief and the record" or "whether summary reversal is warranted in this case as a sanction for the respondent's failure to file a brief."

On August 5, 2022, this court entered an order stating, in pertinent part:

The court has now completed its initial review of the appellant's brief and the record, and summary reversal may be an appropriate sanction for the respondent's failure to file a brief. *See*

² This court granted, for good cause, Jessica's three successive motions to extend the time to file her appellant's brief. Pursuant to the third order, Jessica had until January 18, 2022, to file her appellant's brief.

WIS. STAT. RULE 809.83(2). However, before this court exercises its discretion to summarily reverse based on the respondent's violation of briefing requirements, the court must determine whether the respondent has abandoned the appeal or acted egregiously or in bad faith. See *Raz v. Brown*, 2003 WI 29, ¶¶18, 36, 260 Wis.2d 614, 660 N.W.2d 647. Consistent with the procedure specified in *Raz*, this court again directs the respondent to file a brief and informs the respondent that unless he submits a brief by [September 6], this court will summarily reverse based on abandonment.

Despite this court's repeated warnings and Jessica's motion for summary reversal based on the failure to file a respondent's brief, as of the date of this order, Huey has not filed a respondent's brief, nor has he ever requested an extension of time to do so. We therefore conclude, consistent with the August 5, 2022 order, that Huey's inaction in this regard constitutes an abandonment of this appeal. See *Raz*, 260 Wis.2d 614, ¶18 (“[T]he court of appeals may not grant summary reversal of a circuit court order on appeal as a sanction without a finding of bad faith, egregious conduct, or a litigant's abandonment of the appeal.”); *id.*, ¶36 (“[W]here the court of appeals elects to impose the drastic sanction of summary reversal for failure to file a response brief, it may do so only after unequivocally ordering the filing of a brief and clearly stating the consequences for failure to comply.”).

This court will not abandon its neutrality and serve as Huey's advocate by independently developing arguments in response to Jessica's contentions on appeal. See *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (“[T]he Court of Appeals of Wisconsin is a fast-paced, high-volume court.... We cannot serve as both advocate and judge.”); *Gardner v. Gardner*, 190 Wis. 2d 216, 239 n.3, 527 N.W.2d 701 (Ct. App. 1994) (we will not independently develop a litigant's arguments).

Therefore,

IT IS ORDERED that the judgment is summarily reversed pursuant to WIS. STAT. RULE 809.83(2), and the cause is remanded to the circuit court with directions to vacate the judgment.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals