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DISTRICT IV

April 6, 2023

To:

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Circuit Court Judge
Electronic Notice

Kimberly Stimac
Clerk of Circuit Court
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Dante R. Voss 347294
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You are hereby notified that the Court has entered the following opinion and order:

2022AP71

Dante R. Voss v. Aspirus Riverview Hospital (L.C. # 2019CV86)

Before Blanchard, P.J., Graham, and Nashold, 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).

Dante Voss, pro se, appeals a circuit court order denying his petition for waiver of transcript fees.¹ Based upon our review of the briefs and record, we conclude at conference that

¹ Voss filed an appellant's brief and a reply brief. The office of the Wisconsin Attorney General filed a respondents' brief on behalf of respondents Melissa Vitort, Daniel Schroeder, Jean Young, and Kevin Carr, who are employees of the State of Wisconsin. Counsel for respondents Aspirus Riverview Hospital, Todd Burch, Alex Lampe, and Jane Doe informed this court by letter that they would not be filing a brief because their interests are adequately represented by the state employees' brief.

this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2021-22).²

Voss sued Aspirus Riverview Hospital, its employees, and several state employees, alleging that his right to medical privacy was violated. The circuit court dismissed the case and granted summary judgment in favor of the defendants. Voss appealed the circuit court's dismissal order, initiating appeal No. 2020AP1581. Voss then petitioned the circuit court to waive the transcript fees for the appeal. The circuit court denied the petition in an oral ruling on January 19, 2021, which was followed by a written order. Voss then filed a notice of appeal, seeking review of the circuit court's denial of his petition for waiver of transcript fees. That appeal is pending as No. 2021AP1874. Voss next requested that the circuit court waive the fees for preparation of the transcript of the oral ruling held on January 19, 2021. The circuit court denied the request, and Voss filed this appeal.³

Under *State ex rel. Girouard v. Circuit Court for Jackson County*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990), a litigant is entitled to free transcripts on appeal of a civil case when the circuit court determines both that the litigant is indigent, and that the appeal has arguable merit. *See id.* at 159. Whether a claim has arguable merit is a question of law that this court reviews de novo. *State ex rel. Hansen v. Circuit Ct. for Dane Cnty.*, 181 Wis. 2d 993, 998, 513 N.W.2d 139 (Ct. App. 1994).

² All references to the Wisconsin Statutes are to the 2021-22 version.

³ The deadline for filing a statement on transcript in appeal No. 2021AP1874 has been stayed pending a final decision in this appeal. The deadline for filing a statement on transcript in appeal No. 2020AP1581 has been stayed pending a final decision in appeal No. 2021AP1874.

It is undisputed that Voss is indigent. The only remaining issue in this appeal, then, is whether Voss is entitled to a free transcript of the January 19, 2021 circuit court proceeding because he has an arguable claim on the merits of the underlying appeal, No. 2020AP1581. The state employees assert that the appellant’s brief contains no argument about the merits of Voss’s claims and that, therefore, the circuit court’s decision should be affirmed.

Voss asserts in the reply brief that he is not required to develop an argument that his claims have merit. Voss takes the position that, under *State v. Jacobus*, 167 Wis. 2d 230, 481 N.W.2d 642 (Ct. App. 1992) (published per curiam),⁴ he is entitled to a free transcript of the proceeding at which the circuit court decided that he was not entitled under *Girouard* to a free transcript of the hearing on the merits of his case. We do not agree with Voss’s reading of *Jacobus* as applied to the facts of this case.

In *Jacobus*, the appellant sought free transcripts of a hearing in which the circuit court decided the merits of Jacobus’s case, and of a second hearing that the court conducted pursuant to *Girouard*. *Jacobus*, 167 Wis. 2d at 232. During the *Girouard* hearing, the circuit court determined that Jacobus was not indigent and, therefore, was not eligible for free transcripts in his appeal. *Id.* Jacobus argued that the circuit court erred in its factual determination that Jacobus was not indigent, and this court could not determine from the record whether the circuit court’s factual determination was erroneous. *Id.* at 234. We therefore concluded that “a transcript of the *Girouard* hearing must be provided at no cost to Jacobus” because, without a transcript of that hearing, we could not determine “whether the trial court properly found that Jacobus was not entitled to free transcripts in the underlying appeal.” *Id.* at 235.

⁴ Although *Jacobus* is a per curiam opinion, it was published and is therefore a citable and binding decision of the court of appeals. See WIS. STAT. § 809.23(2).

In *Jacobus*, the issue was whether the appellant was indigent, which was a fact that could not be determined without a transcript. By contrast, Voss's indigency is not at issue in this case. Here, to make a showing that he is entitled to free transcripts, Voss must present an arguably meritorious claim upon which relief can be granted. *Girouard*, 155 Wis. 2d at 159. Voss fails to make such a showing in his briefs, and fails to explain why a transcript of the January 19, 2021 proceeding is necessary for this court to determine whether there is arguable merit to his appeal. In his reply brief, Voss mentions proffers and motions made in the circuit court, but fails to develop any meaningful argument as to the merits of his underlying appeal. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (appellate courts need not address undeveloped arguments on appeal).

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, twenty-one days after the issuance of this opinion and order, the clerk of the circuit court shall lift the stay of the deadline for filing a statement on transcript in appeal No. 2021AP1874.

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

Sheila T. Reiff
Clerk of Court of Appeals