



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

May 18, 2023

To:

Hon. Todd J. Hepler
Circuit Court Judge
Electronic Notice

Todd W. Bennett
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Mark Edward Sturdevant
N4340 Domes Road
Rio, WI 53960

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

2022AP1367

Mark Edward Sturdevant v. Tammy Jo Sturdevant
(L.C. # 2022SC231)

Before Blanchard, P.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).

Mark Sturdevant appeals an order of a Columbia County court commissioner dismissing his small claims complaint against his former wife, Tammy Sturdevant. He also appeals a judgment of the circuit court, which was based on the commissioner's determinations, obligating Mark to pay Tammy \$700 in attorney's fees that she incurred in defending the small claims action. On this court's own motion all aspects of this appeal are summarily disposed of on the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

following grounds. *See* WIS. STAT. RULE 809.21(1) (“The court upon its own motion ... may dispose of an appeal summarily.”).

This court lacks subject matter jurisdiction to review the commissioner’s decision. *See* WIS. STAT. § 808.03(1) (limiting appeals as a matter of right to final orders or judgments “of a circuit court”); *see also United States v. Burczyk*, 54 Wis. 2d 67, 71, 194 N.W.2d 608 (1972) (“Where there is no statutory right to appeal, this court lacks subject matter jurisdiction and must dismiss the appeal on its own motion, if need be.”). Explaining further, Mark seeks to appeal the commissioner’s order to this court directly, but this impermissibly skips the required step of de novo review of the commissioner’s decision in the circuit court. *See* WIS. STAT. § 757.69(8) (“Any decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party.”). Mark does not have a statutory right to appeal the commissioner’s decision directly to this court because it is not a “final order of the circuit court.” *See* § 808.03(1) (defining “final order”); *State v. Trongeau*, 135 Wis. 2d 188, 191, 400 N.W.2d 12 (Ct. App. 1986) (concluding that a court commissioner’s order was not a “final order of a circuit court” as required by § 808.03(1)). Mark provides this court with no basis to conclude that the circuit court’s action in issuing a judgment putting into effect the attorney’s fees aspect of the commissioner’s order could confer appellate jurisdiction to review anything other than the judgment issued by the circuit court.

I reject Mark's challenge to the circuit court's judgment because he fails to identify any basis to reverse the judgment that is not rooted in the commissioner's decision, over which this court lacks jurisdiction.²

Moreover, even if this court could review the circuit court's judgment by considering the commissioner's reasoning in resolving the underlying dispute, I would reject Mark's arguments because he fails to address a dispositive argument on that issue made by Tammy on appeal. *See United Co-op. v. Frontier FS Co-op.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant's failure to reply to a respondent's argument may be taken as a concession). Tammy develops an argument that the merits of Mark's appeal were resolved in the family court proceedings involving the parties' divorce before Mark's apparent attempt in the small claims action to resurrect the same issues. Mark has not filed a reply brief.

Therefore,

IT IS ORDERED that the judgment and order are affirmed.

² Further, I question whether I could address the merits of any such arguments because Mark has failed to provide this court with a transcript of any proceedings before the commissioner or the circuit court, especially given that the commissioner's written order references reasoning provided "at the time of [a] hearing" held before the commissioner on May 10, 2022. *See Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381 (court of appeals assumes that, when an appellate record is incomplete regarding an issue raised by an appellant, the missing material supports circuit court's decision); WIS. STAT. RULES 809.11(4) (obligating appellant to arrange transmittal of transcripts or state they are unnecessary), 809.19(2)(a) (appellant must include in appendix "limited portions of the record essential to an understanding of the issues raised"), 809.83(2) (noncompliance with rules can be grounds to dismiss the appeal). While this appeal was pending, Mark filed a form "statement on transcript" appearing to indicate his position that "[a] transcript is not necessary for prosecution of this appeal," but he fails to explain that position. *See* RULE 809.11(4)(b).

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

Sheila T. Reiff
Clerk of Court of Appeals