



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 III

August 15, 2023

To:

Hon. Maureen D. Boyle
Circuit Court Judge
Electronic Notice

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

Samuel C. Hall, Jr.
Electronic Notice

Timothy M. Johnson
Electronic Notice

Molly K. Woodford
Electronic Notice

Ann M. Lamphere
Electronic Notice

Daniel L. Lamphere
P.O. Box 202
Turtle Lake, WI 54889-0202

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

2021AP1954

Daniel L. Lamphere v. Ryan Hulback (L. C. No. 2019CV159)

Before Stark, P.J., Hruz and Gill, 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).

Ann Lamphere, pro se, appeals an order denying her petition for waiver of transcript fees. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We reject Lamphere's arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2021-22).¹

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In case No. 2021AP841, Lamphere appealed a judgment, following a jury trial, that dismissed her claims against several Barron County employees, arising from law enforcement's response to an alleged domestic disturbance. Lamphere twice moved the circuit court to waive the fee for transcripts related to that appeal. The court denied both motions by written orders entered May 13, 2021, and June 9, 2021. Lamphere did not appeal either order; therefore, we have no jurisdiction to review them. *See* WIS. STAT. RULE 809.10(1)(e) (stating that the filing of a timely notice of appeal is necessary to give this court jurisdiction over an appeal).

On October 12, 2021, Lamphere filed the underlying petition for waiver of fees and costs, along with an affidavit of indigency. Lamphere subsequently clarified that she was requesting a “waiver of fees ... for the portion of the [trial] transcript that reflect[s] the dismissal by the [circuit] court” of her claims against four of the defendants. In a letter filed October 22, 2021, the court acknowledged that Lamphere was now “only seeking the transcript of that portion of the second day of trial at which the court dismissed certain claims at the close of evidence,” and it again denied her motion, noting she had provided “no legal basis upon which [her] claims could be successful.” Lamphere then filed the present appeal.²

By order dated December 30, 2021, we noted that if Lamphere's October 12, 2021 petition was actually a motion for reconsideration, we would lack jurisdiction over this appeal, as an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern

² By order dated November 18, 2021, we held appeal No. 2021AP841 in abeyance pending resolution of this appeal.

is that a motion for reconsideration not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; see also *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 197 N.W.2d 752 (1972). Unlike her first two petitions, both of which sought the entire trial transcript, Lamphere’s underlying petition sought only a portion of the second day of trial. We therefore determined that this appeal could proceed, but it would be “limited to whether the circuit court erroneously denied Lamphere’s October 12, 2021 request for a waiver of the transcript fee to produce [the requested] portion of the transcript.”

Whether fees and costs for transcripts should be waived by a circuit court is governed by WIS. STAT. § 814.29. A litigant is entitled to free transcripts on appeal of a civil case when the court determines both that the litigant is indigent and that the litigant has presented “a claim upon which relief can be granted.” *State ex rel. Girouard v. Jackson Cnty. Cir. Ct.*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990). Indigency primarily is a factual question, and we must accept a circuit court’s finding of fact unless it is clearly erroneous. *State ex rel. Richards v. Dane Cnty. Cir. Ct.*, 165 Wis. 2d 551, 555, 478 N.W.2d 29 (Ct. App. 1991), *superseded by statute on other grounds as recognized in Spence v. Cooke*, 222 Wis. 2d 530, 532, 587 N.W.2d 904 (Ct. App. 1998). However, whether a proposed action states a claim upon which relief can be granted is a question of law that we review independently. See *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. A proposed action fails to state a claim upon which relief may be granted when it is legally insufficient. See *id.*, ¶19.

Here, it is undisputed that Lamphere is indigent for purposes of waiving the transcript fee. With respect to the merits of the claim for which the transcript is sought, Lamphere seeks to challenge the circuit court’s decision on the defendants’ motion to dismiss at the close of evidence. Such a motion is governed by WIS. STAT. § 805.14, which provides that “[n]o [such]

motion shall be granted unless the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party.” *Id.* Thus, without a transcript of the entire trial, this court cannot adequately review the court’s decision on the motion to dismiss.

As the circuit court recognized when denying Lamphere’s petition, “providing only that portion of the transcript which relates to [the court’s] decision would have no value without the entire trial transcript [because] [m]y decision was based on the totality of the evidence that was submitted during the trial.” Moreover, “when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the [circuit] court’s ruling.” *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Because Lamphere cannot succeed on her underlying appeal without providing the entire trial transcript, she has failed to state a claim upon which relief can be granted. The court, therefore, properly denied her petition.

Lamphere nevertheless asserts she is entitled to the requested portion of the transcript based on an order of this court. Lamphere is mistaken. By order dated September 23, 2021, Lamphere’s brief and appendix in appeal No. 2021AP841 were not accepted for filing based on their substantial noncompliance with our appellate rules. Among the deficiencies noted in that order was Lamphere’s failure to include a copy of the decision being appealed from, as required by WIS. STAT. RULE 809.19(2)(a).

Lamphere subsequently sought a briefing extension, stating that the circuit court never issued a decision regarding the portions of the case that were dismissed. Although the record

includes the written judgment dismissing all claims against the defendants, it appears Lamphere believed a written order deciding the motion to dismiss at the close of evidence was necessary. In a September 27, 2021 order granting Lamphere’s extension request, we noted that “if the circuit court did not issue a written order, then the appellant instead needs to include in her appendix the relevant portion of a transcript from a hearing at which the court announced the decision that is being challenged on appeal.” That this court stated that a portion of the transcript could be filed as an alternative to a written order does not create an entitlement to waiver of the transcript fee. Further, our prior order does not state that the identified portion of the transcript is the entirety of the transcript required for our review on appeal.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals