

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 19, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1426

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,**

PLAINTIFF-RESPONDENT,

v.

DARLENE M. TADYCH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Darlene M. Tadych appeals from the trial court judgment, following a bench trial, awarding American Family Mutual Insurance

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a), (3) (1997-98).

Company \$767.20, plus costs and attorney fees. She argues that the trial court erred “when it granted a judgment against [her] for the amount of money which [American Family] paid to its insured *after* its insured had negotiated and executed a compromise settlement agreement and release with [her], and had already received payment on the same.” This court affirms.

¶2 The record establishes that Tadych elected not to request a transcript of the trial. It was her burden to provide an appellate record sufficient to review her argument on appeal. *See State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). American Family, responding to Tadych’s very brief brief to this court, contends:

In the case before the court, the trial court made findings concerning disputed facts based upon the testimony of witnesses and arguments of counsel which are not before this court because the appellant chose not to request transcripts. An improper exercise of discretion cannot be found when no transcript of the trial court’s reasoning is available on appeal. Pursuant to [*Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 273 N.W.2d 233 (1979); *Becker v. Zoschke*, 76 Wis. 2d 336, 251 N.W.2d 431 (1977); and *Hartland*], particularly *Austin v. Ford Motor Co.*, this court must sustain the trial court’s findings of fact and judgment.

(Record reference omitted.)

¶3 American Family is correct. As the supreme court explained:

It is boilerplate law that, when an appeal is brought on a partial transcript, the scope of the review is necessarily confined to the record before the court. While the court can consider errors of law revealed in a trial court memorandum, the court will assume, in the absence of a transcript, that every fact essential to sustain the trial judge’s exercise of discretion is supported by the record.

Austin, 86 Wis. 2d at 641 (citations omitted). Thus, if this appeal presented solely a legal issue that could be resolved without the transcript, Tadych’s failure to provide it might not be fatal. But Tadych offers no reply to American Family’s

contention that the trial court judgment followed “findings concerning disputed facts based upon the testimony of witnesses and arguments of counsel which are not before this court because the appellant chose not to request transcripts.” *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed admitted).²

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4 (1997-98).

² This court also notes that American Family has persuasively addressed the merits of Tadych’s argument, based on its (American Family’s) summary of the trial court proceedings, and on the limited record presented on appeal. Again, Tadych offers no reply. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed admitted).

