

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 8, 2015

Diane M. Fremgen
Clerk of Court of Appeals

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.

Appeal No. 2015AP222

Cir. Ct. No. 2014SC438

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JULIE ANN JASZCZENSKI,

PLAINTIFF-RESPONDENT,

V.

RICHARD HEISE D/B/A HEISE MASONRY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County: WILLIAM F. KUSSEL, JR., Judge. *Modified and as modified, affirmed; cause remanded with directions.*

¶1 STARK, P.J.¹ Richard Heise, pro se, appeals a judgment for \$7,100² resulting from incomplete and defective construction work he performed.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

We conclude Heise has failed to adequately develop any legal arguments and therefore affirm the judgment with the modifications discussed below. We also deny Julie Jaszczenski's motion for frivolous appeal costs as untimely.

BACKGROUND

¶2 Jaszczenski filed a small claims action against Heise seeking \$9,480 for incomplete and defective construction work he performed and return of stolen property.³ Heise, pro se, filed an answer and counterclaim in which he denied the allegations and claimed defamation.

¶3 After a bench trial, the circuit court found Jaszczenski had qualified for financial assistance through the Department of Workforce Development (DWD) to remodel her home.⁴ She selected Heise D/B/A Heise Masonry to complete the construction. The court found Heise performed substandard work that resulted in several building code violations and required repair. Heise, nonetheless, received over \$18,000 from DWD for his work, which was the agreed upon cost for the construction.

¶4 The court further found Heise did not complete the work “in a workmanlike manner” and granted Jaszczenski's claim for money damages of

² At the conclusion of the trial, the circuit court ordered a judgment on the record in favor of Jaszczenski in the amount of \$7,110, which the court calculated by reducing Jaszczenski's damages by twenty-five percent. *See infra* ¶4. However, the judgment entered in the record awards Jaszczenski \$7,100 in damages.

³ Jaszczenski appeared pro se before the circuit court. She is represented by counsel on appeal.

⁴ Heise requested only a partial trial transcript, which begins with closing arguments, after both parties had presented their evidence.

\$9,480. The court, however, determined Jaszczenski was partially at fault for “not keeping a proper eye on this job” and not keeping DWD informed of Heise’s substandard performance. As a result, the court reduced the damages by twenty-five percent, awarding Jaszczenski damages of \$7,110, including costs. The court further concluded Jaszczenski presented insufficient evidence to support her claim for replevin of the alleged stolen property, and Heise failed to meet the burden of proof on his counterclaim. Heise now appeals the judgment. Jaszczenski, in turn, asks this court to find Heise’s appeal frivolous and to award her the costs and reasonable attorney’s fees incurred in this appeal. *See* WIS. STAT. RULE 809.25(3).

DISCUSSION

¶5 The specific issues for review are unclear.⁵ As best as we can decipher, Heise appears to raise two issues: (1) the circuit court erroneously found his work was substandard; and (2) the payment he received from DWD was conclusive evidence that the construction was properly completed, thus precluding

⁵ Under his “Statement of the Issue[s],” Heise states,

1. State of Wisconsin Department of Workforce Development—DWD = Payment to Contractor when Job totally completed. Type of work as follow[s:]

- (1) Concrete Driveway

- (2) Wooden Wheelchair Ramp

- (3) Remodel Bathroom—wheelchair shower

Richard Heise Masonry Builders—Received full payment

2. Countersuit—Slander or Defame

a claim for damages caused by substandard work.⁶ Heise's brief, however, is inadequate and fails to provide a basis for reversing the circuit court on either of these issues.

¶6 The circuit court found Heise performed substandard work. Heise does not explain why he believes the circuit court erroneously exercised its discretion in weighing the evidence and credibility of the witnesses, and making this finding. *See* WIS. STAT. § 805.17(2) (findings of fact shall not be set aside unless clearly erroneous). He fails to cite any legal authority to support his claim or take into consideration the standard of review; he merely disagrees with the court's decision.

¶7 Heise also appears to claim that Jaszczenski was not entitled to recover damages because he was paid for his work and that payment functions as conclusive evidence that Jaszczenski was satisfied with his work and the work was approved by DWD. The court acknowledged, "Heise Masonry ... kept getting their payments approved and they probably thought they were doing perhaps okay" The court, accordingly, reduced the damages by twenty-five percent. The court, however, found Heise submitted nothing in writing to show the work was approved by DWD and "has no direct knowledge that it was or was not approved." As with the first issue, Heise fails to set forth any arguments beyond

⁶ Heise potentially raises a third issue. Heise lists "Countersuit—Slander or Defame" in his statement of the issues. In so doing, Heise appears to be challenging the circuit court's ruling regarding his counterclaim. However, Heise does not develop any legal arguments related to this issue. Instead, Heise states, "I can[']t tell or write about all [sic] the countersuit, because I don[']t have the whole transcript." It is Heise's responsibility to provide a transcript. Without one, we assume the record supports the circuit court's findings and decision. *See Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006); *see also State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (appellate courts may decline to review inadequately briefed issues). We, therefore, decline to consider this issue further.

conclusory statements and does not cite any legal authority to support his argument that the payments he received precluded Jaszczenski's claim.

¶8 Pursuant to WIS. STAT. RULE 809.19(1)(e), an appellant's argument "on each issue must be preceded by a one sentence summary of the argument and is to contain the contention of the appellant, the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." With the exception of minimal record citations, Heise's brief does not satisfy these requirements as to either issue. Some leniency may be afforded to pro se appellants; however, pro se appellants still are bound by the same rules that apply to attorneys on appeal. *Waushara Cty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). We will not abandon our neutrality to develop arguments for Heise. See *Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82; see also *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (arguments unsupported by references to legal authority will not be considered, and appellate courts may decline to review inadequately briefed issues).

¶9 Finally, Jaszczenski claims Heise's appeal is frivolous and seeks costs and attorney's fees pursuant to WIS. STAT. RULE 809.25(3). Under RULE 809.25(3)(a), a motion for frivolous appeal costs "shall be filed no later than the filing of the respondent's brief." Jaszczenski's brief was filed on July 27, 2015. Jaszczenski's motion requesting frivolous appeal costs was dated July 27, 2015, but filed on July 29, 2015. Although the motion was mentioned in the response brief, the motion must be filed separately. See *Howell v. Denomie*, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621. We therefore deny Jaszczenski's motion as untimely.

¶10 The judgment entered does not accurately reflect the amount awarded by the circuit court. We therefore, order the judgment be modified to \$7,110 and as modified affirm. We remand to the circuit court to modify the judgment to \$7,110.

By the Court.—Judgment modified and as modified, affirmed; cause remanded with directions.

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

