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DISTRICT III

May 27, 2026

To:

Hon. Carrie A. Schneider
Circuit Court Judge
Electronic Notice

Alexander B. Conlin
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Nathan DeLadurantey
Electronic Notice

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

2025AP2835-FT Wells Fargo Bank, N.A. v. Amber L. Smith
(L. C. No. 2025CV663)

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).

Amber Smith appeals from an order granting Wells Fargo Bank summary judgment on a collection action. Smith contends that the circuit court erred procedurally by failing to provide her with notice and an opportunity to respond to Wells Fargo's summary judgment motion and by failing to rule upon her own pending motion for arbitration before deciding the matter on summary judgment. Pursuant to this court's order of January 13, 2026, and a presubmission conference, this appeal was placed on the expedited appeals calendar, and the parties were

ordered to submit memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2023-24).¹ Despite a delinquency notice and a *Raz* order issued by this court, Wells Fargo has not filed a memorandum brief. *See Raz v. Brown*, 2003 WI 29, ¶¶18, 36, 260 Wis. 2d 614, 660 N.W.2d 647 (requiring this court to provide notice before summarily reversing based upon a respondent's failure to file a brief). We reverse based upon Wells Fargo's failure to file a brief and remand for further proceedings.

Wells Fargo filed its collection action against Smith on June 9, 2025. Smith filed an answer to the complaint on June 25, 2025. On August 14, 2025, Wells Fargo moved for summary judgment. The following day, Smith filed a cross-motion to either dismiss the action or stay further proceedings and compel arbitration based upon an arbitration clause in the parties' contract.

Following an unrecorded telephone status conference in September 2025, the circuit court directed the parties in writing to engage in settlement efforts and stated that it would again review the status of the matter on November 3, 2025. Docket entries show that another unrecorded telephone scheduling conference occurred on November 3, 2025, with the notation that the parties were "[w]orking on clarifying agreement." On December 18, 2025, the court entered a summary judgment order in Wells Fargo's favor, without giving any further notice or entering a scheduling order directing Smith to abandon settlement negotiations and file a

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

response to the summary judgment motion; without holding any hearing on the record; and without explicitly ruling on Smith's pending motion for arbitration.²

On appeal, Smith contends that the circuit court erred by entering summary judgment against her because: (1) the court failed to give notice that the summary judgment briefing clock had restarted after previously effectively staying the briefing schedule when it directed the parties to engage in settlement negotiations; and (2) the court was required under WIS. STAT. § 788.02 to decide Smith's motion for arbitration before proceeding on the summary judgment motion. As noted above, Wells Fargo has not filed a responsive brief.

An argument to which no response is made may be deemed conceded for purposes of appeal. *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). We conclude that it is appropriate to deem Smith's arguments to be conceded here, where we explicitly cautioned Wells Fargo that we would reverse the order on appeal if Wells Fargo failed to file a response that we deemed necessary to decide the issues on appeal. We therefore reverse the summary judgment order and remand with directions that the circuit court first address Smith's motion for arbitration, either in writing or on the record at a recorded hearing. If the court denies that motion, it should set a schedule for Smith to file a response to the summary judgment motion.

Upon the foregoing,

² Because the scheduling conferences were not recorded, it is not clear whether the circuit court orally addressed the arbitration motion during one of them. It is also unclear whether the court, by declining to sign a proposed arbitration order, intended to deny the pending motion. The court did not, however, explicitly state that the motion was denied or give any reason for denying it on the record.

IT IS ORDERED that the summary judgment order is reversed and this matter is remanded for further proceedings.

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

Samuel A. Christensen
Clerk of Court of Appeals