

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 1, 2026

Samuel A. Christensen
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. 2025AP1802
STATE OF WISCONSIN**

Cir. Ct. No. 2024FO290

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF MONROE,

PLAINTIFF-RESPONDENT,

V.

NICOLAS HODGMAN WITHEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County:
TODD L. ZIEGLER, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ A jury found Nicolas Withey guilty of two forfeitures—disorderly conduct and resisting an officer—in violation of ordinances enacted by Monroe County (“the County”). The circuit court ordered

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

Withey to pay corresponding fines and costs. Representing himself on appeal, Withey purports to raise 14 issues. Withey also asks that this court direct that he receive from the County “full financial compensation for all fines and fees paid as a result of the charges brought against him.” Withey fails to establish that he is entitled to any relief on any ground. Accordingly, I affirm.

BACKGROUND

¶2 The following is the basic context, according to a pretrial motion filed by the County. The clerk of the Village of Kendall (“the village”) sent a letter to Withey on July 1, 2024, notifying him that he was required to mow “noxious weeds” growing on his property.² The notice stated that, if the property was not mowed within 10 days, then a village representative would come onto Withey’s property to mow it, in which case Withey would be responsible for the mowing cost. On August 20, 2024, a village representative arrived to mow the property. The County alleged that, during an ensuing encounter with the representative, Withey committed disorderly conduct, in violation of MONROE

² While I do not reach the merits of Withey’s purported issues for reasons explained below, I note the following for context. “Noxious weeds” are defined in WIS. STAT. § 66.0407(1)(b), and § 66.0407(3) directs all persons owning land to “destroy all noxious weeds” on their lands. Procedures for the appointment of a “weed commissioner” by a village, and the powers, duties, and compensation of weed commissioners are provided in WIS. STAT. § 66.0517. Of note here, § 66.0517(3)(a) provides in part:

If a person in a district neglects to destroy noxious weeds as required under [§] 66.0407(3), the weed commissioner shall destroy, or have destroyed, the noxious weeds in the most economical manner. A weed commissioner may enter upon any lands that are not exempt under [§] 66.0407(5) and cut or otherwise destroy noxious weeds without being liable to an action for trespass or any other action for damages resulting from the entry and destruction, if reasonable care is exercised.

COUNTY, WIS., CODE OF ORDINANCES ch. 20, § 16, and he resisted or obstructed an officer, in violation of ch. 20, § 13(b) of the ordinances.³

¶3 After the County issued citations to Withey and filed a corresponding forfeiture complaint, both sides filed written pretrial motions in the circuit court.

¶4 The following are among the events reflected in circuit court docket entries contained in the record on appeal:

- On February 19, 2025, the circuit court held a hearing, at which the court denied a motion made by Withey to dismiss the forfeiture complaint.
- On July 16, 2025, the circuit court held a final pretrial hearing. A docket entry from that hearing states, “Court goes over Pre-trial Motions – Motions to dismiss are denied.”
- On August 7, 2025, the circuit court held a trial, at which a jury found Withey guilty on both forfeitures.

¶5 The record contains a July 21, 2025 letter issued to the parties by the circuit court that included some rulings. The letter refers to “our recent hearing,” which is apparently a reference to the July 16 final pretrial hearing, strongly implying that the rulings in the July 21 letter were based at least in part on evidence or argument that had been offered by the parties at a hearing.

³ This reference to the MONROE COUNTY, WIS., CODE OF ORDINANCES is to the online register last revised July 21, 2026 (https://library.municode.com/wi/monroe_county/codes/code_of_ordinances).

¶6 Withey filed a notice of appeal on August 8, 2025.

¶7 At a hearing on October 3, 2025, the circuit court heard evidence to determine whether Withey was indigent for purposes of potentially entitling him to free transcripts. See ***State ex rel. Girouard v. Circuit Ct. for Jackson Cnty.***, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990) (a litigant in a civil proceeding may obtain a waiver of transcript fees if the litigant is indigent and the litigant’s claim is one for which relief can be granted). The court issued a written order reflecting a finding that Withey was not indigent for this purpose.

¶8 There are no transcripts in the record on appeal of any proceedings that occurred in the circuit court in this case.

DISCUSSION

¶9 Withey’s briefing is deficient in many respects. Compounding the problem, some of the deficiencies exacerbate other deficiencies. The result is that he fails to develop a single issue that is reviewable on the merits.

¶10 I start with a general point that applies to each of the more specific points that follow. This court makes some allowances for shortcomings in submissions by litigants who are not represented by counsel, as here. ***State ex rel. Harris v. Smith***, 220 Wis. 2d 158, 164-65, 582 N.W.2d 131 (Ct. App. 1998). At the same time, however, this court “cannot serve as both advocate and judge” by “making an argument for [a] litigant.” ***Id.*** at 165; ***Industrial Risk Insurers v. American Eng’g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (“Arguments unsupported by legal authority will not be considered,” and “we will not abandon our neutrality to develop arguments.”).

¶11 One deficiency in Withey’s briefing is that, with isolated exceptions that do not solve the problem, Withey’s briefs on appeal lack citations to the appellate record. See WIS. STAT. RULE 809.19(1)(d) (providing that an appellant’s brief must include “a statement of facts relevant to the issues presented for review, with appropriate references to the record”); RULE 809.19(1)(e) (providing that the argument on each issue in an appellate brief must “contain the contention of the appellant, the reasons therefor, with citations to the authorities, statutes and parts of the record relied on”); *State v. McMorris*, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 (this court may decline to consider “arguments that lack proper citations to the record”). Adding to the problem, Withey repeatedly cites to documents using the format “Exhibit A,” “Exhibit B,” and so on, without referring to any record designation for that document. I can discern contextual clues suggesting what documents some of these “Exhibits” might be, but for other “Exhibits” it is entirely unclear. Further, from all that I can tell, some of these “Exhibits” might not have been made a proper part of the record at any time. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“An appellate court’s review is confined to those parts of the record made available to it.”).

¶12 I pause to note that this failure to cite adequately to the record, and to include citations that are of little to no use, is a significant deficiency and could be sufficient, standing alone, to merit affirmance. *State v. Lass*, 194 Wis. 2d 591, 604, 535 N.W.2d 904 (Ct. App. 1995) (“We will not consider arguments that are not supported by appropriate references to the record.”). It is not acceptable to force the respondent and the appellate court to guess what portion or portions of the record, if any, the appellant is basing an argument on.

¶13 Another major, related deficiency, as referenced above, is that no transcripts are in the appellate record. To a large extent, Withey fails to cite to the record because Withey has failed to ensure that necessary elements of the record are available to this court, which he is required to do as the appellant.

¶14 Explaining further, missing are at least some of the arguments of the parties and the reasoning of the circuit court bearing, so far as I can discern, on each of the issues that Withey now purports to raise. It is the appellant's responsibility to ensure that the parties and the appellate court have an adequate record from which to work. *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Absent relevant items from the record, an appellate court will assume "that every fact essential to sustain the [circuit] court's decision is supported by the record." *Fischer v. Wisconsin Patients Comp. Fund*, 2002 WI App 192, ¶6 n.4, 256 Wis. 2d 848, 650 N.W.2d 75; *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W. 2d 233 (1979) (appellate courts presume every fact essential to the circuit court's decisions are supported by the record).

¶15 Here, without the transcripts, I lack a basis to determine the full nature of the motions and arguments that were presented to the circuit court by both sides. I also lack a basis to determine the full nature of how the court handled each of the purported issues. For example, the court might have made relevant factual or credibility findings, which are circuit court functions to which this court ordinarily applies deferential review. Or, the court might have pointed out shortcomings in Withey's many submissions or arguments, which he made over an extended period, that could have driven, or at least contributed to, court rulings that were based on the court's discretionary power to control its docket. See *Hefty v. Strickhouser*, 2008 WI 96, ¶31, 312 Wis. 2d 530, 752 N.W.2d 820; WIS. STAT. § 802.10(3) (addressing circuit court calendar management and establishing that a

court “may enter a scheduling order on the court’s own motion or on the motion of a party.”).

¶16 For these reasons, I cannot meaningfully evaluate Withey’s challenges to the circuit court’s decisions. Under the legal standard just cited, I must assume both that the court sufficiently addressed the arguments and motions that Withey made and that the missing transcripts reflecting arguments of the parties and the court’s rulings support the court’s rulings. *See Jocius v. Jocius*, 218 Wis. 2d 103, 119, 580 N.W.2d 708 (Ct. App. 1998) (declining to address whether the circuit court erred in denying appellant physical placement rights “because in order to determine whether the [circuit] court erroneously exercised its discretion with respect to this issue, we must be able to examine a full transcript of the proceedings” and the appellant “failed to provide us with the transcript”).

¶17 To cite a representative example, as part of Withey’s argument that he was in some sense unlawfully “entrapped” by the village or the County, he asserts, “Trial testimony demonstrates there was no weed-commissioner verification of noncompliance before enforcement.” Putting entirely to the side whether Withey has identified a legal basis for reversal based on an entrapment-related concept, by Withey’s own account there would be information that is relevant to resolve this issue in a trial transcript that is not part of the record.

¶18 The circuit court’s July 21, 2025 letter, which to repeat makes several pretrial rulings that Withey challenges, is a part of the record. But this does not help Withey avoid the problems created by failing to include transcripts in the record. As noted above, the letter references a pretrial hearing, and there is no transcript for this hearing in the record that allows this court to understand how much of the letter’s rulings were explained by the circuit court orally at that

hearing. Further, I observe that it is routine for circuit courts to modify or elaborate on pretrial rulings when presiding at trial, as evidence is offered or admitted and arguments of the parties are renewed or refined. Therefore, without a trial transcript, I also have no way of knowing the extent to which the circuit court may have modified or elaborated on the particular pretrial rulings that it made in its July 21 letter.

¶19 In his reply brief on appeal, Withey confuses two doctrines. One doctrine, referenced above, requires appellants to ensure that material portions of the record are available on appeal. Under a distinct doctrine, appellate courts rely on standards of review, one of which is *de novo*, meaning review without deference to the ultimate rulings made by the circuit court. Withey fails to recognize that, even when our standard of review is *de novo*, we need to understand what the parties specifically argued, and which issues the circuit court did and did not decide, and on what basis. Or, if there is an issue on which Withey thinks that he has identified the full scope of argument by the parties and the full scope of the circuit court’s ruling and its reasoning, that is not discernable to me from his briefing.

¶20 On a related point, because the record is materially incomplete, I cannot determine whether Withey gave the circuit court an opportunity to address each issue that he raises on appeal, or instead whether he is raising issues for the first time on appeal. See ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995) (“We will not ... blindside [circuit] courts with reversals based on theories which did not originate in their forum.”); ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W. 2d 501 (1997) (issues not presented to the circuit court will generally not be considered for the first time on appeal).

¶21 In his reply brief on appeal, Withey contends that the County “concedes that the existing written record is sufficient to identify when and how Appellant raised the very issues Respondent now claims were unpreserved.” Withey’s argument on this point is based on the fact that the County on appeal cites to a pretrial pleading that Withey submitted to the circuit court, titled “Defendant’s Response Brief and Motion to Dismiss.” But Withey’s target is too narrow and the County has not made a pertinent concession. To be sure, Withey raised various arguments and made various assertions in his pleadings in the circuit court. But he fails to show that, on any of the issues that he now raises, this court has a complete record of all arguments made by both sides and of the rulings of the circuit court, including the circuit court’s reasoning in making those rulings.

¶22 Withey compounds all of the problems discussed to this point by also consistently failing to apply pertinent law to relevant facts in coherent legal arguments. It is not enough for Withey to state a concern, or even a recognizable legal topic, and assert that the circuit court erred, leaving for this court to figure out if the circuit court erred in a particular way given the pertinent facts and legal authority. See *Pettit*, 171 Wis. 2d at 646 (declining to address arguments that lacked “developed themes reflecting any legal reasoning”); *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (declining to consider an “unexplained and undeveloped” argument). The following is only one representative example. Withey asserts that, under the terms of WIS. STAT. § 66.0113(3), no person who is suspected of violating a village ordinance, as Withey was here, may be taken into custody by someone with arrest authority based on the person’s conduct when presented with an attempt to enforce the ordinance unless there is, in Withey’s words, “a substantial and imminent threat to public safety.” See § 66.0113(3) (describing options for alleged violators to

respond to citations issued to them, regarding appearances in court, cash deposits, and the like). Withey makes this assertion without providing pertinent legal authority. See **Pettit**, 171 Wis.2d at 646 (declining to address “[a]rguments unsupported by references to legal authority”).

¶23 Withey asserts that the County and the circuit court committed “institutional failures” in failing to create “a written charging theory,” “factual allegations describing the alleged offenses,” “a lawful-authority basis for arrest,” and “written rulings on dispositive motions.” Withey appears not to understand that the responsibility to create an adequate record for appeal rests with him as the appellant. To the extent that he means to argue that the County, the circuit court, or both were responsible for ensuring that additional documents were created and included in the record, no such argument is developed in his briefing.

¶24 Due to all of these deficiencies, Withey fails to meet his burden to demonstrate error by the circuit court on any of the issues that he purports to raise on appeal challenging the adjudication of the two forfeitures. See **Seltrecht v. Bremer**, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997) (stating that, on appeal, “it is the burden of the appellant to demonstrate that the [circuit] court erred”). This includes Withey’s demand that he is entitled to “full financial compensation for all fines and fees paid.”

¶25 In sum, Withey’s briefing does not contain a single developed, coherent legal argument for which the record reflects both that the parties made particular arguments to the circuit court and that the court made a ruling, including a record of all of the court’s reasoning on that issue.

CONCLUSION

¶26 For all of these reasons, I affirm the judgment of forfeitures and conclude that Withey is not entitled to any of the relief that he seeks.

By the Court.—Judgment affirmed.

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

