

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 15, 2017

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. 2016AP1579

Cir. Ct. No. 2015TR1921

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF LAFAYETTE,

PLAINTIFF-RESPONDENT,

V.

IAN D. HUMPHREY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Lafayette County:
DUANE M. JORGENSEN, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Ian Humphrey, pro se, appeals an order denying his petition for waiver of the transcript fees. For the reasons discussed below, I affirm.²

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise indicated.

BACKGROUND

¶2 In July 2015, Humphrey, was cited for operating a motor vehicle after suspension of his operator privileges in violation of WIS. STAT. § 343.44(1)(a). Humphrey requested a trial on the matter; however, Humphrey did not appear at the trial, which was held to the court, and a default judgment was entered against him.

¶3 In case No. 2016AP966, Humphrey appealed the default judgment and he moved the circuit court to waive the transcript fees for that appeal. In a written decision dated May 5, 2016, the circuit court found that Humphrey was indigent, but denied Humphrey's request for the waiver of transcript fees.

¶4 On May 13, 2016, Humphrey moved the circuit court again for the waiver the transcript fees associated with his appeal in case No. 2016AP966. On May 23, 2016, the circuit court denied Humphrey's motion. Humphrey presently appeals the circuit court's May 23 order.

DISCUSSION

¶5 Whether fees and costs for transcripts should be waived by the court is governed by WIS. STAT. § 814.29. A litigant is entitled to free transcripts on appeal of a civil case when the circuit court determines both that the litigant is indigent, and that the appeal has arguable merit. *See State ex rel. Girouard v.*

² The County of Lafayette did not file a responsive brief. Although this court may, under some circumstances, summarily reverse for failure to file a responsive brief, see WIS. STAT. § 809.83(2), I decline to do so and instead affirm. *See Jezeski v. Jezeski*, 2009 WI App 8, ¶1 n.1, 316 Wis. 2d 178, 763 N.W.2d 176 (Ct. App. 2008) (affirming circuit court even though respondent did not file responsive brief).

Circuit Ct. for Jackson Cty., 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990). Whether a claim has arguable merit is a question of law that this court reviews independently. *State ex rel. Hansen v. Circuit Ct. for Dane Cty.*, 181 Wis. 2d 993, 998, 513 N.W.2d 139 (Ct. App. 1994).

¶6 The circuit court's determination that Humphrey is indigent for purposes of the transcript fees is undisputed. Accordingly, the question before me is whether Humphrey's appeal of his default conviction for operating a motor vehicle after suspension has arguable merit.

¶7 Humphrey's arguments that the circuit court erred in concluding that Humphrey had failed to identify an arguably meritorious claim upon which to appeal focuses on his assertions that his operating privileges were not suspended at the time he was cited for operating under suspension, any suspension of his license was unfair, and he was denied his right to a jury trial. However, because judgment was entered against Humphrey by default because Humphrey failed to appear at the trial on his citation, the only possible claim Humphrey could have on appeal is that default judgment was improperly granted. Humphrey did not assert to the circuit court and does not argue here that default judgment against him based upon his failure to appear at trial was improper, nor has he moved in the circuit court to reopen the default judgment, which might provide reasons in the statement of the grounds for doing so, and Humphrey has thus failed to provide any basis upon which to conclude that his appeal has arguable merit. Accordingly, I affirm the circuit court.³

³ The record in this case contains a written default judgment. The record also reflects that there was a trial. While on the face these two facts apparently conflict, there are reasons other than lack of a trial why default can occur. *See, e.g.*, WIS. STAT. §§ 804.12(2)(a)3. and
(continued)

CONCLUSION

¶8 For the reasons discussed above, I affirm.

By the Court.—Order affirmed.

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

802.10(7). Humphrey has not raised the default judgment as an issue either in the circuit court or in his brief to this court. It is, therefore, forfeit. In any event, were we to overlook the default judgment and address the merits of the appeal, we would reach the same result on the basis of there not being sufficient showing that an appeal would have arguable merit.

