

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 17, 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. 2017AP187

Cir. Ct. No. 2016SC4391

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

SAVVY WOMAN SECRETS,

PLAINTIFF-RESPONDENT,

v.

A CLEAN CARPET LLC AND QUINTUS D. BURKS,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Dane County:
JULIE GENOVESE, Judge. *Reversed.*

¶1 KLOPPENBURG, P.J.¹ Quintus Burks, p/k/a A Clean Carpet LLC, appeals the judgment finding him liable for damages from the confusion over the cancellation of a contract. Burks contends that the judgment is not supported by

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

the evidence. Because the respondent, Savvy Woman Secrets, has not filed a brief despite orders from this court, I summarily reverse.

¶2 In May 2016, Savvy Woman and Burks entered into a contract providing for the placement of an advertisement for Burks's business in the summer and fall issues of Savvy Woman's magazine at a price of \$2,500 per issue. The contract was signed by Burks and Samantha Martin, the marketing director for Savvy Woman, and Burks paid \$500 toward the total \$5,000 charge. The day after signing the contract, Burks changed his mind and decided that he wanted to cancel the contract. Burks called the account representative listed on the contract, Christ Olstad, and left a voicemail message. After failing to hear back, Burks called Olstad again several days later and told Olstad that he wanted to cancel the contract. Olstad acknowledged that he had received Burks's message and that Burks was cancelling the contract. Martin contacted Burks one week later by email. Martin was unaware that Burks had called Olstad and cancelled the contract. Burks failed to respond to the email and several additional emails until finally replying "No." Burks did not clarify this reply by email but at a later date did talk to Martin over the phone and explained that he had previously cancelled the contract during a phone conversation with Olstad.

¶3 Burks did not pay the remaining balance on the contract, and Savvy Woman sued for the money owed. After a bench trial, the circuit court found that Burks had made the call and cancelled the contract. However, the court ruled in favor of Savvy Woman because Savvy Woman relied on the contract and was damaged by the confusion. The court ordered Burks to pay Martin \$1,250, representing half of the charge for the summer issue, plus the \$94.50 filing fee, minus the \$500 payment Burks made when he signed the contract, resulting in a total judgment in favor of Savvy Woman in the amount of \$844.50.

¶4 Burks appealed. Savvy Woman failed to file a response brief within the time required by WIS. STAT. RULE 809.19(3)(a)1.

¶5 On May 24, 2017, this court informed Savvy Woman that we had yet to receive its brief and that the failure to file a brief may result in the case being summarily reversed. This court ordered Savvy Woman to file a brief within five days of receiving the order. On June 20, 2017, this court again informed Savvy Woman that we had not received a brief from Savvy Woman and that the case was being submitted to the court to decide whether resolution would be proper based solely on the appellant's brief and the record. On July 14, 2017, in a third order, this court informed Savvy Woman that we had completed review of Burks's brief and the record and concluded that a respondent's brief was necessary for the resolution of the appeal on its merits. The July 14, 2017 order told Savvy Woman that the failure to file a response brief would be deemed an abandonment of the money judgment and the judgment would be summarily reversed.

¶6 Summary reversal is appropriate where a party “abandon[s] its position on appeal by not responding to numerous requests by the court of appeals to file a brief.” *Raz v. Brown*, 2003 WI 29, ¶¶28-32, 260 Wis. 2d 614, 660 N.W.2d 647 (approving summary reversal on those grounds in *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 500 N.W.2d 339 (Ct. App. 1993)); *see also* WIS. STAT. RULE 809.83(2) (the failure of a person to comply with a court order or with a requirement of the rules is grounds for summary reversal). In this case, Savvy Woman has not provided any argument in response to any claim made in the brief filed by Burks despite repeated orders of this court to Savvy Woman, which have included clear notice that summary reversal would likely result from silence.

¶7 I decline to address the merits of the appeal under these circumstances and conclude only that Savvy Woman has abandoned the appeal and that summary reversal is appropriate.

By the Court.—Judgment reversed.

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

