

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 2008

David R. Schanker
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. 2007AP121

Cir. Ct. No. 2006SC310

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GFS INNOVATIVE MARKETING SOLUTIONS, LLC,

PLAINTIFF-RESPONDENT,

v.

MIDWEST AMUSEMENT PARK, USA INTERNATIONAL RACEWAY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County:
JAMES R. HABECK, Judge. *Appeal dismissed.*

¶1 PETERSON, J.¹ Midwest Amusement Park, USA International Raceway (Midwest) appeals a small claims judgment awarding GFS Innovative Marketing Solutions, LLC damages for breach of contract. Midwest has failed to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

comply with the rules of appellate procedure in numerous respects, including filing a deficient appendix, filing a false appendix certification, citing to its appendix rather than the record, and filing a late reply brief. *See* WIS. STAT. RULE 809.19. We summarily dismiss Midwest’s appeal as a sanction for these violations. *See* WIS. STAT. RULE 809.83(2).

¶2 In *State v. Bons*, 2007 WI App 124, ¶21, 301 Wis. 2d 227, 731 N.W.2d 367, we warned that failure to file an appendix conforming to WIS. STAT. RULE 809.19 and filing a false certification is grounds for a sanction. RULE 809.19(2)(a) requires the appellant to file an appendix that includes

relevant trial court record entries, the findings or opinion of the trial court and limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court’s reasoning regarding those issues.

¶3 A proper appendix is necessary for efficient functioning of this court. A proper appendix “makes readily available to each [judge] the matters which he or she must know ... to give intelligent attention to the issues presented by the appeal” and avoids the need for time-consuming searches of the record. *Bons*, 301 Wis. 2d 227, ¶21 (citations and some punctuation omitted). “It is counsel’s duty to the court as well as to his or her client to furnish it.” *Id.*

¶4 This case arises out of an alleged modification of a contract, and the parties dispute whether the circuit court applied the correct standard of law. The circuit court’s findings and reasoning are found in the final five pages of the trial transcript. These findings are both “the findings ... of the trial court” and an oral ruling “showing the trial court’s reasoning” on a disputed issue before this court. *See* WIS. STAT. RULE 809.19(2)(a).

¶5 However, Midwest’s attorney, Attorney John Scott,² included only certain trial exhibits and the notice of entry of judgment—a document giving only the dollar amount of the judgment—in Midwest’s appendix. The appendix does not include any of the trial court’s findings, rulings or decisions showing its reasoning. Perhaps more egregious, Attorney Scott filed a certification that the appendix complied with WIS. STAT. RULE 809.19(2)(a), when in fact it did not. The certification is manifestly false. *See Bons*, 301 Wis.2d 227, ¶24. These violations of the rules necessitated an unnecessary and time-consuming search of the record for the circuit court’s reasoning.

¶6 In *Bons*, we concluded the appropriate sanction for a faulty appendix and false certification was a penalty of \$150. *Id.*, ¶25. Here, however, Midwest has violated the rules of appellate procedure in numerous other respects as well.

¶7 First, WIS. STAT. RULE 809.19 requires briefs include a fact section with “appropriate references *to the record*.” WIS. STAT. RULE 809.19(1)(d) (emphasis added). The appendix is not the record. *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, ¶1 n.2, 302 Wis.2d 245, 733 N.W.2d 322. Except for citations to the trial transcript, Midwest’s brief cites exclusively to its appendix. Even worse, many of the documents in Midwest’s appendix lack the exhibit tags found on marked exhibits, suggesting they are copies of documents in counsel’s file rather than copies of documents actually in the record. Finally, Midwest filed its reply brief more than a month after GFS’s brief was filed and

² Attorney Peter Horejsi also signed the briefs, but did not sign the appendix certification.

served—approximately two weeks after the deadline found in WIS. STAT. RULE 809.19(4)(a).

¶8 In a previous appeal, we admonished Midwest for “blatantly” failing to conform to the rules of this court and warned that violations of the rules are grounds for a sanction.³ *Hugo Bramschreiber Asphalt Co., Inc. v. Midwest Amusement Park, LLC*, No. 2006AP1205, unpublished slip op. ¶11 n.3 (WI App Sept. 19, 2006); *see also* WIS. STAT. RULE 809.83(2). Especially in view of that past warning, the only appropriate sanction for Midwest’s multiple flagrant violations of the rules in this case is dismissal of its appeal. *See* WIS. STAT. RULE 809.83(2). The court of appeals is a fast-paced, high-volume court. *See Bons*, 301 Wis. 2d 227, ¶21. It is not too much to expect appellate counsel in small claims actions—as in all other actions—to comply with basic rules.

By the Court.—Appeal dismissed.

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

³ Attorney Horejsi represented Midwest in that appeal.

