

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 2002

Cornelia G. Clark
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. 01-1885
STATE OF WISCONSIN**

Cir. Ct. No. 00SC27986

**IN COURT OF APPEALS
DISTRICT I**

LEE BOYD,

PLAINTIFF-APPELLANT,

V.

RALPH GESUALDO,

DEFENDANT,

INTERNATIONAL AUTO, INC.,

DEFENDANT-RESPONDENT,

THOMAS DEXTER AND TONY PRZYTULA,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee
County: THOMAS R. COOPER, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Lee Boyd appeals from a judgment after a bench trial in small claims court. Although the trial court entered judgment on Boyd's behalf in the amount of \$584.50, Boyd claims that the trial court erred in failing to award him additional damages in the amount of \$1,233.78 plus punitive damages. This court affirms.

I. BACKGROUND.

¶2 Boyd took his automobile to Brookfield Motors, currently International Auto, Inc., for repairs on a faulty rear-passenger door lock.² The repair shop discovered a problem with Boyd's alternator, which was replaced with Boyd's consent. Soon thereafter, the battery on Boyd's vehicle failed. Boyd replaced that battery, and ultimately, was forced to purchase a total of three new batteries for his vehicle after Brookfield Motors repaired the alternator. Finally, while in Virginia, the vehicle stalled and would not start. At that time, Boyd had his automobile towed to a repair shop in Virginia, where he was informed that the alternator was the problem. Boyd had the alternator replaced, and while these repairs were taking place, he rented a car.

¶3 On September 25, 2000, Boyd sued International Auto, Inc., in small claims court. On April 13, 2001, after a bench trial, the trial court awarded Boyd \$520.50 plus costs, totaling \$584.50. On April 26, 2001, Boyd filed a motion to reconsider requesting that the trial court award him additional damages including \$562.64 for the rental car in Virginia, \$233.64 for the three replacement batteries,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

² Because respondent has failed to file a response brief pursuant to WIS. STAT. RULE 809.19 (1999-2000), all facts are reported as alleged in appellant's brief and stated in the record.

and \$437.50 for additional repairs that Boyd alleged were made necessary due to the faulty alternator. On May 21, 2001, the trial court denied Boyd's motion to reconsider.

II. ANALYSIS.

¶4 On July 12, 2001, Boyd filed a notice of appeal with this court seeking review of the trial court's pecuniary damage award. However, he failed to file a statement on transcript as required by WIS. STAT. RULE 809.11(4) (1999-2000).³ On August 3, 2001, this court ordered Boyd to file a statement on transcript with the clerk of the court of appeals within five days. On August 8, 2001, this court received a letter from Boyd stating, "The Court of Appeals is

³ WISCONSIN STAT. RULE 809.11(4) states:

Requesting transcripts and filing statement on transcript. (a)

The appellant shall request a copy of the transcript of the reporter's notes of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 14 days after the filing of the notice of appeal.

(b) The appellant shall file a statement on transcript with the clerk of the court of appeals, shall file a copy of the statement on transcript with the clerk of circuit court, and shall serve a copy of the statement on transcript on the other parties to the appeal within 14 days after the filing of the notice of appeal in the circuit court. The statement on transcript shall either designate the portions of the transcript that have been ordered by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. If a transcript is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.

asked by motion to accept this brief and pleading and court records of the plaintiff as is.” This court construed Boyd’s letter as indicating that no transcripts would be necessary for this appeal.

¶5 As such, our review is confined to the record presented on appeal and the appellant’s brief. See *Herro, McAndrews and Porter, S.C. v. Gerhardt*, 62 Wis. 2d 179, 180, 214 N.W.2d 401 (1974) (“This appeal comes before this court without a transcript. Therefore, the scope of our review is necessarily confined to the record before us.”). Moreover, our review is limited to a determination of whether the judgment is in accord with the verdict. See *Gray v. Wisconsin Tel. Co.*, 30 Wis. 2d 237, 243, 140 N.W.2d 203 (1966).

¶6 “Obviously, if no testimony is preserved on appeal, this court is powerless to review a question of fact dependent upon it or to determine the sufficiency of the evidence to support the verdict or the findings.” *Id.* Here, neither the record nor Boyd’s brief provides adequate evidence regarding Boyd’s claim and the trial court’s analysis. Absent such evidence or any findings by the trial court that the alternator in question was defective, let alone any proof that these additional charges were a result of the allegedly defective alternator, this court will not reverse the trial court’s damage award. Accordingly, the trial court is affirmed.

By the Court.—Judgment affirmed.

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

