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DISTRICT IV

March 20, 2025

To:

Hon. Craig R. Day
Circuit Court Judge
Electronic Notice

Tina McDonald
Clerk of Circuit Court
Grant County Courthouse
Electronic Notice

Cathleen Schmitt
P.O. Box 153
Deforest, WI 53532

Felicia Schmitt
c/o Cathleen Schmitt
P.O. Box 153
Deforest, WI 53532

Jamie L. Schmitt
880 Union St., Apt #9
Platteville, WI 53818

You are hereby notified that the Court has entered the following opinion and order:

2024AP1275

Felicia Schmitt v. Jamie L. Schmitt (L.C. # 2021SC453)

Before Taylor, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Appellant Felicia Schmitt, appearing by Cathleen Schmitt as Guardian of the Estate, appeals an order of the circuit court that denied Cathleen's request that respondent Jamie L. Schmitt reimburse her for a \$600 surety bond premium she paid when she sought a collection

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

execution against various items of Jamie's personal property under WIS. STAT. Ch. 815.² Based on my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. The order is summarily reversed as a sanction against Jamie for his failure to file a respondent's brief, *see* WIS. STAT. RULE 809.83(2), and the cause is remanded with directions to grant Cathleen's request for reimbursement of the surety bond premium.

In her capacity as Guardian of the Estate of Felicia, Cathleen secured a small claims monetary judgment against Jamie in the amount of \$10,120.50. As part of post-judgment collection efforts, Cathleen sought execution against various items of Jamie's personal property under WIS. STAT. ch. 815, including several savings and deposit accounts and three vehicles Cathleen believed were owned by Jamie. The Clerk of the Circuit Court ordered the county sheriff to satisfy the monetary judgment out of Jamie's personal and real property in the county.

A sheriff's deputy successfully seized money assets in two of Jamie's savings and deposit accounts. The sheriff's deputy requested a surety bond pursuant to WIS. STAT. § 815.24 to execute against the vehicles. Cathleen secured a surety bond and paid a bond premium of \$600. Ultimately, the sheriff's office determined that, because DMV records indicated that Jamie no longer owned one of the vehicles and the other two vehicles were encumbered by liens, it was futile to seek execution against the vehicles. The circuit court in a written order denied Cathleen's request to recover from Jamie as costs the \$600 surety bond premium, plus statutory interest from the time of the entry of judgment. Cathleen appeals that order.

² Given that the parties share the same surname, for ease of reference and simplicity, I refer to each party by the party's first name.

Cathleen filed her appellant's brief on October 30, 2024. In an order dated December 18, 2024, this court notified Jamie that the respondent's brief was delinquent and, unless the brief was filed or an extension sought within five days, the appeal would be subject to summary disposition. No response was received from Jamie.

In an order dated January 9, 2025, I cautioned Jamie that failure to file a respondent's brief would put the appeal at risk for summary reversal, because such failure tacitly concedes that the circuit court erred. *See State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993). I directed that the appeal be submitted for my review for a decision based solely upon the appellant's brief and the record.

In an order dated January 29, 2025, I informed Jamie that I would summarily reverse the order being appealed if Jamie failed to file the respondent's brief by February 28, 2025. My order specifically stated that failure to file the respondent's brief as directed would constitute an abandonment of the appeal. *Raz v. Brown*, 2003 WI 29, ¶36, 260 Wis. 2d 614, 660 N.W.2d 647. This court has not received a response of any kind from Jamie, and no respondent's brief has been filed.

Therefore,

IT IS ORDERED that the order appealed from is summarily reversed as a sanction for failure to file the respondent's brief, *see* WIS. STAT. RULE 809.83(2), and the matter is remanded to the circuit court with directions to grant Cathleen's request for reimbursement of her surety bond premium from Jamie and any additional allowable costs and fees as determined by the circuit court.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals