

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 26, 2001

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.

No. 01-0827

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

SCOTT NMI MCGUIRE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County:
ROBERT G. MAWDSLEY, Judge. *Reversed and cause remanded.*

¶1 P.J. NETTESHEIM, J.¹ The State of Wisconsin appeals from a trial court order dismissing its action against Scott McGuire. McGuire is the licensee for the service of alcoholic beverages at the Sports Page Bar & Grill. The State

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

cited both McGuire and his employee for a violation of WIS. STAT. §125.07(1)(a)2 for selling alcoholic beverages to a minor. The State argues that the trial court erred in its determination that § 125.07(1)(a)6 precludes it from making a determination that McGuire violated § 125.07(1)(a)2 because the employee of McGuire had already been convicted of a violation for the same sale.

¶2 We do not reach the merits of this appeal. McGuire has failed to file a respondent's brief on appeal. Due to this failure, we summarily reverse the circuit court's order as a sanction under WIS. STAT. RULE 809.83(2).² In taking this action, we stress that we are not addressing the correctness of the trial court's ruling.

¶3 The procedural history of this case on appeal is as follows. Following the trial court's order dismissing its action against McGuire, the State filed a Notice of Appeal on March 21, 2001. It filed its appellant's brief on June 29, 2001, after requesting and receiving an order extending the time to file its brief based on good cause. McGuire subsequently failed to timely file his respondent's brief prior to August 12, 2001. On August 22, this court issued an order alerting McGuire to this fact and warning him that "unless within five days of the date of this order, the Brief of the Respondent(s) is served and filed or an extension is requested ... with good cause shown ... the judgment or order appealed from will

² WISCONSIN STAT. RULE 809.83(2) provides:

Failure of a person to comply with a requirement of these rules, other than the timely filing of a notice of appeal or cross-appeal, does not affect the jurisdiction of the court over the appeal but is grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.

be disposed of summarily and may be summarily reversed under RULE 809.83(2).” On September 5, 2001, this court ordered the appeal to be submitted for a decision without a respondent’s brief.³

¶4 It is well recognized that “[w]e may summarily reverse a judgment or order if the respondent fails to file a brief, [WIS. STAT. RULE 809.83(2)], and we usually do.” *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (citation omitted). Because McGuire has had ample opportunity to respond to the State’s arguments on appeal and has failed to do so, we summarily reverse the trial court’s order. We remand for further proceedings.

By the Court.— Order reversed and cause remanded.

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

³ We note that McGuire’s trial counsel responded to the orders of this court, explaining that McGuire had not retained her as appellate counsel.

