**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

November 7, 1995

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-0645**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

**JAMES LEWIS SMALL, JR.,**

**Plaintiff-Appellant,**

**v.**

**WTMJ TELEVISION STATION and DUANE POHLMAN,**

**Defendants-Respondents.**

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. James Lewis Small, Jr., *pro se*, appeals from a judgment granting WTMJ Television and Duane Pohlman summary judgment, attorney fees and costs. Small argues that the trial court erred in granting summary judgment in the defendants' favor based only upon the motion and briefs filed because, he contends, due process requires oral argument on

summary judgment motions. Further, Small claims that the trial court erred in awarding to the defendants attorney fees and costs. We affirm.

Small is a prisoner at the Racine Correctional Institution. Since his incarceration in 1982, Small has filed some 50 lawsuits on various matters. Because of his prolific use of the court system, WTMJ reporter Pohlman interviewed Small for a news story on prisoner litigators. Small voluntarily consented to be interviewed. During November 1994, portions of the interview were broadcast on television. Soon after the interview was aired, Small wrote to WTMJ to complain about the broadcast. Specifically, Small stated that he did not give WTMJ written permission or a waiver to broadcast the interview. In response, WTMJ replied that there was no basis for his complaints because he voluntarily consented to be interviewed and warned Small of the penalties for filing a frivolous action. Thereafter, Small filed a complaint against the defendants, alleging that he did not give them written consent or a waiver to broadcast the interview and, therefore, his right to privacy was invaded. The defendants successfully moved for summary judgment and were awarded attorney fees and costs pursuant to § 814.025, STATS., after the trial court determined that Small's action was frivolous.

Summary judgment is appropriate when the facts are undisputed. ***Hoglund v. Secura Ins.***, 176 Wis.2d 265, 268, 500 N.W.2d 354, 355 (Ct. App. 1993); § 802.08(2), STATS. When reviewing summary judgment, appellate courts and trial courts follow the same methodology. ***Id.***, 176 Wis.2d at 268, 500 N.W.2d at 355. The court first examines the complaint to see whether it states a claim and, if so, then the court examines the record to determine whether any material fact is in dispute. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). If not, the court then determines whether a party is entitled to judgment as a matter of law. ***Id.*** Questions of law are reviewed *de novo* by the appellate court. ***Anderson v. Milwaukee Ins.***, 161 Wis.2d 766, 769, 468 N.W.2d 766, 768 (Ct. App. 1991).

Initially, Small argues that he was denied due process of law by the fact that the trial court ruled on the motion for summary judgment without oral argument. We disagree. Due process does not include the right to oral argument on a motion, ***Skolnick v. Spolar***, 317 F.2d 857, 859 (7th Cir. 1963), *cert. denied*, 375 U.S. 904 (1963), especially where, as here, the party against whom the motion is directed had ample opportunity to file any affidavits or legal

argument he might have had within the time between the filing of the motion and the date for hearing. *See* ***Spark v. Catholic University of America***, 510 F.2d 1277, 1280 (D.C. Cir. 1975).

Further, § 802.08(2), STATS., does not mandate oral argument; rather, § 802.08(2) states in pertinent part:

> The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The purpose of a motion for summary judgment is to save litigants the expense and time connected with a trial when, as a matter of law based upon the uncontradicted facts, one of the parties could not prevail. That purpose would be defeated if, at a hearing on such a motion, oral argument was allowed as a matter of right.

Also, our *de novo* review reveals that Small has not demonstrated that there is a genuine issue of material fact as to whether he consented to the interview or suffered an invasion of privacy. Small's entire claim is essentially based upon the necessity of WTMJ obtaining his written consent before the interview was broadcast. Small's proposition, that WTMJ must obtain his written consent for an interview in which he voluntarily participated, has no basis in law.

Small also challenges the trial court's award of attorney fees and costs against him. The invasion-of-privacy statute provides that if judgment is entered in favor of the defendant in a privacy action, "the court shall determine if the action was frivolous." Section 895.50(6)(a), STATS. In order to find an action for invasion-of-privacy to be frivolous, the court must find either that (1) the act was commenced in bad faith or for harassment, or (2) the action was devoid of arguable basis in law or equity. Section 895.50(6), STATS. The question of whether an action for invasion-of-privacy is frivolous is one of law

which this court may resolve on the record. *See* ***Lamb v. Manning***, 145 Wis.2d 619, 628, 427 N.W.2d 437, 441 (Ct. App. 1988) (proceeding under § 814.025, STATS.).

After reviewing the record in this case, we agree with the trial court that Small's claim was frivolous. Small was familiar with legal matters. WTMJ warned him as to the inaccuracy of his claim. Thus, Small either knew or should have known that his claim was specious and unsubstantiated. Small's *pro se* status is no bar to sanctions. *See* ***Verex Assurance, Inc. v. AABREC, Inc.***, 148 Wis.2d 730, 736, 436 N.W.2d 876, 879 (Ct. App. 1989).

Since the trial court acted properly in dispensing with oral argument, in ruling on the documents before it, and awarding attorney fees and costs to the defendants, there is no reversible error and the judgment is affirmed.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.