

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 7, 1995

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.

NOTICE

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

No. 95-0777

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ROBERT STANEK,

Plaintiff-Appellant,

v.

JOHN C. MICKELSON,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for St. Croix County: ERIC J. LUNDELL, Judge. *Affirmed in part and cause remanded with directions.*

LaROCQUE, J. Robert Stanek appeals a small claims judgment in favor of his former landlord, John Mickelson. Stanek raises various issues regarding the sufficiency of the evidence and trial court procedure that cannot be reviewed without a trial transcript. Stanek also notes, however, that the court appears to have mistakenly included Stanek's statement of costs in Mickelson's judgment. The matter is remanded for the limited purpose of recalculating Mickelson's court costs. Because this court concludes that the remaining legal questions are without merit, the judgment is affirmed in all other respects.

The lack of a transcript limits review to those parts of the record available to the appellate court. *In re Hyde*, 76 Wis.2d 558, 563, 251 N.W.2d 791, 793 (1977). This court by order dated April 4, 1995, dismissed Stanek's motion for a transcript paid for at public expense and referred him to the trial court pursuant to *State ex rel. Girouard v. Circuit Court*, 155 Wis.2d 148, 454 N.W.2d 792 (1990). There has been no appeal of the trial court decision regarding the request for a transcript at public expense. By order dated May 22, 1995, this court noted Stanek's delinquency regarding his required statement on transcript and, after extending the time for filing without effect, ordered the appeal to proceed without transcripts. The order also precluded Stanek from raising issues on appeal that require a transcript for resolution.

Stanek contends that it was "procedural error" for the court to entertain Mickelson's counterclaim outside the \$2,000 small claims limit. Although the jurisdictional limit for a money judgment brought pursuant to ch. 799, STATS., is now \$4,000, the increase is applicable to actions commenced after August 1, 1994, the

effective date of the amendment. See 1993 Wis. Act 181 § 2.¹ The clerk's minutes demonstrate the court awarded a judgment on the counterclaim only for \$2,000 (less the award of \$1,400 on Stanek's doubled security deposit claim). Although the absence of a transcript prevents a review of the trial court's rationale, it is apparent that the court reduced the counterclaim to \$2,000 based upon the statutory limit. Stanek does not develop his argument concerning the error other than to state it in a single conclusory sentence. An issue raised but not briefed or argued is deemed abandoned. *Reiman Assocs. v. R/A Adver.*, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981). Arguments unsupported by reference to legal authority will not be considered. *State v. Shaffer*, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980). Stanek does not provide any legal authority to demonstrate a lack of jurisdiction to hear a counterclaim as long as the court limits the claim to the statutory amount.

¹ This court previously reversed and remanded for further proceedings a judgment on Mickelson's counterclaim in this action, *Stanek v. Mickelson*, No. 93-2638 (Wis. Ct. App. June 1, 1994). The basis of the decision was the failure to give the tenant an opportunity to be heard regarding the counterclaim and the trial court's failure to consider the application of § 100.20(5), STATS., providing for a double damages award for failing to comply with the law regarding return of security deposits. Those concerns are no longer at issue in this appeal.

Finally, Stanek contends that the court erroneously awarded Mickelson's court costs based upon Stanek's statement of costs. Stanek's contention is supported by the record. Stanek submitted a bill of costs dated January 6, 1995, totaling \$270.85. The notice of entry of judgment dated January 9, 1995, in favor of Mickelson awarded costs to Mickelson totaling \$270.85. It would appear that this was an administrative error in light of the clerk's minutes of the trial dated December 21, 1994. Those minutes indicate Mickelson was to recover costs and disbursements and state, "submit costs issues in writing ... submit Bill of Costs." Mickelson submitted a bill of costs of his own, totaling \$804.10, date stamped by the clerk of court January 11, 1995. Because the issue has not been raised or briefed on appeal, this court need not resolve the timeliness or validity of Mickelson's bill of costs. He included \$649.10 for attorney fees as well as "wages" for witnesses. The matter is remanded to the trial court to resolve the apparent miscalculation of costs. The court may enter a revised judgment showing the proper sum, if any, for Mickelson's costs.

By the Court. – Judgment affirmed in part and cause remanded with directions.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.