

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 10, 1997

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. 96-0310

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BANK ONE, BEAVER DAM,

APPELLANT-RESPONDENT,

V.

R & R HYDRO, INC.,

DEFENDANT,

ELAINE R. HITCHCOCK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
JACQUELINE R. ERWIN, Judge. *Affirmed and cause remanded.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Elaine Hitchcock appeals from a judgment of foreclosure and sale on property owned by R & R Hydro, Inc. The judgment

holds her personally liable for any deficiency in payment after the sale proceeds have been applied to the loan. Hitchcock contends that she did not receive proper notice of the proceedings; that the respondent, Bank One of Beaver Dam, improperly withheld certain documents from the court; and that Bank One acted improperly when it refused to accept partial payment on the delinquent loan. We reject Hitchcock's arguments and affirm.

In 1993 and 1994, R & R Hydro borrowed \$650,000 from Bank One, secured by mortgages on the company's real estate. Hitchcock was president of R & R Hydro, and personally guaranteed the loans.

Beginning in August 1994, R & R Hydro defaulted on its monthly loan payments. As a result, Bank One commenced this foreclosure action in February 1995. Attorney Jerome Ott filed an answer and a request for substitution of judge on behalf of Hitchcock and R & R Hydro. Thereafter, pursuant to § 801.14(2), STATS.,¹ Ott received service of all documents filed by Bank One, or by the court.

Bank One moved for summary judgment. Neither Hitchcock nor R & R Hydro responded to the motion by the deadline for doing so, although Hitchcock later submitted a letter addressed to the presiding judge. We conclude Hitchcock received appropriate notice of all court proceedings because she received the notice provided for in § 801.14(2), STATS.

¹ Section 801.14(2), STATS., states in relevant part: "Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court."

We decline to review whether Bank One improperly withheld certain essential documents. Hitchcock failed to make any factual record in the trial court to support her allegation. Additionally, the issue is barely mentioned in her brief. We need not review an inadequately briefed issue. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

There is no evidence in the record to support Hitchcock's allegation that Bank One acted improperly when it allegedly refused to accept a partial payment of the amount in default. The plain language of the loan agreements allowed Bank One to sue for the balance due after R & R Hydro defaulted. It had no obligation under those agreements to accept a partial payment of the amount then due.

Bank One moves this court to conclude that Hitchcock's appeal is frivolous, pursuant to § 809.25(3), STATS. An appeal is frivolous within the proscription of the statute, when the appellant knew or should have known that the appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. *Verex Assurance, Inc. v. AABREC, Inc.*, 148 Wis.2d 730, 735, 436 N.W.2d 876, 878 (Ct. App. 1989). The standard to be applied is an objective one: what would a reasonable person in the position of this pro se litigant know or should have known about the facts and the law relating to the arguments herein presented. *Stoll v. Adriansen*, 122 Wis.2d 503, 514, 362 N.W.2d 182, 188 (1984).

Hitchcock's "brief" is a one and one-half page letter, without legal citation, that sets forth, in a stream of conscientiousness style, her complaints about the way Bank One has treated her. Bank One hired legal counsel to respond, and it has taken the resources of this court to rule upon the merits of the

appeal. While we have always tried to be more understanding of the shortcomings of materials submitted to us by pro se litigants, judicial process is not a toy and should not be used in a frivolous manner. A pro se litigant is not excused from her obligation to make a reasonable investigation of the facts and the law before filing an appeal. *See Verex*, 148 Wis.2d at 736, 436 N.W.2d at 879.

We have reviewed the record and the arguments made by Hitchcock and we can find no arguable merit in any of her contentions. They appear to have been made without much forethought and without any legal research whatsoever. Therefore, we conclude they are frivolous, as a matter of law.

We remand the matter to the trial court to assess against Hitchcock the reasonable costs and attorneys fees Bank One incurred because of Hitchcock's frivolous appeal.

By the Court.—Judgment affirmed and cause remanded.

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

