

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 5, 2003

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.

**Appeal No. 02-2986
STATE OF WISCONSIN**

Cir. Ct. No. 01SC032016

**IN COURT OF APPEALS
DISTRICT I**

**COMMUNITY FINANCIAL SERVICES CENTER
CORPORATION,**

PLAINTIFF-RESPONDENT,

v.

CARL RUCKER, D/B/A RUCKER DETECTIVE AGENCY,

DEFENDANT-APPELLANT,

KENNETH TRAMMELL,

DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL A. NOONAN, Judge. *Affirmed; motion granted and cause remanded.*

¶1 FINE, J. Carl Rucker appeals *pro se* from a judgment entered in a small-claims matter following the trial court's grant of summary judgment. We

affirm. Community Financial Services Center Corporation, the plaintiff in the small-claims case seeks frivolous-appeal costs and attorney's fees under WIS. STAT. RULE 809.25(3). We grant the motion and remand this matter to the circuit court for a determination of appropriate and reasonable costs and fees.

¶2 Community Financial Services filed this small-claims action seeking to recover on a check issued by Rucker. The small-claims complaint also sought ancillary costs related to the bad check, treble damages, and attorney's fees under WIS. STAT. § 943.245. After various attempts at personal service, Community Financial Services ultimately served Rucker by publication and Rucker filed an answer denying the allegations in Community Financial's complaint.

¶3 Community Financial Services filed a motion for summary judgment, which the trial court granted. The motion was based, in part, on Rucker's failure to respond to Community Financial's Request for Admissions. *See* WIS. STAT. RULE 804.11. The Request for Admissions sought admissions from Rucker that he was responsible for: (1) the bad check and bank handling charges related to the check; (2) treble damages under WIS. STAT. § 943.245; and (3) attorney's fees under § 943.245, as well as the other prerequisites to the recovery by Community Financial on its small-claims complaint. Rucker never responded to the Request for Admissions.

¶4 Rucker's failure to respond to the Request for Admissions is dispositive of this appeal. Thus, we do not discuss the other matters Community Financial raises in support of the trial court's grant of summary judgment. *See Gross v. Hoffman*, 227 Wis.296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed). We also do not discuss Rucker's attempt to argue on this appeal that he was not properly served, which was neither raised in

his answer nor by motion as is required by WIS. STAT. RULE 802.06(2)(a)4. We also do not discuss his other arguments, which he asserts fleetingly in his short brief, because they were not raised before the trial court. *See Wirth v. Ehly*, 93 Wis. 2d 433, 443–444, 287 N.W.2d 140, 145–146 (1980) (appellate court does not usually consider matters raised for the first time on appeal).

¶5 WISCONSIN STAT. RULE 804.11(1)(b) provides that matters for which admission is sought under that rule are “admitted unless” the party upon whom the requests were served denies or objects to the requests. WISCONSIN STAT. RULE 804.11(2) provides that “[a]ny matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Rucker did not respond to the Requests, nor did he seek relief from that failure to respond. He also did not submit any affidavits in opposition to the matters deemed admitted by his failure to respond to the Requests. Thus, summary judgment was appropriate. *See Bank of Two Rivers v. Zimmer*, 112 Wis. 2d 624, 630–633, 334 N.W.2d 230, 233–234 (1983).

¶6 WISCONSIN STAT. RULE 809.25(3) permits this court to award to the party that prevails on the appeal “costs, fees, and reasonable attorney fees” if this court determines that the appeal was frivolous as defined by that rule. An appeal is frivolous under RULE 809.25(3) if, among other things, “[t]he party ... 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.” WIS. STAT. RULE 809.25(3)(b)2. In this case not only is the Request-for-Admissions rule clear, as noted above, but the official compilation of the Wisconsin Statutes, which is available at most public libraries, lists the *Bank of Two Rivers* case as the second case summarized after the text of the rule, noting that the case stands for the following proposition:

“Summary judgment can be based upon a party’s failure to respond to a request for admissions, even if an admission would be dispositive of the entire case.” WIS. STAT. ANN. RULE 804.11, *citing Bank of Two Rivers*, 112 Wis. 2d at 630, 334 N.W.2d at 233. Rucker was thus on clear notice that his failure to respond put him at risk of what the trial court did here: grant summary judgment to Community Financial Services. Significantly, Rucker has not filed a reply brief. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (argument not rebutted is admitted); *Reiman Assocs. v. R/A Adver.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (issue not argued is waived).

By the Court.—Judgment affirmed; motion granted and cause remanded.

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

