

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 30, 2007**

A. JOHN VOELKER  
Acting 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. 2006AP2148**

**Cir. Ct. No. 2006SC11347**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STEPHEN E. LEE,**

**PLAINTIFF-APPELLANT,**

**v.**

**LEGACY BANK,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MICHAEL B. BRENNAN, Judge. *Order entered.*

¶1 FINE, J. Stephen E. Lee, *pro se*, appeals the dismissal of his small-claims case against Legacy Bank.<sup>1</sup> Although the Rules of Appellate Procedure

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<sup>1</sup> The dismissal was ordered by the Honorable Michael G. Malmstadt. The written order was signed by the Honorable Michael B. Brennan on behalf of Judge Malmstadt.

require that a respondent file a brief presenting the respondent's argument, WIS. STAT. RULE 809.19(3), Legacy Bank's appellate lawyers have not filed a brief, and, in a letter dated January 11, 2007, addressed to the clerk of this court, said that they would not do so:

Please be advised that Legacy Bank, Defendant-Respondent, with respect to the above-referenced matter, will not be filing a responsive brief. Due to the economics of this case, our client has chosen not to expend the necessary funds to prepare and file a brief in this matter.

Defendant-Respondent would simply direct the Court to the record in this matter, most particularly the transcript of the proceedings before the Honorable Michael G. Malmstadt on July 19, 2006. Defendant-Respondent asserts that the record and transcripts, standing alone, are sufficient to warrant this Court upholding the Trial Court's decision on the Motion to Dismiss.

We disagree.<sup>2</sup> Giving reasons to sustain its position is a *party's* obligation, and is not any court's function. If a party defaults in its obligation to show why it should prevail, it cannot expect a court to assume its burden. *Raz v. Brown*, 2003 WI 29, ¶36, 260 Wis. 2d 614, 631, 660 N.W.2d 647, 655, recognized that "the Wisconsin Court of Appeals faces a heavy caseload and that it is entitled to wide latitude when enforcing procedural rules designed to make the appellate process more efficient." *Raz* holds, however, that the court of appeals may not summarily reverse an order entered against a respondent who does not file a brief unless the respondent is first warned that failure to file a brief will result (rather than "may" result) in summary reversal, as authorized by WIS. STAT. RULE 809.83(2). *Raz*, 2003 WI 29, ¶¶25, 36, 260 Wis. 2d at 627–628, 631, 660 N.W.2d at 653–654, 655.

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<sup>2</sup> Ironically, Legacy Bank's appellate lawyers then, in one paragraph, berate Stephen E. Lee, who, as noted, appears *pro se*, for violating the Rules of Appellate Procedure, including the filing of a handwritten brief.

¶2 Our review of the Record persuades us that a respondent’s brief that complies with WIS. STAT. RULE 809.19 is necessary. Accordingly, as authorized by *Raz*, 2003 WI 29, ¶37, 260 Wis. 2d at 632, 660 N.W.2d at 655, we enter the following order:

It Is Hereby Ordered that Legacy Bank shall file a respondent’s brief on this appeal that fully complies with WIS. STAT. RULE 809.19, and, in conformity with RULE 809.19(3)(a)1a, the brief shall be filed within thirty days of the issuance of this order. Lee will then have fifteen days to file a reply brief or a letter that he will not file a brief. *See* RULE 809.19(4).

It Is Also Hereby Ordered that if Legacy Bank does not file the brief required by the previous paragraph, such failure will be taken as an egregious act amounting to its abandonment of its right to contest Lee’s appeal, and, accordingly, this court will summarily reverse the circuit court’s order from which this appeal is taken and remand the matter to the circuit court with directions that it enter judgment for Lee on his small-claims complaint, *see Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (“Respondents on appeal cannot complain if propositions of appellants are taken as confessed which they do not undertake to refute.”) (quoted source omitted), for whatever damages he is able to prove, *cf.* WIS. STAT. RULE 806.02 (on default, court shall take proof if necessary to enter judgment).

*By the Court.*—Order entered.

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

