

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2009

David R. Schanker
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. 08AP1333
STATE OF WISCONSIN**

Cir. Ct. No. 2007SC33960

**IN COURT OF APPEALS
DISTRICT I**

BRUCE J. KELLETT,

PLAINTIFF-RESPONDENT,

V.

W. JEAN MCCOY-GARNER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Reversed and cause remanded with directions.*

¶1 FINE, J. W. Jean McCoy-Garner appeals, *pro se*, a small-claims judgment entered against her in favor of Bruce J. Kellett for \$4,360 plus costs and fees for a total of \$5,011.49. Kellett sued McCoy-Garner for damages he

allegedly sustained as a result of an automobile accident involving him and McCoy-Garner.

¶2 McCoy-Garner's appellate brief is not well-developed, to say the least, but Kellett, whose respondent's brief was due January 9, 2009, has not filed *any* brief, even though he is represented by a lawyer and was directed to do so by this court's order of January 22, 2009. Rather than file a brief as ordered, Kellett's lawyer, Johnathan G. Woodward, Esq., sent a letter to this court dated January 22, 2009, saying that he had "discussed all pertinent issues" with Kellett and that Kellett "has instructed me to file no responsive brief with the Court."

¶3 By this court's order of January 28, 2009, Kellett was warned that if he did not file a brief in response to McCoy-Garner's brief the matter was subject to summary reversal. *See State ex rel. Blackdeer v. Levis Township*, 176 Wis. 2d 252, 260, 500 N.W.2d 339, 341 (Ct. App. 1993) (per curiam) ("Failure to file a respondent's brief tacitly concedes that the trial court erred.") (quoted source omitted). Kellett has still not filed a brief.

¶4 WISCONSIN STAT. RULE 809.19(3)(a)1 mandates that "[t]he respondent *shall* file a brief." (Emphasis added.) WISCONSIN STAT. RULE 809.83(2) provides that the "[f]ailure of a person to comply with a court order or with a requirement of these rules ... is grounds for ... summary reversal."

¶5 Under *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 625, 660 N.W.2d 647, 652, we may summarily reverse a circuit-court judgment or order if we find that the respondent has abandoned the appeal. We conclude that the letter dated January 22, 2009, from Kellett's lawyer to this court is an abandonment of the appeal. Moreover, as recognized by *Raz*, 2003 WI 29, ¶37, 260 Wis. 2d at

632, 660 N.W.2d at 655, we “may order [a brief] to be filed.” As noted, we did, and Kellett has not complied with that order.

¶6 In view of Kellett’s abandonment of the appeal *and* his failure to comply with our order of January 22, 2009, directing that he file a brief, we summarily reverse the judgment entered against McCoy-Garner, and remand this matter to the circuit court with directions that the judgment be vacated.¹

By the Court.—Judgment reversed and cause remanded with directions.

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

¹ McCoy-Garner also seeks reversal of what she characterizes as “the revocation of her operating privileges.” This request apparently refers to proceedings that are not part of this appeal, and that request for relief is denied.

