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WISCONSIN COURT OF APPEALS DISTRICT IV

CLERK OF COURT OF APPEALS
OF WISCONSIN

IAN HUMPHREY,

Appellant, Petitioner

v.

Case No.: 2016AP966

County of Lafayette

Appellee, Respondent.

APPELLANT'S REPLY TO RESPONDENT BRIEF

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INTRODUCTION

What follows herein is my reply to the Respondent's four page rebuttal of my appeal. The respondent has essentially argued for what amounts to a denial of due process. The Respondent proffers the boiler plate claim that: "... the brief provides no factual or legal basis" (P. 3) without really developing this argument, and seemingly invites the Court to make it for the Respondent, based upon the earlier denial of a fee waiver for transcripts (P. 4), in which the Respondent presented no brief.

The Respondent's brief is insufficient, and the Court should vacate the judgment under the same principles it would follow for failing to file a brief

The Respondent has filed a 4 page rebuttal to my appeal that features no table of authorities, fails to address any argument presented in the brief, and offers a boiler plate claim that my appeal features no facts or law that entitle me to relief. The Respondent argues that there are no facts, which inexplicably disregards procedural events as facts. The Respondent fails to even challenge the accuracy of my allegations, forfeiting the issues. Finally, the Respondent requests that the Court transfer an undeveloped conclusion to the current appeal, inviting the Court to abandon its' neutrality completely.

Notwithstanding a 15 page brief which cited law, Wisconsin Statutes, the record, and argued:

1. That I was improperly denied a Jury Trial.
2. That a void judgment was entered by the Trial Court, and that the judgment harmed and will continue to harm me unjustly.
3. That the denial of a fee waiver was unjust, and a refusal to correct this action will result in a miscarriage of justice.
4. That the County's presented case did not sustain the void judgment or the judgment at trial.
5. That the Trial Court's findings contradicted the evidence.

6. That the Trial Court ignored my objection to the error it made, and that I preserved the objection.
7. That the core issues: Whether the language of the law provides an affirmative defense in my case, or if not, whether State law unconstitutionally nullifies the notice requirement of substantive due process.

The Respondent inclusively claims that none of these circumstances are worthy of remedy, without any support for this contention, by failing to address any of the circumstances specifically. Historically, jury trials are a protected entitlement in both the U.S. and Wisconsin constitution; without argument or an offering of how my circumstances don't entitle me to relief, the position offered by the Respondent is baseless.

For some reason, it appears as though the Respondent believes that transcripts are the only source of facts, when there are enough procedural events to support my allegations. The Respondent doesn't even deny my allegations, which tacitly concedes the issues by failing to address them.

“[f]ailure to file a respondent's brief tacitly concedes that the trial court erred,” State ex rel. Blackdeer v. Levis Township, 176 Wis. 2d 252, 260, 500 N.W.2d 339, 341 (Ct. App. 1993) (quoted source omitted), and allows this court to assume that the respondent concedes the issues raised by the appellant, Charolais Breeding Ranches, Ltd. v. FPC Securities Corp., 90 Wis. 2d 97, 108–109, 279 N.W.2d 493, 499.

Further, the Respondent fails to consider a liberal interpretation, or declined to submit argument knowing a liberal interpretation of my appeal couldn't be overcome.

Bin-Rilla v. Israel 113 Wis. 2d 514 (1983) 335 N.W.2d 384 “ This court has used a similar procedure. See State ex rel. LeFebre v. Abrahamson, 103 Wis. 2d 197, 307 N.W.2d 186 (1981), and cases cited therein. If a response is ordered and received, the court considering the petition and response should determine which type of relief, if any, is appropriate and what type of action, if any, is consistent with that relief.”

Finally, the Respondent invites the Court to transfer an undeveloped opinion about the merit of my appeal, and either develop it here or blanket this appeal similarly.

We will not act as both advocate and judge, *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992), by independently developing a litigant's argument, *Gardner v. Gardner*, 190 Wis. 2d 216, 239–240 n.3, 527 N.W.2d 701, 709 n.3 (Ct. App. 1994).

The action the Respondent requests be transferred is an undeveloped position on the merits of my appeal. If the Court now develops this argument or substitutes it for a decision, it will have abandoned any semblance of neutrality.

I conclude that the Court should treat the answer of the Respondent in the same regard that it would a failure to file a brief. What the Respondent has filed is not a brief, it is 4 pages of rubbish, a delusional posit about the subject material of my appeal that doesn't even qualify as a straw-man logic fallacy, asking that a Court develop arguments for it, and conceding that an earlier decision affected my ability to procure transcripts and has harmed the appeal.

The Court doesn't need transcripts to address the improper jury waiver, void judgment, or the second failure of the respondent to brief on the issues

Contrary to the Respondent's position, the facts of record themselves justify remedy. There is significant commentary to demonstrate that I received unfair, unfavorable rulings that contradict with the true circumstances: I was denied a fee waiver for Jury Trial, but have been indigent. The Trial Court slipped in a default judgment, possibly with the intent to procedurally bar my appeal, as the Trial Court is guilty of several procedural abuses, one of which is the subject of a pending appeal, wherein the law relied on to issue orders by the Trial Court demonstrates deliberate effort to circumvent the law for its' own purposes (2018AP481). Finally, the Respondent has failed to actually brief on the issues.

There is enough in the record to demonstrate I made a timely Jury Demand, that I was denied a waiver of fees, and that I was ultimately found indigent for circumstances that have existed prior to, and for the duration of the litigation. My allegation that the Trial Court ostensibly refused me an opportunity to correct the defect required a response, and the

Respondent failed to provide one. Regardless, the record is clear that no materials were sent to me informing me of a specific form requirement to waive the Jury fee, and that the Trial Court failed to consider excusable neglect.

Phelps v. Physicians Ins. Co. of Wisconsin, Inc., No. 03-0580 “As we have seen, the trial court did not apply the requisite excusable-neglect standard. This was error. We therefore undertake our own review of the uncontested facts to determine whether they “provide support for the circuit court’s decision.” *Hedtcke*, 109 Wis. 2d at 471, 326 N.W.2d at 732. If they do not, we must reverse. *Id.*, 109 Wis. 2d at 471–472, 326 N.W.2d at 732 (“If the record indicates that the circuit court failed to exercise its discretion, if the facts of record fail to support the circuit court’s decision, or if this court’s review of the record indicates that the circuit court applied the wrong legal standard, this court will reverse the circuit court’s decision as an abuse of discretion.”).

Thus, it follows that the Respondent’s failure to respond to my allegation: that the Trial Court unjustly denied my fee waiver, and further refused to allow me to correct the defect on the spot via the form it claimed was required, tacitly concedes that my right to Jury Trial was unjustly denied.

The Court’s final judgment is void, and despite how both the Trial Court, and Court of Appeals (or so it claimed), have since bypassed the void judgment and responded to subject material from the trial, the final judgment is void nonetheless.

Maier Const., Inc. v. Ryan, 260 N.W.2d 700 (Wis. 1978). “We have said that a decision which requires the exercise of discretion and which on its face demonstrates no consideration of any of the factors on which the decision should be properly based constitutes an abuse of discretion as a matter of law. *McCleary v. State*, 49 Wis. 2d 263, 278, 182 N.W.2d 512 (1971). We are obliged, however, to uphold a discretionary decision of a trial court if, from the record, we can conclude ab initio that there are facts of record which would support the trial judge’s decision had discretion been exercised on the basis of those facts. *Kimas v. State*, 75 Wis. 2d

244, 247, 249 N.W.2d 285 (1977); *Hyslop v. Maxwell*, 65 Wis. 2d 658, 664, 223 N.W.2d 516 (1974).

In the instant case we find facts that indicate to us that the trial judge's decision was insupportable and which, contrary to his conclusion, required that the default judgment be vacated."

Thus, it follows that the Court of Appeals must vacate the judgment, as it is void due to being a contradiction of the facts and the record is devoid of any explanation for it. Even despite the fact that both Courts have reviewed this litigation beyond the void judgment, it must be vacated because it could potentially impact future bail considerations, as I contend it impacted my ability to obtain a fee waiver for transcripts. Finally, because the Respondent has failed to address the void judgment, it has tacitly conceded that the void judgment is so, and therefore should be vacated.

The Respondent has failed to brief on the issues, instead submitting a 4 page rebuttal that fails to comply with Wisconsin Statute 809.19(3)(a)2, and 809.19(1)(e). The Respondent offers no citations to authority (and features no table of authorities), or Statutes, and refers only to the previously denied appeal (which is devoid of any discussion of the core issues I raised) and out-of-context portions of my brief. The argument put forth by the Respondent is completely underdeveloped, and seeks only to copy/paste an earlier affirmation that didn't even consider my issues in *arguendo*.

State v. Pettit, 171 Wis.2d 627, 646 - 47, 492 N.W.2d 633 (Q. App. 1992) (we need not address undeveloped arguments).

This is the second time the Respondent has failed to sufficiently answer an appeal; The first time, in the appeal referenced by the Respondent, the Court of Appeals developed, for the first time, the argument that a void judgment precluded remedy. Upon reconsideration, the Court of Appeals acknowledged that there had been a trial, yet claimed there still existed no merit, and denied the appeal without developing an argument. The Court of Appeals cannot stand by a claim to neutrality while rubber stamping any rubbish their State and County agents put forth. To continue this practice will only bring about more litigation.

The Respondent's only articulated defect alleged is a lack of transcripts

For some byzantine reason, the Respondent chose to highlight the impact being denied transcripts has had on the value of my appeal.

Without specifying which legal citation has authority (because the Respondent posits that I provided NO legal authority to support relief), the Respondent proffers that the only authority I cite indicates that I will not receive a "meaningful" appeal. This language is from Griffin vs Illinois, wherein the Court found that the denial of transcripts was enough to find that substantive due process had been unjustly denied.

The argument of the Respondent enhances my appeal in that:

1. If the syllogism is accepted that: the void default judgment, and the unexplained rejection of the meritorious issues I raised previously, affected my ability to procure transcripts... then the Respondent has highlighted the material prejudice I suffered while contemporaneously arguing for my entitlement to substantive due process be ignored.
2. The Respondent's position highlights the material value of transcripts, which would appear to contradict the Appellate Court's finding, and further the logic in Griffin, that the presence of verifiable facts would change the outcome of review in the instant appeal, and thus should have warranted a fee waiver.

Going forward: Rooker-Feldman

On 4/12/16, I argued that Wisconsin law contains an affirmative defense applicable to my case against the complaint filed by the County. I also argued that if it doesn't, then the law is unconstitutional. The Trial Court declined to engage this, instead finding that because the incident I testified to served as notice of the suspension, that I would be found guilty. When I raised to the Trial Court that this finding was in error because I had not actually been suspended (an error plainly evident on the exhibit submitted by the County), I was brushed aside. After I served my notice of appeal, I received a default judgment, which the County's clerk acknowledged was a mistake and that the judgment at trial had been preserved.

Later, I was denied a fee waiver for transcripts necessary to litigate my appeal. This denial also failed to discuss the core issues of this case. It has been an offensive process to say the least, unassisted by what appears to be the general attitude about pro se litigants in Wisconsin <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=90&Issue=3&ArticleID=25460>. While someone on the other side of the fence may see this article as fair, it's fairly repugnant to myself: pro se litigants are speculated to be motivated by the internet and optimism, or poverty. These litigants face inevitable presumption while trying to get their adjudicators to look beyond prose (which is more frustrating when our opponents are often worse). At this point in this case, we are at a crossroads.

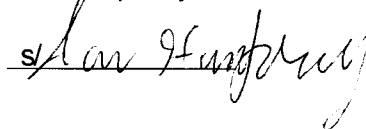
The Rooker-Feldman doctrine bars a Federal District Court from reviewing any matter inextricably intertwined with a State Court's judgment. While I can appeal from the Court of Appeals to the State Supreme Court, and then to the United States Supreme Court, let's be frank: Even with a simple, straightforward, and irrefutably meritorious case... I'd still be playing a lottery. Without showing too much of what's in my hand, the chief offenses made by the State thus far have not been judgments, but the demonstrably erroneous and perfunctory exercises that have been substituted for the due process I am entitled to by law. Should this continue, I believe I will have grounds, and I have documented and recorded material events; the Western District of Wisconsin will accept my phone recording and affidavits in place of transcripts, where the State Courts of Wisconsin won't, and it will be a whole new ball game if I get blown-off again.

CONCLUSION

Wherefore, again, I ask that the Court reverse and vacate the judgment, and either dismiss the complaint with prejudice, or remand for a Jury Trial.

Dated: July 23, 2018

Ian Humphrey



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CERTIFICATE OF FORMATTING

I, the Appellant/Petitioner in this case, hereby certify the reply brief I filed is 10 pages, and 2,713 words.

Ian Humphrey 7/23/18