

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 1, 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. 2008AP2719

Cir. Ct. No. 2008FO481

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JOHN J. LONGO,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Racine County:
ALLAN B. TORHORST, Judge. *Reversed and cause remanded with directions.*

¶1 ANDERSON, P.J.¹ This is an appeal by the State of Wisconsin from a Racine county circuit court judgment on whether the circuit court abused

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

its discretion by requiring that the Wisconsin Department of Natural Resources request a mounted deer head from John J. Longo within a limited time period, or waive its legal right to the head and issue Longo a permit for its possession. Based on Longo's failure to file a respondent's brief, this court summarily reverses the decision of the circuit court.

¶2 The facts in this case are undisputed. In early February 2008, Longo received a call from his nephew that a deer had recently been hit on the road near Longo's home. Longo drove to the location of the deer carcass and, with the help of two passersby, loaded the deer carcass into his truck and took it home. Longo used the carcass for meat which he consumed.

¶3 Several days later, Longo called a friend, who was a Caledonia police officer and a taxidermist, to ask him about having the head mounted. Longo's friend informed him that he should get a "piece of paper" to pick up a deer from the side of the road. After this conversation, Longo did not take any steps to obtain a permit for the claimed deer.

¶4 In June 2008, the DNR learned through a confidential informant that Longo had collected a roadside deer carcass and never obtained a permit. Warden Randy Dunkel was sent to Longo's residence to interview Longo about the tip. During the interview, Longo confirmed that he had taken the deer, consumed the meat, mounted the head and had it displayed in his home. On June 23, 2008, Longo was issued a ticket for a violation of WIS. ADMIN. CODE § NR 19.13 (May 2008) for not obtaining a permit for the claimed deer.

¶5 After a bench trial, Longo was found guilty of violating WIS. ADMIN. CODE § NR 19.13 (May 2008). On September 22, 2008, the circuit court fined Longo one dollar and ordered him to surrender the mounted deer head to the

DNR “upon request.” The court additionally ordered that if the DNR failed to retrieve the mounted deer head from Longo on or before October 31, 2008, it must issue Longo a permit to possess the mounted head.

¶6 The State appeals the decision of the circuit court, arguing that it made an error of law or discretion when it required the DNR to request the mounted deer head from Longo within a limited time period or be required to issue Longo a permit for its possession. Although Longo was given ample opportunity to file a response brief to the State’s appeal, he has not done so.

¶7 WISCONSIN STAT. § 809.19(3)(a)1. mandates that “the respondent shall file a brief.” WISCONSIN STAT. § 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.” “Failure to file a respondent’s brief tacitly concedes that the trial court erred.” *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1979).

¶8 Under *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647, we may summarily reverse a circuit court judgment or order if we find that the respondent has abandoned the appeal. We conclude that Longo has abandoned the appeal. Longo did not respond to the delinquent brief notice sent on April 16, 2009, nor did Longo file a proper brief after receiving notice of the order submitting the appeal to the court without the respondent’s brief.

¶9 In view of Longo’s abandonment of the appeal and his failure to comply with our order of April 16, 2009, directing that he file a brief, we summarily reverse the decision of the circuit court requiring that Longo return the mounted deer head “upon request” of the State and remand this matter to the

circuit court with directions that the court order Longo to return the mounted deer head to the DNR without further delay.

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

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

