COURT OF APPEALS
DECISION
DATED AND FILED

January 12, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2833

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

FIDELIS I. OMEGBU,

PLAINTIFF-APPELLANT,

V.

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: JOHN J. DiMOTTO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Fidelis I. Omegbu, *pro se*, appeals from the trial court's order dismissing his action against the Milwaukee Metropolitan Sewerage District. Omegbu argues that the trial court erred in concluding: (1) that Omegbu failed to meet the statutory prerequisite for bringing his claims; and (2) that Omegbu lacks standing to assert claims on behalf of his corporation, Kasa

Electric. Omegbu also argues that the trial court erred in denying his motion to amend his complaint.[1] We affirm.

BACKGROUND

Omegbu owns all of the stock of Kasa Electric LLC, a "minority business."[2] In the summer of 1997, the Milwaukee Metropolitan Sewerage District sought proposals from parties interested in operating and maintaining the District's wastewater treatment facilities. Kasa Electric, by Omegbu, submitted to the District a proposal that sought a subcontract or partnership with the party who was ultimately awarded the contract. The District did not award the contract to Kasa.

Also, in the summer of 1997, the District contracted with the Milwaukee Building and Construction Trades Council to administer the Minority Business Development and Training Program, which the District had developed pursuant to § 66.905, STATS.[3]

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[1] Omegbu presents numerous other arguments on appeal; however, the import and relevance of those arguments are unclear. We therefore reject any additional claims Omegbu attempts to present because they are insufficiently developed. *See* ***Barakat v. DHSS***, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (reviewing court need not address "amorphous and insufficiently developed" arguments).

[2] Section 66.905(1)(a), STATS., provides:

> "Minority business" means a sole proprietorship, partnership, limited liability company, joint venture or corporation that is at least 51% owned and controlled by one or more minority group members and that is engaged in construction or construction–related activities.

[3] Section 66.905(2), STATS., provides:

> PROGRAM CREATED. (a) From the amounts allocated for purposes of this section under s. 20.866 (2) (to), the district shall fund a development and training program for the purpose of

(continued)

Based on the foregoing events, Omegbu filed a complaint for injunctive relief, challenging the District's ability to contract with a private party for the operation and maintenance of its wastewater facilities, the District's failure to award the contract to Kasa Electric, and the District's award of the Training Program contract to the Milwaukee Building and Trades Construction Council. The District filed a motion to dismiss Omegbu's complaint, and after a hearing, the trial court dismissed the complaint.

DISCUSSION

We review *de novo* the trial court's grant of summary judgment.[4] *See* ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). Section 802.08(2), STATS., sets forth the standard by which summary judgment motions are to be judged: "The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

> developing the capability of minority businesses to participate in construction and construction–related projects funded under the combined sewer overflow abatement program under s. 281.63.
>
> (b) From the amounts allocated for purposes of this section under s. 20.866 (2) (tc), the district shall fund a development and training program for the purpose of developing the capability of minority businesses to participate in construction and construction–related projects funded under the clean water fund program under ss. 281.58 and 281.59.
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> (c) The district may implement the training programs under pars. (a) and (b) directly, or may contract under this section for the implementation of these training programs.

[4] In dismissing Omegbu's complaint, the trial court considered materials outside of the pleadings. Therefore, the dismissal is reviewed as a grant of summary judgment. *See* RULE 802.08(3), STATS.; ***Doe v. Archdiocese of Milwaukee***, 211 Wis.2d 312, 331, 565 N.W.2d 94, 101 (1997).

As noted, Omegbu's cause of action sought to enjoin the District from entering contracts for the operation and maintenance of its sewer facilities and for the administration of the Minority Business and Development Program. Section 893.80, STATS., provides, in relevant part:

> **Claims against governmental bodies or officers, agents or employes [*sic*]; notice of injury; limitation of damages and suits. (1)** …[N]o action may be brought or maintained against any … political corporation, governmental subdivision or agency thereof nor against any officer, official, agent or employe [*sic*] of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:
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> (a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the … political corporation, governmental subdivision or agency and on the officer, official, agent or employe [*sic*] under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the … corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant … corporation, subdivision or agency or to the defendant officer, official, agent or employe [*sic*]; and
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> (b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant … corporation, subdivision or agency and the claim is disallowed.

In ***DNR v. City of Waukesha***, 184 Wis.2d 178, 515 N.W.2d 888 (1994), the Wisconsin Supreme Court held that the notice requirement of § 893.80(1) applies

to actions seeking injunctive relief. *See* ***id.***, 184 Wis.2d at 191, 515 N.W.2d at 893.[5]

Omegbu does not dispute that he failed to give notice to the District before commencing his suit for injunctive relief; he also does not argue that the District had actual notice of his claim or that his failure to give notice did not prejudice the District. Thus, the trial court properly dismissed Omegbu's claims for injunctive relief against the District because Omegbu failed to comply with the notice of claim statute.[6]

Omegbu's complaint also sought damages for the District's failure to award a contract to Kasa Electric. Kasa Electric, however, was not a party to Omegbu's suit against the District. Although Omegbu is the sole shareholder of Kasa Electric, he cannot bring an action on behalf of Kasa Electric because he is not a lawyer. *See* ***Jadair Inc. v. United States Fire Ins. Co.***, 209 Wis.2d 187, 202, 562 N.W.2d 401, 407 (1997) ("[O]nly lawyers can appear on behalf of, or perform legal service for, corporations in legal proceedings before Wisconsin courts.").

[5] In ***DNR v. City of Waukesha***, 184 Wis.2d 178, 515 N.W.2d 888 (1994), the supreme court said, "The language of the statute clearly and unambiguously makes the notice of claim requirement applicable to all actions." ***Id.***, 184 Wis.2d at 191, 515 N.W.2d at 893. In ***State ex rel. Auchinleck v. Town of LaGrange***, 200 Wis.2d 585, 547 N.W.2d 587 (1996), however, the supreme court held that this particular language was too broad, and withdrew this language "to the extent that it is interpreted as applying to open records and open meetings actions." ***Id.***, 200 Wis.2d at 597, 547 N.W.2d at 592.

[6] As the trial court noted, the notice of claim statute does not apply to federal civil rights violations. *See* ***Felder v. Casey***, 487 U.S. 131, 134 (1988). The trial court concluded, however, that Omegbu failed to sufficiently allege a civil rights violation in his complaint. On appeal, Omegbu does not identify any allegation from his complaint to refute the trial court's conclusion, nor does he argue that the trial court's conclusion was erroneous.

Thus, the trial court properly concluded that Omegbu could not assert Kasa Electric's claim that the District improperly failed to award it a contract.[7]

Finally, Omegbu claims that the trial court erred in denying his oral motion to amend his complaint for injunctive relief to instead state a certiorari action challenging the District's contract with the Milwaukee Building and Trades Construction Council for the administration of the Minority Business and Development Program. We disagree.

The amendment of pleadings is governed by § 802.09(1), STATS., which provides, in relevant part:

> A party may amend the party's pleading once as a matter of course at any time within 6 months after the summons and complaint are filed or within the time set in a scheduling order under s. 802.10. Otherwise a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given at any stage of the action when justice so requires.

[7] Omegbu asserts that he can seek relief for the personal economic losses that he suffered as a result of Kasa Electric's lost business. He also asserts that Kasa Electric is merely his alter ego, and thus the corporate fiction should be ignored. Both assertions are without merit. It is well-established that "a stockholder has no individual right of action for an alleged injury to the corporation in which he holds shares." ***Lee v. Threshermen's Mut. Ins. Co.***, 26 Wis.2d 361, 363, 132 N.W.2d 534, 535 (1965); *see also* ***Marshfield Clinic v. Doege***, 269 Wis. 519, 526–527, 69 N.W.2d 558, 562 (1955) ("An injury to a corporation gives no individual right of action, although the injury to the corporation may incidentally result in the depression of the value of the stocks and bonds."). The corporate fiction is not to be ignored simply as a means of avoiding this rule, but, rather, is ignored only if recognizing the corporate fiction "would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong equitable claim." ***Jonas v. State***, 19 Wis.2d 638, 644, 121 N.W.2d 235, 238–239 (1963) (internal quotation marks and citation omitted); *see also* ***Lee***, 26 Wis.2d at 363, 132 N.W.2d at 535 ("The underlying rationale is that having chosen to conduct their business in the corporate form, the shareholders are bound to observe this nonconducting entity which they have interposed between themselves and those with whom they deal."). This case does not present a situation in which it is appropriate to ignore the corporate fiction.

"A trial court's decision to grant leave to amend a complaint is discretionary." ***Finley v. Culligan***, 201 Wis.2d 611, 626, 548 N.W.2d 854, 860 (Ct. App. 1996). We will not reverse a trial court's discretionary decision unless the record discloses that the trial court failed to exercise its discretion, that the facts do not support the trial court's decision, or that the trial court applied the wrong legal standard. *See* ***id.***, 201 Wis.2d at 626–627, 548 N.W.2d at 860–861.

Omegbu had already amended his complaint once before he made his oral motion to amend his complaint. Therefore, the amendment was permissible only by leave of the court or with the consent of the District. The District did not consent to the amendment; consequently, we review whether the trial court properly exercised its discretion in denying leave to amend the complaint. The record reveals that, in his oral motion, Omegbu did not indicate to the court any specific way in which he wanted to amend the allegations of the complaint, but, rather, he merely said, "Your Honor, to the extent that what I'm seeking is not in the proper format of certiorari, I will motion the Court to amend the Complaint." The trial court denied Omegbu's motion, explaining that a certiorari action and an action for an injunction are different types of actions that require different legal approaches. We conclude that the trial court properly exercised discretion in denying Omegbu's oral motion to amend his complaint because it was not sufficiently specific, and because it sought to state a wholly different cause of action.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.