COURT OF APPEALS
DECISION
DATED AND FILED

September 12, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1039 **Cir. Ct. No. 2001CV6684**

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

AMERICAN TRANSMISSION COMPANY, LLC,

PLAINTIFF-RESPONDENT,

V.

BASIL E. RYAN, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 KESSLER, J. American Transmission Company ("ATC") brought this action to enforce its easement rights to access property owned by Basil E. Ryan, Jr. ("Ryan"). Over the course of the first three years of litigation, Ryan, who was represented at various times by a series of attorneys, repeatedly failed to

comply with scheduling and other court orders. As a result, Ryan was found in contempt and his *pro se* counterclaim was dismissed. At issue in this appeal is a judgment for ATC of $183,087.43, which represents expenses ATC incurred cleaning up contaminated soil on Ryan's land so that it could access the easement, plus statutory court costs. ATC was granted summary judgment on this claim based on Ryan's failure to timely respond to a request for admissions. Thereafter, ATC voluntarily dismissed all of its other claims.

¶2 Ryan argues that: (1) the trial court erroneously denied his motion to withdraw the admissions, thereby imposing what he calls a "$181,000 sanction"—judgment for ATC on its environmental claim; (2) even given the deemed admissions, summary judgment on the third claim should not have been granted; (3) the trial court erroneously denied Ryan's motion for reconsideration; and (4) the trial court erroneously denied Ryan's motion to extend the time to name witnesses.

¶3 We affirm because we conclude that the trial court properly exercised its discretion under WIS. STAT. § 804.11(2) (2003-04)[1] when it denied Ryan's motion to withdraw his admissions. Based on the admissions, there were no disputed material facts relating to ATC's third claim for relief and, therefore, summary judgment was properly granted to ATC. We also conclude that the trial court properly exercised its discretion when it denied Ryan's motion for reconsideration. Finally, we conclude that the issue related to Ryan's motion for additional time to name witnesses is moot because we have sustained the summary

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

judgment on the environmental claim, and all remaining claims have been dismissed.

BACKGROUND

¶4 In 1970, Wisconsin Electric Power Company entered into an easement agreement with The C. Reiss Coal Company, the owner of the property which was subsequently acquired by Ryan. The easement was properly recorded. In June 2001, Wisconsin Electric assigned the easement to ATC, and the assignment was properly recorded. In 1987, Ryan purchased the property with the easement. He operated a towing business from 1987 until 1997 and stored vehicles and boats on the property. At the time of these proceedings, Ryan continued to have non-functional automobiles on the property, in addition to other debris.

¶5 ATC began this action on July 23, 2001, seeking injunctive relief and damages because, it alleged, Ryan had obstructed the easement with "functional and non-functional automobiles" and "piles of sand, gravel, and other debris," and had refused to allow ATC to access the easement. At a hearing on August 7, 2001, the parties reached an agreement whereby the property would be surveyed to determine the exact boundaries of the easement and Ryan would allow the surveyor access to the property to conduct the survey. Ryan also agreed to allow ATC access to the property consistent with the easement. Pursuant to that agreement, Ryan would be given forty-eight hours' notice before ATC would access the property, allowing Ryan time to remove the vehicles and other

impediments from the easement area. The trial court accepted the parties' agreement and signed the order on August 30, 2001.[2]

¶6 During this part of these proceedings, Ryan was represented by the law firm of Gimbel, Reilly, Guerin & Brown, specifically by attorneys Kathryn Keppel and Michael Guerin. Despite the parties' agreement at the August 7, 2001 hearing, ATC's access to the property, and the survey of the easement remained matters of contention. In February 2002, ATC filed a motion for contempt, while Ryan sought to vacate the August 30, 2001 order. The parties' continued dispute over the easement even resulted in the trial court making a personal trip to view the property. On April 16, 2002, the trial court ordered that a second, independent survey be conducted.

¶7 On May 2, 2002, the trial court issued an order that Ryan not store cars or equipment in the easement area. On May 9, 2002, ATC again filed a contempt motion, asserting that Ryan continued to deny ATC access to perform work on the easement, and interfered with its workers' safety. In response, Guerin notified the trial court that representation of Ryan at that contempt hearing was outside the scope of his representation, and that Guerin would be moving to withdraw as counsel.

¶8 On May 20, 2002, Guerin and his law firm moved to withdraw, citing Ryan's demands that the firm "embrace positions which we deem to be

[2] This case was originally assigned to the Hon. Michael Sullivan. When Judge Sullivan became Chief Judge, the case was reassigned to the Hon. Lee Wells. Judge Wells retired, which resulted in a reassignment, this time to the Hon. Patricia McMahon. A substitution of judge was requested and the case was assigned to the Hon. Clare Fiorenza who issued the orders appealed from here.

imprudent," Ryan's failure to pay past due bills, and Ryan's act of delivering to Guerin's office a package containing sixteen unopened letters from Guerin to Ryan postmarked between May 1 and May 15, 2002. Ryan did not attend the hearing on June 3, 2002; the record reflects that Ryan's wife called to advise the trial court that he would not be appearing. Guerin and the firm were allowed to withdraw.

¶9 On June 25, 2002, after all parties were sent the court-ordered survey of the easement, ATC notified Ryan and all parties of a hearing on July 9, 2002, on its motion to lift the previously ordered stay to allow ATC to perform work on the easement. Ryan did not attend the hearing. The trial court confirmed the boundaries of the easement as established in the survey and permitted ATC to immediately begin work on the easement. The trial court also ordered Ryan to pay one-third of the survey costs within thirty days. However, by July 31, 2002, Ryan had not removed the "cars and equipment" from the easement.

¶10 Ryan's second attorney, Irving Gaines, filed a notice of appearance on Ryan's behalf on August 8, 2002. On August 26, 2002, Gaines, on behalf of Ryan, moved for: (1) additional time to answer the complaint; (2) an order finding ATC in contempt for failing to respond to requests for production of documents; (3) the vacating of the July 15, 2002 order that followed the July 9, 2002 hearing; (4) an order limiting the presence of a security guard on Ryan's property to those hours that Ryan and his employees are absent; (5) clarification of Ryan's obligations regarding some crushed stone; (6) an order restraining ATC from installing fiber optic material on the grounds that such material was not included in the utility easement; and (7) reconsideration of the order that Ryan pay one-third of the court-ordered survey bill.

¶11 In support of that motion, Ryan filed a seven-page, single-spaced affidavit in which he claimed to have two business addresses (including the property in question) and a home address where he did not accept "business" mail. He stated that he had a fourth address, which he described as the only address where he accepted business mail, and that he had never received any mail relating to the court proceedings prior to July 31, 2002. Ryan complained at length about his former counsel, and described meeting with "numerous attorneys" who Ryan described as experts in real estate or contract litigation before he hired Gaines.

¶12 Ryan's affidavit also asserted that the survey was inaccurate and that he was supposed to have received a copy before it was filed with the trial court so he could comment on its contents. Ryan complained that ATC's "frequent motions, temporary orders and relief" had impaired, apparently for thirteen months, Ryan's ability to file an answer and counterclaim.[3] Ryan also made complaints about the security guard employed by ATC, about removal of stone and other material from the surface of the easement, and about the type of equipment (fiber optics) he believed ATC intended to install on the easement, indicating that he was of the opinion that fiber optics were not included in the easement.

¶13 Judge Sullivan held a hearing on Ryan's motion at which Ryan and ATC representatives testified. The trial court denied Ryan's motion to answer the complaint. However, it gave Ryan twenty days after the completion of the project for which ATC was exercising its easement rights to file a counterclaim in the

[3] The action began in July 2001. Thirteen months later, no answer to the complaint had yet been filed.

event Ryan's property was not fully restored. The trial court declined to set aside the July 9, 2002 order. The trial court denied Ryan's motion for contempt against ATC, finding that the requested discovery related to the extent of the easement, which had now been decided.

¶14 The trial court ordered Ryan to pay one-third of the costs of the survey "on or before 30 days after August 22, 2002." The trial court also resolved the issues concerning the security guard and fiber optics. Finally, the trial court extended its previous orders dated April 16, 2002 and July 9, 2002, through September 30, 2002. The order confirming the details of the trial court's ruling was signed and filed November 12, 2002.

¶15 On November 15, 2002, Gaines moved for permission to withdraw as Ryan's counsel. Ryan did not attend this hearing. In support of his motion, Gaines alleged that Ryan was not paying his bills, and was not responding to written communications. Based upon ATC's concern about having a way to contact Ryan if he was not represented by counsel, the trial court instructed ATC to use the address for Ryan provided by Gaines, and allowed Gaines to withdraw.

¶16 As of December 17, 2002, Ryan had not paid his share of the surveyor bill—$4,253.99—as he had twice previously been ordered to do. The trial court personally wrote to Ryan and instructed him to pay the bill immediately.

¶17 On December 20, 2002, ATC wrote to Ryan, providing a certificate of completion, thereby notifying Ryan that ATC's work on the property was completed. This triggered the twenty-day period during which Ryan was permitted to file his counterclaim.

¶18 As of January 7, 2003, Ryan had still not paid his portion of the survey bill. Consequently, on the trial court's initiative, a contempt hearing was scheduled for January 22, 2003. On January 10, 2003, Ryan wrote to the trial court, explaining that the survey was being used against him in other litigation by another party, and that he had identified errors in the survey that he believed needed to be corrected before he would pay for the survey.

¶19 On January 13, 2003, Ryan, acting *pro se*, filed a counterclaim. His counterclaim asserted that his property had not been restored to its original condition, alleging damage to gates, fences and the road as well as damage to other areas of his property.

¶20 Ryan did not appear at the contempt hearing on January 22, 2003, and a body attachment was issued. On February 24, 2003, Ryan appeared without counsel and was found in contempt. The trial court agreed to raise Ryan's claims about inaccuracies in the survey by letter transmitting Ryan's check to the surveying company, which check Ryan tendered that day in open court.

¶21 The trial court entered the first scheduling order at a status conference held on June 26, 2003. Ryan appeared in person and with his new attorney, Emmanuel Mamalakis. ATC filed an amended complaint on August 1, 2003, that added the environmental claim that is the subject of this appeal. Two months later, ATC moved to compel Ryan to provide discovery that had been served on Ryan on July 1, 2003. ATC also moved for default judgment because Ryan had not timely answered the amended complaint.

¶22 A hearing took place on October 20, 2003. Mamalakis appeared and asked to have the scheduling order amended. The trial court agreed to amend the scheduling order. Specifically, Judge Wells, who had taken over the case from

Judge Sullivan, set October 27, 2003, as the deadline for Ryan to file an answer and November 25, 2003, as the deadline to answer all interrogatories and discovery. The written order, filed November 3, 2003, ordered Ryan to provide his list of witnesses by April 15, 2004.[4]

¶23 Ryan answered the amended complaint but did not fully comply with the discovery order. Specifically, Ryan's attorney filed answers to interrogatories on Ryan's behalf that related to his counterclaim; these were not signed by Ryan as required by statute.[5]

¶24 ATC filed a motion for sanctions that was heard on December 8, 2003. Ryan did not appear at the hearing, although Mamalakis did appear. Mamalakis moved to withdraw as counsel for Ryan, asserting that Ryan "has repeatedly fallen short on obligations to the court and counsel as it relates to production, answers, and the process of the case." On inquiry by the trial court, Mamalakis further explained that "the problem is that at certain points in time my client just disappears and for very very extended periods of time sometimes when he's not happy with what is proceeding" and that Ryan "[w]ouldn't even answer a phone call." The trial court granted Mamalakis's motion to withdraw as counsel for Ryan.

[4] The April 15, 2004 date is in dispute. At the hearing prior to the order, the trial court indicated that both parties would be required to provide their lists of witnesses by January 15, 2004. For the reasons discussed later in this opinion, resolution of this issue is not necessary for this opinion.

[5] WISCONSIN STAT. § 804.08(1)(b) provides in relevant part: "Each interrogatory shall be answered separately and fully in writing under oath…. The answers are to be signed by the person making them, and the objections signed by the attorney making them."

¶25 The trial court considered the merits of ATC's motion for sanctions and the earlier motion for default judgment. It was noted that Mamalakis had filed an answer to the amended complaint and answers to interrogatories, but that Ryan had not signed the answers to interrogatories and the answers were not specific. The trial court found that the discovery responses provided were insufficient, and that any answers that were given "should be struck as they are not insufficient [sic] and are not proper as to signature and as to the sufficiency of their contents." The trial court's reasons for doing so included findings that:

> [T]he answers to the interrogatories and the discovery have not been answered by the party; that that makes the answers themselves defective and inconsistent with the requirements of the statutes…. [I]t's impossible for the plaintiff to find out what these [counter]claims are all about…. And so I'm going to strike those answers as legally insufficient … and also as factually insufficient because it gives no kind of information … upon which the plaintiff can respond or take appropriate action on in order to either resolve the case, or to settle the case, or to try the case.

¶26 The trial court dismissed with prejudice Ryan's counterclaim on grounds that it had not been prosecuted, given Ryan's lack of participation in discovery. The trial court also awarded attorney fees of $1,822.50 in connection with the motion for contempt as a sanction against Ryan for failing to comply with discovery.

¶27 However, the trial court denied ATC's motion for default judgment, reasoning that an amended complaint had been filed. The trial court noted that a summary judgment motion may be in order down the road, but affirmed that the previously established discovery dates would remain in effect.

¶28 Ryan thereafter began to write letters to the trial court and to counsel for ATC. The gist of his letters to the trial court was to complain about

Mamalakis, to complain about Ryan's own lack of understanding that sanctions could be imposed, and to claim that he had not responded to discovery because he had been unable to meet with his lawyer. Nonetheless, on December 22, 2003, the trial court signed the order confirming its ruling at the December 8, 2003, hearing. Thereafter, Ryan continued to write letters to the trial court.

¶29 On January 30, 2004, ATC served Ryan with its Second Set of Interrogatories, Requests for Production of Documents and Requests for Admissions, all related to count three of the amended complaint, which sought recovery of expenses ATC incurred cleaning up soil on Ryan's land so that it could access the easement. It is these requests for admission that are at issue on appeal.

¶30 Judge Wells retired. The case was reassigned to the Hon. Clare L. Fiorenza in February 2004. On March 18, 2004, the trial court held a status conference at which Ryan appeared without an attorney, although he indicated that he was in the process of hiring one. During the status conference, ATC served Ryan with a motion for summary judgment on count three of the amended complaint, relating to over $175,000 in environmental cleanup costs it claimed it incurred when it had to remediate the easement so it could be used. The accompanying brief in support of the motion for summary judgment relied in part on Ryan's failure to respond to the January 30, 2004 Second Set of Interrogatories, Requests for Production of Documents and Requests for Admissions. A hearing on the motion for summary judgment was set for May 24, 2004. The trial court set a briefing and response schedule for the summary judgment motion.

¶31 Approximately a month after the status conference, Ryan retained new counsel, David Roth, who filed a motion to extend time to answer the Second

Set of Requests for Admissions, or, alternatively, to amend and/or withdraw the prior admissions to conform to the responses filed with Ryan's motion. On May 7, 2004, Roth added a motion to extend the time to name witnesses. The trial court considered the motion to withdraw the prior admissions and the summary judgment motion on May 24, 2004. It denied Ryan's motion to withdraw the admissions or extend his time to answer them. Based on the admissions, it concluded that there were no disputed issues of material fact and it granted summary judgment for ATC.

¶32 Over the next ten months, discussions concerning the remaining claims continued. Ryan also filed a motion seeking reconsideration of the trial court's denial of his motion to withdraw the admissions, and the grant of summary judgment. The trial court denied the motion for reconsideration.

¶33 The trial court then considered Ryan's outstanding motion to extend the time to name witnesses. It denied the motion. The parties subsequently stipulated to dismiss all of ATC's remaining claims with prejudice. This appeal followed.

DISCUSSION

¶34 This appeal concerns only the judgment on the environmental claim, and Ryan's motion to extend the time to name witnesses; Ryan has not appealed the dismissal of his counterclaim. Ryan argues that: (1) the trial court erroneously denied his motion to withdraw the admissions, thereby imposing what he calls a "$181,000 sanction"—judgment on the third claim for relief; (2) even given the deemed admissions, summary judgment on the third claim should not have been granted; (3) the trial court erroneously denied Ryan's motion for reconsideration;

and (4) the trial court erroneously denied Ryan's motion to extend the time to name witnesses. We examine each issue in turn.

I. Withdrawal of admissions

¶35 Ryan argues that the trial court should have granted his motion to withdraw the admissions. Admissions are governed by WIS. STAT. § 804.11. Matters are deemed admitted "unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or attorney…." Sec. 804.11(1)(b). Section 804.11(2) explains the effect of admissions, and the remedy to seek relief from an admission:

> EFFECT OF ADMISSION. Any matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this section is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

¶36 In a case with facts that are strikingly similar to those presented here, we reviewed a trial court's decision to deny a party's motion to withdraw its admissions. *See* ***Mucek v. Nationwide Commc'ns, Inc.***, 2002 WI App 60, ¶24, 252 Wis. 2d 426, 643 N.W.2d 98. ***Mucek*** outlined the applicable standard of review:

> The decision to allow relief from the effect of an admission is within the trial court's discretion. We will uphold a trial court's discretionary act if the court

> examined the relevant facts, applied a proper standard of law, and, demonstrating a rational process, reached a conclusion that a reasonable judge could reach. At the same time, if a trial court fails to adequately set forth its reasoning, we may independently review the record to determine if it provides a basis for the court's exercise of discretion.

Id., ¶25 (citations omitted).

¶37 ***Mucek*** recognized that a trial court "'may' permit withdrawal or amendment only if 'the merits of the action will be subserved' and if the party who benefits from the admission 'fails to satisfy the court that withdrawal … will prejudice' the benefiting party." ***Id.***, ¶26 (quoting WIS. STAT. § 804.11(2); ellipsis supplied by ***Mucek***). However, ***Mucek*** emphasized that even if both statutory conditions are met, the court is not required to permit withdrawal. ***Id.***, ¶34. ***Mucek*** explained: "A trial court's general authority to maintain the orderly and prompt processing of cases provides authority to deny withdrawal, apart from the two factors in WIS. STAT. § 804.11(2)." ***Mucek***, 252 Wis. 2d 426, ¶35. ***Mucek*** also held that "a trial court may consider a party's history of discovery abuse when deciding whether to permit withdrawal or amendment of admissions, both when determining prejudice under § 804.11(2) and when otherwise exercising the court's authority to control the orderly and prompt processing of a case." ***Mucek***, 252 Wis. 2d 426, ¶28.

¶38 In the instant case, the trial court recognized that pursuant to ***Mucek***, regardless of whether it found that ATC would be prejudiced and that the presentation of the merits of the action will be subserved—the two statutory factors, *see* WIS. STAT. § 804.11(2)—it could nonetheless still decline to grant the motion to withdraw or amend the admissions based on the party's history of discovery abuse. *See* ***Mucek***, 252 Wis. 2d 426, ¶¶28, 35. The trial court therefore

did not make findings with respect to the statutory factors, and instead discussed the discovery abuses.

¶39 The trial court indicated that it had carefully reviewed the record and found that "[t]here has been a total non-cooperative nature of Mr. Ryan.…" The trial court discussed the history of the case and then concluded:

> [B]ased upon the totality of all the facts that I gathered in reading the CCAP records and the transcripts and the orders that were entered by the Court, in my discretion I do not think that the Court should allow the admissions to be amended. Mr. Ryan is not a novice to the court system and the Court does consider that.[6]

¶40 On appeal, Ryan asserts that the trial court erroneously exercised its discretion when it failed to consider the two statutory factors that must be satisfied before a trial court can permit withdrawal of admissions. *See* WIS. STAT. § 804.11(2). Ryan argues that these factors were both satisfied, and that the trial court should have granted his motion to withdraw or amend the admissions.

¶41 In contrast, ATC urges this court to affirm the trial court's exercise of discretion and asserts that we need not discuss the two-prong test, because under ***Mucek***, the trial court has discretion to deny a motion to withdraw admissions *even if* the two statutory conditions are satisfied. In the alternative, ATC argues that the two statutory factors were not satisfied.

¶42 We need not decide whether a trial court is *required* to consider the two factors enumerated in WIS. STAT. § 804.11(2), because there is ample

[6] The trial court noted that a search on CCAP revealed over seventy cases involving Ryan. This court takes judicial notice that as of the time of the writing of this opinion, a statewide search for "Basil Ryan" on CCAP disclosed eight-six entries, five of which began after the beginning of this case.

evidence in the record to support a finding that ATC would be prejudiced if Ryan were allowed to withdraw his admissions. *See* ***Hammen v. State***, 87 Wis. 2d 791, 800, 275 N.W.2d 709 (1979) ("[T]his court will uphold a discretionary decision of the trial court if the record contains facts which would support the trial court's decision had it fully exercised its discretion.").

¶43 A motion to withdraw admissions cannot be granted if the party who obtained the admissions satisfies the court that "withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits." *See* WIS. STAT. § 804.11(2). ATC argues that it would be prejudiced if Ryan were permitted to withdraw his admissions because it would not have "ample time to complete discovery if such admissions were withdrawn or amended," given the amended discovery deadline set for approximately five weeks after the hearing on Ryan's motion to withdraw the admissions. ATC notes that this would likely require another adjournment to accommodate Ryan's "failure to cooperate with discovery and the orderly process of a case."

¶44 ATC contends that the "discovery abuses and instances of delay perpetrated by Ryan in this matter are the same kind of conduct" that was addressed in ***Mucek***. ***Mucek*** considered whether plaintiff Mucek would be prejudiced if defendant NCI were permitted to withdraw its admissions:

> [W]e have no hesitation in affirming the trial court's exercise of discretion in this case. The trial court said it had rarely "seen such egregious conduct on the part of a defendant." The record, as set forth in the "background" section of this decision, amply supports this characterization. NCI continually failed to cooperate with discovery and, indeed, failed to cooperate with its own counsel. Its lack of cooperation continued after it was sanctioned the first time. At the hearing five days prior to trial, NCI provided no basis for finding that its failure to respond to the request for admissions was excusable. By simply laying out NCI's failure to cooperate right up until

> the eve of trial, Mucek met her burden of showing prejudice.

Id., 252 Wis. 2d 426, ¶36 (citations and footnote omitted).

¶45 We conclude that there is ample evidence in the record to support a finding that ATC would be prejudiced if Ryan were permitted to withdraw his admissions. Specifically, the record—which includes findings by two different judges—indicates that in the three years prior to the hearing on Ryan's motion to withdraw the admissions, Ryan regularly failed to timely respond to discovery requests or follow trial court orders. His failure to cooperate was so egregious that the trial court issued a bench warrant when he failed to appear in court despite prior orders to do so. This pattern of conduct by Ryan greatly increased the cost to ATC and the expenditure of judicial resources required to litigate the case. This is sufficient evidence to support a finding that ATC would be prejudiced if Ryan were permitted to withdraw his admissions. Because the record supports a finding that ATC satisfied its burden to prove prejudice, Ryan is precluded from withdrawing his admissions. *See* WIS. STAT. § 804.11(2). This conclusion is consistent with the trial court's exercise of discretion, and we therefore affirm. *See* ***Hammen***, 87 Wis. 2d at 800.

II. Summary judgment

¶46 Ryan contends that even if this court sustains the trial court's denial of his motion to withdraw the admissions, summary judgment should not have been granted because "questions of fact were presented with respect to who caused the contamination for which ATC was seeking recovery of its cleanup costs." Ryan asserts that the only evidence he caused the contamination is his admissions and a short affidavit from ATC that lists the sums incurred in "hauling and

disposal of contaminated soil, material and water." Ryan argues that his own affidavit asserting that ATC's contractor pierced buried electrical lines, releasing fluid in the soil, creates a genuine issue of material fact that precludes summary judgment.

¶47 ATC responds by arguing that even if there was cable or mineral oil leakage, the contamination costs at issue were related to other contamination, evidence of which Ryan has not refuted. ATC argues:

> The bottom line is that Ryan was responsible for the cleanup costs whether or not he actually caused the contamination because of his ownership of the property as a matter of law. Claim Three of the Amended Complaint simply states that Ryan would be unjustly enriched if ATC were to pay for cleanup of his property when it is Ryan's and not ATC's responsibility to pay for such costs.

¶48 In reviewing a grant of summary judgment, we apply the standards set forth in WIS. STAT. § 802.08(2) in the same manner as the trial court. ***Badger State Bank v. Taylor***, 2004 WI 128, ¶12, 276 Wis. 2d 312, 688 N.W.2d 439. Section 802.08(2) permits summary judgment where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. ***Badger State Bank***, 276 Wis. 2d 312, ¶12.

¶49 We conclude that summary judgment was properly granted. ATC's Third Claim for Relief sought damages for Ryan's interference with its use of its easement, including among other damages "costs … incurred … as a result of the actions of [Ryan] which … contaminated the soil" and which, because ATC discovered the contamination in making ordinary use of its easement, "triggered public duties under Wis. Stats. Chapter 292, Wisconsin Admin. Code Chapter NR 718 … as well as other state and federal environmental and remedial statutes…." ATC submitted an affidavit by detailing the costs paid by ATC in the hauling and

disposing of the contaminated soil and water on Ryan's property.[7] The costs totaled approximately $181,000.

¶50 The facts established by Ryan's failure to respond to the requests for admission fulfill all the elements which ATC would otherwise be required to prove to recover on its Third Claim for Relief for its costs in cleaning up contamination on the easement on Ryan's property. The admissions include:

> NO. 2:[8] [A]s the owner in fee of the property … [Ryan is] a responsible party with respect to the remediation of any pollution or contamination to the soil, waters or air of said property.
>
> NO. 3: [Ryan has] put the property … to uses that have caused the soil to become contaminated.
>
> NO. 4: [Ryan has] taken no precautions … to prevent the contamination of the soil of said property.
>
> NO. 5: [T]he soil of the property … is contaminated.
>
> NO. 6: [Ryan has] made no report to the [Wisconsin DNR] … to advise them of the contamination.…
>
> NO. 7: [Ryan has] taken no remedial action with respect to the contamination of the soil of the property….
>
> NO. 8: [ATC] in making ordinary use of its easement interest … was exposed … to the contaminated soil…
>
> NO. 9: [O]nce [ATC] discovered the contaminated soil … it was under a public duty to remove the contaminated material from the premises.

[7] ATC had previously disclosed these same costs in its Disclosure of Witnesses and Damages filed January 15, 2004, as required by the scheduling order. Ryan made no similar required disclosure.

[8] Numbers correspond to the Request for Admission number. All property referred to is the property owned by Ryan.

> NO. 10: [Ryan] as the fee owner of the property … [is] obligated to indemnify [ATC] wholly for any costs or expenditures it incurred in removing any contaminated soil that was discovered by [ATC] in making ordinary use of its easement interest in the property….
>
> NO. 12: [B]y not warning [ATC] of the possibility that it would encounter contaminated soil when it undertook to make ordinary use of its easement interest … and by not taking prior remedial action with respect to the contaminated soil … [Ryan] caused [ATC] to act to its pecuniary damage.
>
> NO. 13: [B]ased on [Ryan's] responsibility as the fee owner of the real property … [Ryan is] wholly responsible for the damages suffered by [ATC] related to the removal of the contaminated soil.

¶51 Ryan argued, in his affidavit in opposition to summary judgment, only that the contamination was not his doing. Ryan's affidavit did not provide facts which dispute the costs involved. His affidavit admits receipt of the requests for admission dated January 30, 2004, and admits prior sanctions in December 2003 for failure to respond to discovery.

¶52 A trial court may properly grant summary judgment based on a litigant's failure to respond to requests for admission. ***Bank of Two Rivers v. Zimmer***, 112 Wis. 2d 624, 630, 334 N.W.2d 230 (1983). Ryan's claim that he did not cause the contamination at issue does not absolve him of a remediation duty under applicable environmental laws.[9] A duty to remediate does not require that the owner caused the contamination in the first place. *See* ***State v. Mauthe***, 123 Wis. 2d 288, 300-03, 366 N.W.2d 871 (1985). Based on Ryan's failure to respond in a reasonably timely manner to the requests for admissions set forth above, Ryan

[9] *See* WIS. STAT. §§ 292.01 and 292.11 and WIS. ADMIN. CODE §§ NR 700.03 and 700.05.

has conceded his responsibility for the contamination and for the entire cost of remediation performed by ATC. Summary judgment was properly granted.

III. Denial of the motion for reconsideration

¶53 Ryan's admissions conclusively establish his responsibility for the entire cost of remediation. Nonetheless, Ryan argues that the trial court erroneously denied his motion for reconsideration of the grant of summary judgment on the environmental claim because he claims that he produced newly discovered evidence. He provides no authority for the proposition, inherent in his argument, that whenever a litigant produces additional affidavits the trial court is required to reanalyze the grant of summary judgment. This lack of authority, together with the conclusive admissions, compels us to reject this argument. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980) (we need not consider arguments unsupported by citations to authority).

IV. Denial of Ryan's motion to extend the time to name witnesses

¶54 After summary judgment on the environmental claim was granted, but before ATC voluntarily dismissed its other remaining claims, the trial court denied Ryan's motion to extend the time to name witnesses. Ryan appeals that order. Because we have affirmed the summary judgment on the environmental claim and all other claims have been voluntarily dismissed, we conclude that this issue is moot. *See* ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 ("An issue is moot when its resolution will have no practical effect on the underlying controversy.").

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.