

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 1, 2007

A. John Voelker
Acting 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. 2005AP2675

Cir. Ct. No. 2004CV565

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

HORST W. JOSELLIS,

PETITIONER-APPELLANT,

V.

**LABOR AND INDUSTRY REVIEW COMMISSION
AND PACE INDUSTRIES, INC.,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Sauk County:
JAMES EVENSON, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Horst Josellis appeals from an order affirming a decision by the Labor and Industry Review Commission (LIRC) on his discrimination complaint. We affirm.

¶2 In 1999, Josellis filed a complaint with the Department of Workforce Development alleging that his employer Pace Industries, Inc., discriminated against him on the basis of age and national origin, contrary to WIS. STAT. § 111.321 (2005-06).¹ The Department denied those claims, and Josellis sought review by the commission. The commission affirmed the denial. Josellis sought judicial review in circuit court under WIS. STAT. ch. 227, *see* WIS. STAT. § 111.395, and the court affirmed the denial.

¶3 On appeal, Josellis’s brief does not provide clear background information that allows us to understand the context of his arguments, and the arguments themselves are disorganized and confusing. From this material, we have identified one issue to address.

¶4 Josellis argues that the commission erred by concluding that some of his claims were barred because they were not filed within the 300-day time period provided in WIS. STAT. § 111.39(1). That statute requires that the complaint be filed with the department within 300 days after the alleged discrimination “occurred.” Josellis argued to the commission that his claims based on events before 300 days should be considered timely using the “continuing violation” doctrine. The commission, after reviewing a federal court decision concerning that doctrine, concluded that the doctrine does not apply to “discrete acts” such as termination, failure to promote, denial of training, and others, although the doctrine may be applicable to harassing acts underlying hostile work environment claims. Applying that law, the commission concluded that Josellis’s claims based

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

on denial of training, written discipline, and demotion were based on discrete acts, and therefore not timely filed.

¶5 On appeal, Josellis argues that the various acts underlying these claims should be regarded as harassing acts underlying a hostile work environment claim. Josellis appears to misunderstand the concept of a hostile work environment claim. According to the case relied on by the commission, such a claim is founded on acts like intimidation, ridicule, and insult. *See National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116 (2002). Josellis's claims based on denial of training, written discipline, and demotion were not based on those types of harassing activities. They were, as the commission determined, discrete acts, and therefore subject to the 300-day filing requirement.

¶6 As to Josellis's other claims, the commission agreed with the department's finding that Josellis had not met his burden at the probable cause proceeding under WIS. STAT. § 111.39(4)(b). On appeal, Josellis presents a discussion of certain evidence, but it is mostly impossible to determine from his discussion which specific claim(s) or finding(s) he is attempting to discuss or disagree with, or why those disagreements affect the final outcome. To the extent it is possible, he appears to provide only one or two sentences of argument. We conclude that this issue is not adequately briefed to require, or even allow, further substantive response. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (court may decline to review issue inadequately briefed).

By the Court.—Order affirmed.

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

