COURT OF APPEALS
DECISION
DATED AND FILED

August 18, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2256 **Cir. Ct. No. 2006CV184**

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

WARREN SLOCUM,

PLAINTIFF-APPELLANT,

V.

DOUG RIVARD,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County: EDWARD F. VLACK III, Judge. *Affirmed and cause remanded with directions.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Warren Slocum, pro se, appeals from an order dismissing his lawsuit, finding it frivolous and awarding attorney fees and costs. Slocum argues his case was prematurely dismissed and that the court improperly imposed sanctions against him. We reject Slocum's arguments, affirm the order

and remand the cause to include the reasonable attorney fees and costs incurred in this appeal.

¶2 Slocum commenced this action against Doug Rivard, the chairman of the Town of Star Prairie, with the filing of a document entitled "Summons."[1] Slocum requested Rivard's removal from office "based on his official misconduct and neglect of duty, as allowed under s. 73.03(3), and other statutes, please see attached letter to the court."[2] Slocum also alleged Rivard "interfered with the Plaintiff's civil rights, by refusing to issue a properly requested building permit." He also alleged Rivard "engaged in vandalism to the Plaintiff's personal and real properties …." The circuit court granted a motion to dismiss on the grounds that WIS. STAT. § 73.03(3)[3] "does not provide a private cause of action for a taxpayer, resident or citizen." The court also held Slocum's pleading failed to comply with WIS. STAT. §§ 801.09 and 801.095.

¶3 Slocum appealed and we dismissed the appeal for lack of jurisdiction. *See* ***Slocum v. Rivard***, No. 2007AP2404 unpublished slip op. (WI App Dec. 13, 2007). We concluded the circuit court's memorandum decision was not a document appealable as a matter of right because it did not contain language "dismissing" or "adjudging" Slocum's claims, a requirement of a final order or judgment. *See* ***Wambolt v. West Bend Mut. Ins. Co.***, 2007 WI 35, ¶24, 299 Wis. 2d 723, 728 N.W.2d 670.

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[1] The circuit court in the present case noted Slocum had previously filed a lawsuit against Rivard in St. Croix County case No. 05CV816, entitled "Removal from Office." The court found "the allegations and relief he seeks are virtually identical …."

[2] No letter was attached to Slocum's pleading.

[3] Reference to Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶4 Slocum filed an amended complaint more than six months after his initial pleading and after the scheduling order's amended pleading deadline. The amended complaint removed the reference to WIS. STAT. § 73.03(3), but provided no other legal basis for his claims. Rivard answered the amended complaint and filed a second motion to dismiss. A second hearing was held and the court concluded Slocum had improperly failed to seek leave of court prior to filing his amended complaint and, further, that the relief sought was beyond the court's authority. The court also stated:

> The grant of authority under § 73.03(3) is very clear – it is a power granted to the department of revenue. On a number of times, previous courts and this court have opined that the power under WIS. STAT. § 73.03 is not granted to a private party. Yet, despite the notice that the defendant was seeking costs, the plaintiff pursued this action under § 73.03(3), which this court has determined to be frivolous.

The court therefore again dismissed Slocum's action and awarded costs and fees for pursuing a frivolous lawsuit. Slocum now appeals.

¶5 Slocum argues the circuit court "prematurely" dismissed his action because "it has not yet been presented with all the evidence of the case, and therefore cannot come to an informed decision about it, without having done so." Slocum also suggests we dismissed the prior appeal because the court "had not directly addressed the issues of the case itself, or the case's substantive merits."

¶6 Contrary to Slocum's perception, we did not in the previous appeal require the circuit court to address the substantive merits of his claims. We merely held the court's memorandum decision was not appealable as a matter of right because it did not contain language adequately disposing of the entire matter in litigation as to one or more parties within the meaning of WIS. STAT. § 808.03(1) and ***Wambolt***, 299 Wis. 2d 723, ¶24.

¶7 Moreover, despite Slocum's various complaints about the circuit court, his briefs to this court fail to provide any legal authority for the conclusion that a private citizen may sue under WIS. STAT. § 73.03(3) to remove an elected official from office. Slocum also provides no citation to legal authority to support any other claim, nor does he develop any legal theory that would allow him relief. We will not consider arguments unsupported by legal authority and we will not abandon our neutrality to develop arguments. *See* ***Kruczek v. DWD***, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286; ***M.C.I. Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Accordingly, we conclude the court properly granted the motion to dismiss.

¶8 Slocum insists the circuit court erroneously exercised its discretion by disallowing his amended complaint. Slocum contends he requested leave to amend within the proper time frame and also that the court ignored the statutory prerogative to allow amendment "when justice so requires." Again, Slocum fails to provide adequate citations to the record on appeal to support his factual allegations that he requested leave to amend within the proper time frame, but his asserted facts do not constitute legally sufficient requests for leave of court in any event.[4] We also reject Slocum's assertion that justice required an amendment as a matter of law. The court did not erroneously exercise its discretion by disallowing Slocum's untimely amended complaint.

[4] For example, Slocum asserts he "repeatedly expressed my willingness to file the new charges separately (not as part of an amended complaint) if the court desired." Our examination of the record does not support Slocum's contention that he requested leave to amend within the proper time frame. Indeed, during the motion hearing on April 23, 2008, the court stated the amended complaint was "filed approximately a year after the scheduling order required it to be filed."

¶9 We also conclude the circuit court did not erroneously exercise its discretion by finding Slocum's action frivolous. Rivard put Slocum on notice of his intention to pursue sanctions under the twenty-one-day safe harbor provisions of WIS. STAT. § 802.05(3), during which a party may withdraw or properly correct a pleading alleged to be frivolous in order to avoid sanctions.[5] Despite notice that Rivard was seeking sanctions, Slocum pursued this action which the court had found frivolous even before the previous appeal in this case. Slocum also pursued his present claims despite the dismissal of a nearly identical lawsuit in St. Croix County case No. 2005CV816. Indeed, as the court observed, "the same claims had been rejected by two different judges in 05 CV 816."[6] The court emphasized Slocum was not inexperienced in the legal process, having been involved in lengthy litigation in a zoning dispute with St. Croix County in case No. 2003CV377, a family matter in St. Croix County case No. 1994FA191, and an appeal in ***Slocum v. Hohman***, No. 1998AP2974, unpublished slip op. (WI App Sept. 14, 1999). We perceive no error in the court's finding of frivolousness.

¶10 Finally, Rivard has filed a motion in this court to find the appeal frivolous under WIS. STAT. RULE 809.25(3). This court has held that when a claim was correctly adjudged to be frivolous in the circuit court, it is frivolous per se on appeal. *See* ***Riley v. Isaacson***, 156 Wis. 2d 249, 262, 456 N.W.2d 619 (Ct. App. 1990). Regardless, we conclude the WIS. STAT. RULE 809.25(3)(c) standards are met in this case. Slocum pursued the litigation not just at the circuit court level,

[5] We do not construe Slocum's briefs as contesting the propriety of the twenty-one-day safe harbor notice and we will not address it further.

[6] Slocum's arguments were rejected upon a motion to dismiss and a motion for reconsideration which was assigned to a different judge.

but also on appeal, although he knew or should have known there was no reasonable basis in fact or law. *See* WIS. STAT. RULE 809.25(3)(c)2. His repeated attempts to pursue claims that have been dismissed as frivolous also demonstrate the appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another. *See* WIS. STAT. RULE 809.25(3)(c)1.

¶11 This matter is precisely the type of conduct that WIS. STAT. RULE 809.25(3) was intended to prohibit. To be made whole, Rivard is entitled to the reasonable attorney fees and costs incurred in this appeal. Therefore, we affirm the order and remand the matter with directions to amend the order to include the reasonable attorney fees and costs incurred in this appeal.

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

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