**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**November 2, 2010**

**A. John Voelker**
**Acting Clerk of Court of Appeals**



**Appeal No. 2009AP3071** **Cir. Ct. No. 2006CV5627**

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

---

**BRIAN E. DAVIS,**

**PLAINTIFF-APPELLANT,**

**V.**

**CITY OF MILWAUKEE,**

**DEFENDANT-RESPONDENT.**

---

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge.[1] *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

---

[1] This case originally came before the Honorable Michael J. Dwyer. It was transferred to the Honorable Mel Flanagan in August 2008, and was then transferred to the Honorable Dennis P. Moroney in May 2009.

¶1 CURLEY, P.J. Brian E. Davis, *pro se*, appeals from the judgment dismissing his action against the City of Milwaukee (City) after he presented his case at trial. *See* WIS. STAT. § 805.14(3) (2007-08).[2] Davis argues that the trial court should have granted summary judgment on his constitutional unreasonable search claims because he believes that an unpublished Court of Appeals decision establishes that City employees may not, under any circumstances, enter his property without a warrant or permission. He also argues that the trial court's rulings regarding the parties' motions *in limine* prevented him from fully presenting his case at trial. Davis further argues that the trial court erroneously dismissed his claims after he rested his case. For the reasons explained below, we disagree with Davis and affirm.

## I. BACKGROUND.

¶2 Davis owns and rents properties in Milwaukee, including the property at issue, a house on North 58th Street. Davis's complaint, filed June 19, 2006, alleges that City inspectors entered this property several times throughout 2005 without permission or a warrant, cited him for various code violations, and then filed a frivolous lawsuit against him in municipal court. According to Davis, the inspectors' actions violate an unpublished 2002 Court of Appeals decision that he believes establishes that under no circumstances may any City employee enter any of Davis's properties without permission or a warrant, *see* ***City of Milwaukee v. B. Davis Inv.***, No. 02-1043, unpublished slip op. (WI App Aug. 6, 2002) (***B. Davis Inv.***). According to Davis, these actions also violate the Fourth

[2] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

Amendment and Article I, section 11 of the Wisconsin Constitution, both of which grant him the right to be free from unreasonable searches.[3] The City denies all of Davis's claims.

¶3 Before discovery ended—before Davis had answered all of the City's discovery requests and before he had appeared for his noticed deposition—Davis filed a motion for summary judgment. In that motion, he argued that ***B. Davis Investment***, 257 Wis. 2d 939, as well as letters that he sent to the City requesting that City employees stay off his property, created a reasonable expectation of privacy that was violated as a matter of law. Davis did not, however, establish whether he personally occupied the house on 58th Street when the inspectors were there, nor did he explain exactly where on the property the inspectors were when they allegedly violated his rights. Unable to find a basis for Davis's motion and concluding that material facts still were in issue, the trial court denied summary judgment, and the case went to trial.

[3] Davis's complaint, amended complaints, and appellate briefs, as well as nearly every other document Davis filed in this matter, contain additional claims, which generally allege bias and deceit against the judges and City attorneys assigned to his case. We spent an inestimable amount of time perusing the record in a good-faith attempt to address all issues before us, and we conclude all such allegations are unsubstantiated. We further conclude that the only issues properly before us on appeal are the denial of summary judgment and dismissal of: (1) the federal Fourth Amendment claim; (2) the state constitutional claim; and (3) Davis's claim that the City's actions violated ***City of Milwaukee v. B. Davis Inv.***, No. 02-1043, unpublished slip op. (WI App Aug. 6, 2002). As for all other claims, we conclude that they are waived because Davis has not adequately developed them on appeal. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 451-52, 480 N.W.2d 16 (1992) ("It is a 'well-established rule' in Wisconsin that appellate courts need not and ordinarily will not consider or decide issues which are not specifically raised on appeal … [w]hile some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law.") (citation omitted). *See also* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992) (court of appeals may decline to review inadequately developed issues).

¶4 At trial, Davis called as witnesses four employees from the City's Department of Neighborhood Services. Of the four, two had personally inspected the property on 58th Street. One of these witnesses testified that he circled around the outside of the house, stood near the north end, and observed defective siding. The other witness testified that her general practice when inspecting houses is to approach them from sidewalks, service walks, driveways, or by other available means. She does not go through locked gates or fences; she also does not cross "no trespassing" signs. After the four City employees testified, Davis rested his case. He himself did not testify. The City then moved to dismiss. The trial court, finding that the evidence did not prove any of Davis's claims, granted the motion. Davis now appeals.

## II. ANALYSIS.

*A. The trial court properly denied Davis's motion for summary judgment.*

¶5 Davis argues that the trial court erred in denying his motion for summary judgment. We review *de novo* the grant or denial of summary judgment, employing the same methodology as the circuit court. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-16, 401 N.W.2d 816 (1987). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). The inferences to be drawn from the underlying facts are to be viewed in the light most favorable to the party opposing the motion. ***Lambrecht v. Estate of Kaczmarczyk***, 2001 WI 25, ¶23, 241 Wis. 2d 804, 623 N.W.2d 751. If there is any reasonable doubt regarding whether there exists a genuine issue of material fact, that doubt must be resolved in favor of the nonmoving party. ***Schmidt v. Northern States Power Co.***, 2007 WI 136, ¶24, 305 Wis. 2d 538, 742 N.W.2d 294.

¶6 In fact, summary judgment was not appropriate because there still was at least one issue of material fact when Davis filed his motion.[4] Although Davis established that City inspectors did enter onto his 58th Street property, he had not yet established exactly where the inspectors went. The facts were still unclear as to whether the inspectors went onto the constitutionally-protected "curtilage" of the property, *see* ***Conrad v. State***, 63 Wis. 2d 616, 633-34, 218 N.W.2d 252 (1974), or whether they observed the defects from outside of the area where Davis had a reasonable expectation of privacy, *see, e.g.*, ***State v. Bauer***, 127 Wis. 2d 401, 406, 379 N.W.2d 895 (Ct. App. 1985) (no unreasonable search occurs where government employees who enter private property restrict their movements to those areas generally made accessible to visitors, such as driveways, walkways or similar passageways); ***United States v. French***, 291 F.3d 945, 953 (7th Cir. 2002). Therefore, Davis's summary judgment motion was correctly denied.

¶7 Contrary to what Davis argues, our decision in ***B. Davis Investment***, 257 Wis. 2d 939, does not expand the constitutional definition of "reasonable expectation of privacy" such that any entry onto Davis's property constitutes a *per se* Fourth Amendment violation. In fact, ***B. Davis Investment*** had nothing to do with either the state or federal constitutions. In ***B. Davis Investment***, Davis's

[4] While the Wisconsin Supreme Court may interpret Article I, § 11 of the Wisconsin Constitution differently than the United States Supreme Court interprets the Fourth Amendment, *see* ***State v. Weide***, 155 Wis. 2d 537, 547, 455 N.W.2d 899 (1990), it has consistently and routinely conformed the law of search and seizure under the Wisconsin Constitution to the law developed by the United States Supreme Court under the Fourth Amendment, *see, e.g.*, ***State v. Dearborn***, 2010 WI 84, ¶14, ___ Wis. 2d ___, 786 N.W.2d 97 ("We have historically interpreted the Wisconsin Constitution's protections [regarding unreasonable searches and seizures] identically to the protections under the Fourth Amendment as defined by the United States Supreme Court."). Therefore, we analyze Davis's federal and state constitutional claims identically.

investment company filled out a form called "Application of Certificate for Exterior Code Compliance." ***Id.***, 257 Wis. 2d 939, ¶6. This was the first step in a procedure whereby new property owners applied for mandatory inspections. ***Id.*** Davis's company did not, however, complete the following step, which was to fill out a form called "Application for Inspection"—a form that expressly granted the City permission to inspect the property. ***Id.***, ¶¶5-9. After Davis's company filled out the Application of Certificate for Exterior Code Compliance, the City inspected one of the company's properties under the mistaken belief that the company had in fact filled out the Application for Inspection, and found several code violations, for which the City successfully sued Davis's company. ***Id.*** Reversing the City's determination, this court held that a property owner's Application for Certificate of Exterior Code Compliance may not substitute for an Application for Inspection. ***Id.***, ¶¶14-16. We did not determine whether the City's inspections violated the constitution. *See* ***id.*** ¶9, n.2.

¶8 Moreover, notwithstanding the constitutional issues, ***B. Davis Investment*** does not govern the instant case. ***B. Davis Investment*** involves: (1) a different plaintiff—Davis's investment company instead of Davis; (2) a different kind of inspection; and (3) a different legal basis for relief. Therefore, the "law of the case doctrine," a "'longstanding rule that a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal,'" *see* ***State v. Moeck***, 2005 WI 57, ¶18, 280 Wis. 2d 277, 695 N.W.2d 783 (citation omitted), does not apply.

*B. The trial court properly exercised its discretion with regard to the parties' motions in limine.*

¶9 Davis next argues that the trial court's rulings on the parties' motions *in limine* prevented him from presenting his case. The decision to grant or deny a motion *in limine* is committed to the discretion of the court, and we affirm if the trial court applied the correct law to the facts of record and reached a reasonable result. ***Grube v. Daun***, 213 Wis. 2d 533, 541-42, 570 N.W.2d 851 (1997). In other words, if a reasonable basis for the circuit court's ruling exists, we will not disturb it. ***Id.***

¶10 Davis contends that the court's order prohibiting him from mentioning ***B. Davis Investment***, 257 Wis. 2d 939, to the jury violated WIS. STAT. § 902.01(7) "by failing to notify the jury of that decision which became a requirement when [the trial court] took judicial notice of it." As we discussed above, ***B. Davis Investment*** is irrelevant to the instant case. *See* WIS. STAT. § 904.02 ("Evidence which is not relevant is not admissible."). Moreover, contrary to what Davis argues, it does not matter whether the trial court took judicial notice of the case at the beginning of litigation; establishing a piece of information as fact does not render it relevant. *See* WIS. STAT. § 904.01 ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Therefore, because the trial court had a reasonable basis for excluding this evidence—in other words, because it was irrelevant—we affirm its ruling. *See* ***Grube***, 213 Wis. 2d at 541-42.

¶11 Davis additionally argues that the trial court's rulings generally violated WIS. STAT. §§ 904.01 and 904.02 "by prohibiting him from mentioning

the actual damages which were incorporated into his Third Amended Complaint." Presumably, Davis refers to the trial court's exclusion of "evidence or argument relating to any expenses incurred by Brian Davis in painting the subject property," although neither his brief nor his Third Amended Complaint expressly say so. As Davis provides no explanation for how these damages flowed from the City's alleged violations of his constitutional rights, we conclude that the trial court appropriately excluded them as irrelevant. *See* WIS. STAT. §§ 904.01, 904.02; see *also* ***Kruczek v. DWD***, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286.

¶12 Davis also submits that the order prohibiting him from introducing or mentioning attorney opinions from the Department of Natural Resources "violated WIS. STAT. § 907.02 and was an attempt to cover up defense counsel's claim that plaintiff lacked a privacy interest in his own property were not warranted by existing law—including this court's prior opinion in [***B. Davis Investment***]—and were therefore a violation of WIS. STAT. § 802.05." Davis provides no further explanation for this contention, and does not explain the relevance of these particular documents. *See* WIS. STAT. §§ 904.01, 904.02; *see also* ***Kruczek***, 278 Wis. 2d 563, ¶32. We therefore conclude that the trial court reasonably exercised its discretion when it excluded this evidence.

*C. The trial court properly dismissed Davis's claims at trial.*

¶13 As a final matter, Davis argues that the trial court erroneously dismissed his claims after he rested his case. A trial court may dismiss a case after the plaintiff has rested if the evidence is insufficient to support a verdict in the plaintiff's favor. WIS. STAT. § 805.14(3). After considering all credible evidence and reasonable inferences in the light most favorable to the plaintiff, the trial court must be satisfied that there is no credible evidence to sustain a finding in

plaintiff's favor. *See* WIS. STAT. § 805.14(1); ***Beacon Bowl v. Wisconsin Elec. Power Co.***, 176 Wis. 2d 740, 788, 501 N.W.2d 788 (1993). The trial court may only direct a verdict when the evidence is not in dispute or when it is so clear and convincing as to reasonably permit unbiased and impartial minds to come to one conclusion. ***Millonig v. Bakken***, 112 Wis. 2d 445, 450, 334 N.W.2d 80 (1983). On the other hand, the trial court should not direct a verdict if it is within the jury's province to accept either of a witness's contradictory statements about a material issue. *See* ***Graves v. Travelers Ins. Co.***, 66 Wis. 2d 124, 136-37, 224 N.W.2d 398 (1974). The trial court's function in deciding a motion at the close of the evidence is not to weigh the evidence. *See* ***Wisconsin Natural Gas v. Ford, Bacon, & Davis Constr.***, 96 Wis. 2d 314, 338, 291 N.W.2d 825 (Ct. App. 1980). Rather, the trial court must accept the evidence as true unless the evidence is mere conjecture. ***Id***.

¶14 Although we apply the same standard on appeal, we must also give substantial deference to the trial court's better ability to assess the evidence. *See* ***Helmbrecht v. St. Paul Ins. Co.***, 122 Wis. 2d 94, 109-10, 362 N.W.2d 118 (1985). Thus, we will not overturn a trial court's decision to dismiss at the end of the plaintiffs' case "'merely because, on a doubtful balancing of probabilities, the mind inclines slightly against the decision.'" ***Olfe v. Gordon***, 93 Wis. 2d 173, 186, 286 N.W.2d 573 (1980) (citations omitted). Rather, we may set aside a dismissal only if the record reveals that the trial court was "clearly wrong." ***Id.***

¶15 In Davis's case, we cannot say that the trial court's dismissal of his claims was clearly wrong. *See* ***id.*** The evidence adduced at trial did not establish that any City employee entered any property on which Davis had a reasonable expectation of privacy. *See* ***Bauer***, 127 Wis. 2d at 406. Of the four witnesses called to testify, only one actually testified to having setting foot on the property.

The inspector who initially inspected the house on 58th Street never testified that he entered the house itself or went anywhere near the curtilage. *See* ***Conrad***, 63 Wis. 2d at 634. He merely circled around the house and observed defective siding at the north end. No other witness specifically testified to entering the property. Presumably, the second inspector, the one who testified to her general inspection practices, did go onto the property; however, Davis did not elicit facts during her testimony that would have given rise to a jury question. Given the dearth of facts regarding the inspections at issue in this case, we conclude that the trial court did not err in dismissing the case after Davis had rested. *See* WIS. STAT. § 805.14(3); ***Olfe***, 93 Wis. 2d at 186. Accordingly, we affirm.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.