

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 29, 2003

Cornelia G. Clark
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. 02-2392
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-109

**IN COURT OF APPEALS
DISTRICT III**

BERNHARD K. BENN AND KIMBERLY A. BENN,

**PLAINTIFFS-RESPONDENTS-CROSS-
APPELLANTS,**

v.

LARRY L. VITORT,

**DEFENDANT-APPELLANT-CROSS-
RESPONDENT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Dunn County: ROD W. SMELTZER, Judge. *Affirmed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Larry Vitort appeals a judgment awarding \$1,754 to Bernhard and Kimberly Benn on their wrongful interference with a prospective

contract claim.¹ He argues that the Benns failed to present sufficient proofs to entitle them to judgment and that the record fails to support the award of damages. He further contends that the circuit court erred when it denied his motion to vacate the judgment. The Benns cross-appeal, arguing that the circuit court erroneously denied punitive damages and awarded insufficient damages. They also seek attorney fees and costs under WIS. STAT. RULE 809.25. We affirm the judgment and remand for determination of attorney fees and costs under RULE 809.25.

¶2 In 1992, Bernhard and Kimberly Benn purchased their home with the help of Betty and Larry Vitort, who co-signed the note and mortgage.² To protect their exposure to liability, the Benns signed a quitclaim deed transferring title to both the Benns and the Vitorts. In May 1995, the Benns sought refinancing to take advantage of lower interest rates.

¶3 The lending institution required the Benns to obtain a quitclaim deed from the Vitorts. The Vitorts signed and delivered the quitclaim deed, extinguishing their interest in the Benns' home. Unbeknownst to the Benns, the financing institution lost the unrecorded deed. The Benns first discovered the deed had been lost in 2001 when they again sought refinancing. The financing institution prepared a new quitclaim that Betty Vitort signed. Larry Vitort, however, refused to sign the deed.

¹ Although the notice of appeal purports to appeal parts of several orders, we characterize the court's ultimate resolution as a judgment and we interpret the appeal to be from the court's judgment. *See* WIS. STAT. RULE 809.10(4).

² The circuit court's findings of fact are unchallenged.

¶4 The Bennis claimed that Vitort’s delay cost them \$2,546.68 in overpayment of interest and \$1,085.53 in underpayment of principal. They brought this action seeking an order that Vitort sign a quitclaim deed and for compensatory and punitive damages. The Bennis filed a motion for summary judgment. Vitort did not respond to the motion and the circuit court granted the Bennis summary judgment and set a hearing on damages.

¶5 Before the damage issue was heard, Vitort filed a motion to vacate the summary judgment, which the circuit court denied. After an evidentiary hearing, the court awarded the Bennis \$1,754 damages, attorney fees and costs. This appeal and cross-appeal follow.

¶6 On appeal, Vitort argues that the circuit court erroneously entered summary judgment because the Bennis failed to establish a prima facie case for interference with a prospective contract. We are unpersuaded. By failing to respond to the motion for summary judgment and failing to appear at the motion hearing, Vitort failed to preserve this issue for appellate review. *See State v. Huebner*, 2000 WI 59, 235 Wis. 2d 486, ¶10, 611 N.W.2d 727. In general, issues that are not timely preserved in the circuit court will not be considered on appeal. *See id.*

¶7 This rule is “not merely a technicality or a rule of convenience; it is an essential principle of the orderly administration of justice.” *Id.*, ¶11. “The rule promotes both efficiency and fairness, and ‘go[es] to the heart of the common law tradition and the adversary system.’” *Id.* (quoting *State v. Caban*, 210 Wis. 2d 597, 604-05, 563 N.W.2d 501 (1997)). The rule serves several important objectives:

Raising issues at the trial court level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal. It also gives both parties and the trial judge notice of the issue and a fair opportunity to address the objection. Furthermore, the waiver rule encourages attorneys to diligently prepare for and conduct trials. Finally, the rule prevents attorneys from “sandbagging” errors, or failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal.

Id., ¶12 (citations omitted). Because Vitort did not respond in a timely fashion to the Bennis’ motion for summary judgment, he has not preserved for appellate review his objections to summary judgment.

¶8 Next, Vitort argues that the circuit court wrongfully denied his motion to vacate the summary judgment. Vitort’s entire argument consists of one paragraph:

The Motion To Vacate The Summary Judgment was erroneously identified as being brought under Sec. 806.07(1)(a)(h), Stats. The Court did in fact, treat it as a Motion To Reconsider. The arguments for a Reconsideration are essentially the same arguments set forth above in that Mr. Vitort asked the Court to reconsider its findings regarding the establishment of the elements of intentional interference with a prospective contract. No further argument is made on this issue.

¶9 We reject this argument. As we have previously declared, we consider such “for-reasons-stated-elsewhere” arguments to be inadequate and decline to address them. *See Calaway v. Brown County*, 202 Wis. 2d 736, 750-51, 553 N.W.2d 809 (Ct. App. 1996). Because we determine that Vitort’s argument is undeveloped, we do not address it further. *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶10 Next, Virort argues that the evidence fails to support the court's determination of damages. This argument is unaccompanied by legal citation as required under WIS. STAT. RULE 809.19(1)(e). It is not this court's function to supply legal research and develop argument. See *State v. Waste Mgmt.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). This court will not consider arguments unsupported by legal authority. See *State v. Shaffer*, 96 Wis. 2d 531, 545-46 n.3, 292 N.W.2d 370 (Ct. App. 1980).

¶11 On cross-appeal, the Benns argue that the circuit court awarded insufficient damages and, instead, they were entitled to \$3,635.21, consistent with their exhibit at trial. The court initially ordered \$500 damages and \$500 attorney fees. Later, on its own motion, the court determined that the damages should be increased to \$1,000 "as a result of the delay in refinancing their note; caused in part by Larry L. Vitort, the defendant, failing to timely respond to plaintiff's request to sign a second quit claim deed" and entered an order accordingly.

¶12 Although Vitort did not file a cross-response brief, we nonetheless conclude that the circuit court's decision finds support in the record. The circuit court gave its reasons for its determination that minimal damages were appropriate.

When I listened to the evidence that came out, there were certain things that the Benns had to do also in order to get approval by a finance company as far as appraisals or whatever, that they needed to do as well. And there was also a little bit as far as what steps that were taken by the Benns to be able to facilitate it. There was a little bit of mixed testimony that was given to the court.

....

I'm going to order compensatory damages with regard to the delay in being able to accrue additional financing.

The court noted that the Bennis were eventually able to obtain a favorable interest rate.

¶13 Damages recoverable in actions for interference with a prospective contractual relationship include “the pecuniary loss of the benefits” of the prospective contract. THE LAW OF DAMAGES IN WISCONSIN §§ 24.21, 24.22 at 22 (quoting RESTATEMENT (SECOND) OF TORTS § 774A(1) (1977)); see *Cudd v. Crownhart*, 122 Wis. 2d 656, 660-61, 364 N.W.2d 158 (Ct. App. 1985). Here, the circuit court determined the Bennis failed to establish that their damage claim was entirely caused by Vitort’s intentional delay. Vitort testified that, initially, he mistakenly believed his name was no longer on the title. He further testified that he delayed signing the deed because he had received no assurance that he was no longer liable on the mortgage. The circuit court, not this court, is the ultimate arbiter of weight and credibility of testimony. WIS. STAT. § 805.17(2). Because the court was entitled to accept Vitort’s explanation regarding some of the delay, we do not overturn its damage finding.

¶14 Next, the Bennis argue that the circuit court erroneously refused to order punitive damages. Under appropriate circumstances, punitive damages may be awarded for tortious interference of contract. LAW OF DAMAGES, *supra* § 24.22, at 23. “For punitive damages to be awarded in addition to compensatory damages for the tort, there must be a showing of an evil intent deserving of punishment or of something in the nature of special ill-will or wanton disregard of duty or gross or outrageous conduct.” *Trinity Evang. Luth. Church v. Tower Ins. Co.*, 2002 WI App 46, ¶29, 251 Wis. 2d 212, 641 N.W.2d 504. “Punitive damages rest upon allegations which, if proved, demonstrate a particular kind of conduct on the part of the wrongdoer, which has variously been characterized in our cases as malicious conduct or willful or wanton conduct in reckless disregard of rights or

interests.” *Wangen v. Ford Motor Co.*, 97 Wis. 2d 260, 267, 294 N.W.2d 437 (1980). A “[p]laintiff is not entitled to punitive damages as a matter of right.” *Id.* Even though the evidence may sustain punitive damages, if the trier of fact does not award them, it is not error. *Malco, Inc. v. Midwest Alumin. Sales*, 14 Wis. 2d 57, 63, 109 N.W.2d 516 (1961). Here, the circuit court implicitly determined that Vitort’s actions were not shown to be malicious or outrageous to warrant the imposition of punitive damages. The court’s determination is not error.

¶15 Finally, the Bennis argue the appeal is frivolous. Vitort did not file a cross-response brief. Because their argument is unrefuted, we conclude that the appeal is frivolous. *See State v. Peterson*, 222 Wis. 2d 449, 459, 588 N.W.2d 84 (Ct. App. 1998) (unrefuted arguments deemed admitted). Accordingly, we conclude Vitort’s attorney should have known that the appeal is without any reasonable basis in the law and could not be supported by a good faith argument for an extension, modification or reversal of existing law. We award costs, fees and reasonable attorney fees against Vitort’s attorney under WIS. STAT. RULE 809.25(3). We remand to the circuit court for a determination of reasonable attorney fees and costs under RULE 809.25(3) and assessment against Vitort’s appellate attorney, Francis Rivard.

By the Court.—Judgment affirmed and cause remanded.

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

