COURT OF APPEALS
DECISION
DATED AND FILED

November 30, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP2279 **Cir. Ct. No. 2008CV50**

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

FREDERICK ELDRED RENNEKE,

PLAINTIFF-APPELLANT,

V.

FLORENCE UTILITY COMMISSION, FLORENCE WISCONSIN TOWN/COUNTY MUNICIPAL CORPORATION AND FLORENCE ELECTRIC UTILITIES,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Florence County: LEON D. STENZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. Frederick Eldred Renneke, pro se, appeals from an order dismissing his complaint against the Florence Utility Commission (the

utility).[1] Because Renneke did not file any affidavits to counter those filed by the utility and because the utility's affidavits show it is entitled to summary judgment, we affirm.

¶2 This appeal stems from the extension of electrical service by the utility to Rennecke's property. After the work was completed, Renneke filed a complaint in which he complained about: (1) the number of trees destroyed by workers during the extension; (2) the timeliness and quality of the work; (3) alleged damage to a driveway culvert; (4) alleged harassment by utility employees; (5) the amount charged for the work; and (6) monthly charges on his electric bill. The utility filed an answer in which it: (1) alleged that its workers removed only those trees and vegetation reasonably necessary for the installation and maintenance of the connecting line; (2) denied that its work was untimely or not properly completed; (3) denied damaging Renneke's driveway culvert; (4) denied harassing Renneke; (5) alleged that Renneke was charged $1,394.22 for the extension, which was less than the $1,500 estimate given to Renneke, and that Renneke paid the bill; and (6) alleged that the monthly charge was required by state law. The utility also alleged several affirmative defenses including improper service of the complaint; failure to file a notice of claim under WIS. STAT. § 893.80(1);[2] discretionary act immunity under § 893.80(4); and accord and satisfaction.

[1] Renneke also named "Florence Wisconsin Town/County Municipal Corporation and Florence Electric Utilities" as defendants. All of Renneke's complaints are aimed at the Florence Utility Commission and, therefore, we will refer only to the utility in our discussion.

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

¶3 The utility moved for summary judgment. It submitted an affidavit of its general manager, Robert Friberg. The following facts were set forth in the affidavit.

- Renneke requested the extension of electrical service to his property. Friberg told him that a distribution line would need to be installed, at an estimated cost to Renneke of $1,500. Renneke accepted the cost and signed an application for service.

- The distribution line extension was built on the public right-of-way. The land between Renneke's property and the nearest connection point was heavily wooded and the utility needed to clear trees in order to construct and maintain the extension of a distribution line to Renneke's property. The utility cleared trees from the public right-of-way in front of Renneke's property. The installation of the secondary service line to Renneke's property followed his driveway, and "very few trees" were cut or trimmed. The amount of trees and vegetation cleared by the utility "is a matter of [u]tility discretion for public safety and reliability [and] may be determined by a multitude of factors, including whether some trees are cracked or wind-damaged."

- When utility workers began clearing the path for the electric lines, they found several wind-damaged trees "leaning heavily toward the new line extension" and in "imminent danger of falling." All trees cleared were within the "accepted standard of being within 15 [feet] of the power line." Utility workers "did not remove any more trees, branches, brush, or other vegetation than was reasonably necessary to install and maintain the connecting line and the service line across [Renneke's] property."

- On the first day of the work on Renneke's installation, Friberg ordered his workers to leave because of Renneke's "agitated state." When workers returned a few days later to complete the installation, Friberg asked Florence County sheriff deputies to accompany the workers because of Renneke's "erratic and threatening behavior" after the trees had been cleared.

- As property owner, Renneke is responsible for the connection of electric service from the meter to the residence. Friberg inspected the wiring used by Renneke. It did not meet electrical code standards, and Friberg told Renneke he had ten days to correct the problem or the utility would shut off the electricity to Renneke's property, as required by the administrative code.[3] After Renneke complained to Friberg that he could not find the material to correct the problem, Friberg personally made the necessary repairs, at no cost to Renneke. When Friberg was making those repairs, he also installed, at Renneke's request, an upper bracket on the conduit running down the wooden utility pole. The lack of an upper bracket had "posed no safety risk" to Renneke or his property.

- A utility vehicle crossed Renneke's driveway during the work, but "[a]t no time did the outriggers of the [u]tility vehicle come into contact with [Renneke's] road culvert."

[3] Friberg's affidavit referred to WIS. ADMIN. CODE § PSC 113.03. WISCONSIN ADMIN. CODE § PSC 113.0301(1m)(b) (July, 2000) provides: "[r]esidential utility service may be disconnected or refused for … [v]iolation of the utility's rules pertaining to … the operation of non-standard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation."

- After the installation, Renneke was billed $1,394.22, less than the $1,500 estimate given to Renneke when he applied for electrical service. After Renneke did not pay the bill, "[p]ursuant to WIS. STAT. § 66.60(16) and corresponding town ordinances, a lien was placed against [Renneke's] property for the amount of the unpaid utility bill." The delinquent utility bill was included in Renneke's 2007 property tax bill, and Renneke paid the bill in full.

- The utility includes, on all bills, "a charge, as required by state statute, for low-income energy assistance and conservation programs." Renneke has received credits against his account from the low-income energy assistance program.

- Renneke "served the summons and complaint … himself by personally delivering a copy to" Friberg at the utility's offices. Renneke "has never served the [u]tility with a Notice of Circumstances or Notice of Claim."

¶4 Renneke did not file any affidavit in opposition to the utility's motion. In a "response," Renneke stated he "personally and friendlily served the summons" on Friberg. Renneke referred to three letters he sent to the utility, and argued those letters should be considered "notices of circumstances of [his] claims." Renneke denied "intentionally or voluntarily" paying for the extension of service to his property. Finally, Renneke asserted that Friberg "libeled, defamed and slandered" his character when Friberg asked the deputy sheriff to oversee the utility work on the second day. The remainder of Renneke's response was filled with largely incomprehensible and scurrilous comments directed at Friberg and the utility's attorney.

¶5 The circuit court granted the utility's motion for summary judgment. The circuit court ruled that Renneke's complaint stated a cause of action but, because Renneke did not file any counter-affidavits to rebut those submitted by the utility, the utility was entitled to summary judgment. Specifically, the circuit court held that Renneke had not properly served the summons and complaint; that Renneke's letters did not meet the requirements of WIS. STAT. § 893.80(1); that the utility's acts were discretionary and, therefore, the utility was immune from suit; and that Renneke paid his electric bill with "no indication" that he was paying it "under protest." Renneke appeals.

¶6 Renneke's appellate briefs lack any legal argument or analysis.[4] His briefs are a nonstop litany of vituperative adjectives and vulgarities directed at the utility, Friberg, and now the circuit court. In nearly every sentence, Renneke crassly disparages the circuit court and the opposing party. In nearly every sentence, Renneke crosses the line of permissible zealous advocacy. *See* ***State v. Rossmanith***, 146 Wis. 2d 89, 89, 430 N.W.2d 93 (1988). This court "need not countenance scurrilous and inappropriate briefs or briefs which are offensive in content." ***Puchner v. Puchner***, 2001 WI App 50, ¶5, 241 Wis. 2d 545, 625 N.W.2d 609 (citation omitted). A self-represented appellant is not free to ignore the procedural and substantive rules. *See* ***Waushara Cnty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). This court could strike Renneke's briefs. Because striking the briefs would likely not affect Renneke in any fashion, we

[4] In his brief-in-chief, Renneke challenges the constitutionality of WIS. STAT. §§ 66.0809(3) and 802.06, and he also claims that his constitutional rights under the First, Eighth and Fourteenth Amendments were violated by the utility. Renneke did not make any of those arguments in the circuit court. He cannot raise them for the first time on appeal. *See* ***Evjen v. Evjen,*** 171 Wis. 2d 677, 688, 492 N.W.2d 361 (Ct. App. 1992).

decline to strike his briefs. Renneke is forewarned, however, that continued use of the Wisconsin court system as a forum for his insulting and offensive writings will not be tolerated and may result in the imposition of sanctions.[5]

¶7 We now turn to the merits. We review a summary judgment using the same methodology as the circuit court. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2). The party against whom summary judgment is sought may not rely on conjecture, but must counter the motion with evidentiary materials demonstrating there is a dispute of material fact. *See* ***Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.***, 2001 WI App 148, ¶48, 246 Wis. 2d 933, 632 N.W.2d 59.

¶8 Friberg's affidavit established that the utility was entitled to summary judgment, as a matter of law. Although Renneke clearly disagrees with that assessment, he did not submit any proper evidentiary material showing a disputed issue of any material fact.

¶9 Under WIS. STAT. § 801.10(1), "any adult resident [of Wisconsin] … who is not a party to the action" may serve a summons and complaint. A defect in service under § 801.10 is a fundamental defect that deprives the circuit court of

[5] The utility had asked the circuit court to hold Renneke in contempt of court for violating that court's warning that Renneke not use vituperative language in documents filed with the court. Because the circuit court granted the utility's motion for summary judgment, the circuit court declined to further find Renneke in contempt of court.

personal jurisdiction over the defendant. ***Dietrich v. Elliott***, 190 Wis. 2d 816, 827-28, 528 N.W.2d 17 (Ct. App. 1995). Renneke admits personally serving the summons and complaint on Friberg. Therefore, service was improper.

¶10 The utility is a municipal entity and, therefore, Renneke had to comply with WIS. STAT. § 893.80(1). He did not. Even if his letters could be construed as the notice of circumstances required by § 893.80(1)(a), it is undisputed that Renneke did not file a notice of claim under § 893.80(1)(b). Nothing in Renneke's letters "state[d] the requested relief in terms of a specific dollar amount." ***DNR v. City of Waukesha***, 184 Wis. 2d 178, 199, 515 N.W.2d 888 (1994). Failure to comply with § 893.80(1) defeats Renneke's claims.

¶11 Additionally, as a municipal entity, the utility is immune from suit for discretionary acts. WIS. STAT. § 893.80(4); ***Scarpaci v. Milwaukee Cnty.***, 96 Wis. 2d 663, 683, 292 N.W.2d 816 (1980). The manner in which the utility extended service to Renneke, including the number of trees cleared to accomplish the extension, involved the application of standards to the circumstances of Renneke's property. The utility's decisions and acts were discretionary. *See* ***id.***

¶12 The circuit court correctly granted summary judgment in favor of the utility. Therefore, we affirm the order dismissing Renneke's complaint.

By the Court.—Order affirmed.

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