

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 20, 2011

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. 2010AP2794

Cir. Ct. No. 2010SC608

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**RYAN SEMLAR, DANIEL J. MARSHALL, JACOB BUSCHER AND
TAYLOR BAHR,**

PLAINTIFFS-RESPONDENTS,

v.

LARRY KALLEMBACH AND DARREL KALLEMBACH,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Larry Kallembach and his brother Darrel Kallembach (collectively, “the Kallembachs”) appeal a small claims judgment

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a)(2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

entered in favor of the Kallembachs' tenants, Ryan Semlar, Daniel Marshall, Jacob Buscher, and Taylor Bahr (collectively, "the tenants"). The Kallembachs present three issues on appeal: (1) the court lacked jurisdiction and therefore the court should have dismissed the tenants' complaint; (2) the court erred by denying the Kallembachs' motion to dismiss; and (3) the court erred by refusing to allow the Kallembachs to file an answer within ten days as required under WIS. STAT. § 802.06(1). For the reasons that follow, we reject these arguments and affirm.

BACKGROUND

¶2 The tenants filed a small claims action against the Kallembachs seeking damages for the return of their security deposit and three months' rent on the ground that the Kallembachs denied the tenants full use and enjoyment of the rental residence. The Kallembachs filed a motion to dismiss the tenants' complaint on jurisdictional grounds and on the ground that the complaint failed to meet certain pleading requirements.

¶3 The parties appeared in Intake Court on the return date. The Kallembachs moved to dismiss the tenants' complaint. The court set another date to hear the motion and to proceed directly to trial in the event the motion was denied.

¶4 The parties again appeared in court on the date set by the court to consider the motion to dismiss. In support of their motion to dismiss, the Kallembachs denied the allegations in the complaint and argued that the court lacked equity jurisdiction and that the complaint failed to set forth sufficient facts based on the personal knowledge of the tenants and therefore failed to state a claim for which relief could be granted. The court denied the motion to dismiss. The Kallembachs then demanded the opportunity to file an answer within ten

days. The court denied the request and proceeded directly to trial. At the conclusion of the trial, the court entered judgment in favor of the tenants. The Kallembachs appeal.

DISCUSSION

¶5 The Kallembachs first argue that the trial court lacked equity jurisdiction to adjudicate the tenants' complaint, citing to WIS. STAT. § 799.209(4). The full extent of their argument is as follows:

The trial court's grant of jurisdiction is confined to proceeding according to the substantive law; Appellees' claims sound in equity ... and thus are outside the scope of the trial court's jurisdiction, the trial court exceeded its jurisdiction requiring the judgment be vacated.

This argument is not fully developed; we therefore do not consider it. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline to address issues inadequately developed).

¶6 The Kallembachs next argue that the court erred by denying their motion to dismiss the tenants' complaint. Specifically, they argue that the complaint fails to set forth a "statement of facts signed by a competent fact witness having personal knowledge of the facts, which alleges facts sufficient to state a claim upon which relief can be granted." The Kallembachs make similar insufficiency of the pleadings arguments with respect to the summons. They assert that, because of the insufficient pleadings, the complaint failed to "invoke the court's jurisdiction over the subject matter of the action" and that the court erred by denying the motion to dismiss or ordering the tenants to amend the complaint.

¶7 Apparently, a statement of facts prepared by an attorney, but not the tenants' attorney-of-record, and attested to by one of the tenants was attached to the complaint and served on the Kallembachs. The record, however, does not contain the attached statement of facts. The appellant bears the responsibility to ensure that the record includes all documents pertinent to the issues raised on appeal. See *Schaidler v. Mercy Med. Ctr. of Oshkosh, Inc.*, 209 Wis. 2d 457, 469, 563 N.W.2d 554 (Ct. App. 1997). Because the appellate record is incomplete, we must assume the missing parts of the record support the trial court's ruling. *Id.* at 470. Here, the court denied this part of the Kallembachs' motion after observing that one of the tenants had attested on the statement of facts to the truthfulness of those facts, and therefore satisfied the pleading requirements. The Kallembachs give us no reason to reverse this ruling, especially since they have not taken the necessary steps to include the statement in the record for us to review.

¶8 Finally, the Kallembachs argue the court erred by refusing to allow them to file an answer within ten days after the court denied their motion to dismiss. In support, they rely on WIS. STAT. § 802.06(1). Their reliance on this statute is misplaced.

¶9 First, the Kallembachs were told at Intake Court that a trial would be held following the hearing on their motion to dismiss if they did not prevail on their motion. Thus, the Kallembachs were aware of the distinct possibility that a trial would be held immediately following the court's ruling on their motion to dismiss. The fact they were unprepared for trial is of their own making. Second, the court correctly explained to the Kallembachs that under the small claims statutes, specifically WIS. STAT. § 799.06(1), the answer can be made orally. Thus, it was not necessary for the Kallembachs to file a written answer and the

court was within its discretion to hold the trial on the continued hearing date. The Kallembachs were given notice that a trial could be held on that date and proceeding to trial was an efficient use of the court's and the tenants' time.

¶10 Based on the foregoing reasons, we reject the Kallembachs' arguments and affirm the trial court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. RULE 809.23(1)(b)4.

