

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 25, 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. 2010AP331

Cir. Ct. No. 2008CV1207

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

KEVIN J. DUGAN,

PLAINTIFF,

BERNARD L. BEYER,

PLAINTIFF-APPELLANT,

V.

JEFF S. DUGAN,

DEFENDANT-RESPONDENT,

JOSEPH R. MOORE,

**DEFENDANT-THIRD-PARTY
PLAINTIFF-RESPONDENT,**

V.

STEWART TITLE GUARANTEE CO.,

**DEFENDANT-THIRD-PARTY
DEFENDANT-RESPONDENT.**

APPEAL from a judgment and an order of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Bernard Beyer, pro se, appeals from a “final judgment” upon a jury verdict in favor of Jeff Dugan. Beyer also purports to appeal from a prior summary judgment in favor of Joseph Moore and an order dismissing Stewart Title Guaranty Company.¹ We affirm.

¶2 This matter arises out of Beyer’s attempt to sell a vacant lot adjacent to Moore that Beyer had transferred by warranty deed to Dugan nine months earlier. Essentially, Beyer claims Dugan converted the property.²

¶3 Beyer commenced a lawsuit alleging “deliberate misrepresentation, land title fraud, theft and conspiracy to defraud.” (Capitalization omitted.) Beyer contends that he had been negotiating the sale of the property with Moore but in anticipation of “going to jail or prison,” he “left certain portions of the closing papers blank, including a warrantee [sic] deed.” Beyer “entrusted Dugan, a friend of many years,” to “fill-in the blanks at a later time[.]” to facilitate a “quick sale while incarcerated.”

¶4 Beyer claims that several months into his incarceration, he “ascertained Dugan recorded the deed to the property in [Dugan’s] name,

¹ The parties do not discuss whether the prior summary judgment concerning Moore, or the order of dismissal regarding Stewart Title, were final for purposes of appeal. *See* WIS. STAT. § 808.03(1) (2009-10). Regardless, we reject Beyer’s arguments on the merits.

² Beyer also included various theft charges against Dugan.

mortgaged it twice and sold it to Moore.” Beyer alleged these transactions occurred without his authorization. Beyer contends that he made Moore a defendant because “Moore had documentary evidence indicating Beyer was unaware he no longer owned the property while negotiating purchase of the property from Dugan.” Beyer filed an amended complaint adding as a defendant Stewart Title Guaranty Company, which was involved in issuing a title insurance policy.

¶5 During the course of the circuit court proceedings, Beyer filed a virtual plethora of motions and other pleadings. Ultimately, the court granted summary judgment to Moore because Beyer had terminated his interest in the property and was not entitled to judgment as a matter of law. The court dismissed Stewart Title for lack of personal jurisdiction. A jury subsequently found in favor of Dugan. Following a multitude of other motions and filings, Beyer now appeals.

¶6 Beyer first argues the circuit court erred by denying Beyer’s several motions requesting default judgment against Dugan for failing to answer the original complaint. Beyer is incorrect. The amended complaint contained new and additional claims for relief and the filing of the answer to the amended complaint was timely. *See Ness v. Digital Dial Commc’ns, Inc.*, 227 Wis. 2d 592, 596 N.W.2d 365 (1999). In addition, the court addressed eight of Beyer’s motions on February 6, 2009. However, Beyer failed to file transcripts of the hearings. When transcripts are missing, we assume what is missing would support the circuit court’s decision. *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993).

¶7 The circuit court also correctly denied Beyer’s motion for a continuance and stay of the date for filing summary judgment motions. After

expiration of the deadline, Beyer filed a motion requesting a new date for summary judgment motions and a motion for a continuance. Beyer also filed a motion for reconsideration immediately prior to the start of the jury trial. Beyer asserts the circuit court erroneously denied his motions because his ability to prepare was impeded because he was a prisoner. The circuit court has inherent discretion to control its own docket and thus properly denied Beyer's motions.

¶8 Beyer also argues the circuit court erred by accepting the jury's verdict in favor of Dugan, and by failing to sanction Dugan for discovery violations. Beyer references his circuit court documents to support his arguments. We consider such "for-reasons-stated-elsewhere" arguments to be inadequate and decline to consider them. *See Calaway v. Brown County*, 202 Wis. 2d 736, 750-51, 553 N.W.2d 809 (Ct. App. 1996).³ In addition, Beyer failed to provide transcripts of the jury trial. The appellant must ensure a complete record for review. Again, missing material is assumed to support the circuit court's decision. *Fiumefreddo*, 174 Wis. 2d at 26-27.

¶9 Beyer next argues the circuit court erroneously granted Moore summary judgment. Moore submitted evidence in support of the summary judgment motion establishing that Beyer held himself out to be the rightful owner of the property during discussions with Moore, even though Beyer had previously transferred the property by warranty deed to Dugan. Beyer admitted he signed the warranty deed. A notary verified that both Dugan and Beyer were present during the signing of the warranty deed and she reviewed their identities prior to each

³ Pro se litigants are bound generally to the same appellate rules as attorneys. *Waukesha County v. Graf*, 166 Wis. 2d 442, 451, 480 N.W.2d 16 (1997).

signing the deed. At the time she was presented with the warranty deed, the grantor and grantee information was complete, indicating that Beyer was the grantor and Dugan was the grantee.

¶10 As the court emphasized, Beyer failed to file any response or affidavits in opposition to Moore's summary judgment motion. And Beyer's lack of transcripts again supports the circuit court. In addition, Beyer failed to file a reply brief to this court. Quite simply, Beyer terminated his interest in the property. The court properly granted summary judgment in favor of Moore as a matter of law.

¶11 Beyer is also unable to satisfy his burden with regard to the court granting summary judgment to Moore regarding his slander of title claim. The affidavits in support of summary judgment established that Beyer knew the filing of a lis pendens on the property was false, a sham or frivolous. *See* WIS. STAT. § 706.13 (2009-10). Beyer filed no response brief or affidavit in opposition to Moore's motion.

¶12 Beyer also falsely contends that the circuit court failed to rule on a motion for an award of expenses and "for Beyer having to compel Moore to produce." In denying the motions, the court found "[t]hese motions appear to be plaintiff's, Bernard Beyer, dissatisfaction with the jury verdict and the Court's dismissal of Joseph Moore." The court also concluded the motions were untimely. Beyer's argument is meritless.

¶13 Finally, the circuit court correctly granted Stewart Title's motion to dismiss because Beyer failed to properly serve Stewart Title, thus depriving the court of personal jurisdiction. *See Hagen v. City of Milwaukee Employees' Retirement Sys. Annuity & Pension Bd.*, 2003 WI 56, 262 Wis. 2d 11, 663

N.W.2d 268. Beyer had the Brown County Sheriff attempt service at the office of an independent agent of Stewart Title. Stewart Title argues that this independent agent had no authority to accept service on behalf of Stewart Title. Beyer failed to file a reply brief and therefore concedes the issue. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). We shall not consider Beyer’s argument made for the first time in his principal appellate brief that the process server “made an extra-ordinary effort in determining whether the agent was authorized to receive service of process (the complaint).” *See Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980).

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2009-10).

