



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

June 27, 2024

To:

Hon. Daniel G. Wood
Circuit Court Judge
Electronic Notice

Jonathan E. Barnett
Electronic Notice

Miranda Christensen
Clerk of Circuit Court
Adams County Courthouse
Electronic Notice

Candice Ann Kastel
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP122

County of Adams v. Candice Ann Kastel (L.C. # 2023FO649)

Before Nashold, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Candice Ann Kastel, pro se, appeals a judgment convicting her of violating an Adams County disorderly conduct ordinance. On this court's own motion, this appeal is disposed of summarily pursuant to WIS. STAT. RULE 809.21(1).² I reject Kastel's arguments and affirm.³

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version.

² WISCONSIN STAT. RULE 809.21(1) provides that, "upon its own motion or upon the motion of a party," this court "may dispose of an appeal summarily."

³ The parties' briefs do not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. See RULE 809.19(8)(bm) (providing that, when paginating briefs, parties

(continued)

In September 2023, the County initiated this civil forfeiture action. The citation filed by the County alleges that Kastel violated a County ordinance adopting Wisconsin's disorderly conduct statute, WIS. STAT. § 947.01(1). That statute prohibits individuals from "engag[ing] in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance." Sec. 947.01(1).

Kastel filed a written plea of not guilty, and a court trial was set for January 3, 2024. On the trial date, Kastel appeared pro se. She said that she had assumed she would be assigned a public defender and would have a jury trial. The circuit court informed her that this was not a criminal case and that she had made no jury demand. Kastel said that she did not "understand what's going on" and requested a continuance. The court denied her continuance request.

The officer who issued the citation testified as follows. The officer responded to a report of an "altercation" at a town board meeting and learned that Kastel had "rais[ed] her voice," "flipp[ed] off" the board chairperson, and called him an "asshole." Individuals at the meeting were "disturbed" by the incident.

Kastel testified to the following. The incident at the board meeting was related to a prior event in which trees were removed from Kastel's property without notice. At the board meeting,

should use "Arabic numerals with sequential numbering starting at '1' on the cover"). This rule was amended in 2021, *see* S. Ct. Order 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021), because briefs are now electronically filed in PDF format, and are electronically stamped with page numbers when they are accepted for e-filing. As our supreme court explained when it amended the rule, the new pagination requirement ensures that the numbers on each page of a brief "will match ... the page header applied by the eFiling system, avoiding the confusion of having two different page numbers" on every page of a brief. S. Ct. Order 20-07 cmt. at x1.

Kastel complained about the tree removal to the chairperson. He called her a “liar,” which led Kastel to call him an “asshole” and to leave the meeting.

The court found Kastel guilty of violating the disorderly conduct ordinance and entered a judgment of conviction. Kastel’s primary argument is based on the First Amendment, which limits the government’s power to regulate speech. See *State v. A.S.*, 2001 WI 48, ¶16, 243 Wis. 2d 173, 626 N.W.2d 712. Kastel contends that when the government seeks to penalize “speech alone” as disorderly conduct, it must prove that the speech falls into one of the categories of speech that the First Amendment does not protect, and she contends that the County failed to make such a showing here.

Kastel is correct that the disorderly conduct statute “sanctions only categories of speech that have been traditionally regarded as beyond the protection of the First Amendment.” *Id.* However, Kastel made no argument before the circuit court that her actions at the board meeting were constitutionally protected speech. “Arguments raised for the first time on appeal are generally deemed forfeited.” *Tatera v. FMC Corp.*, 2010 WI 90, ¶19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810. Among other things, the forfeiture rule is meant to encourage diligent trial preparation and to give “parties and the circuit court notice of the issue and a fair opportunity to address” it, thus reducing the need for appeal. See *State v. Ndina*, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612.

Because Kastel did not raise her First Amendment argument before the circuit court, neither the court nor the County had the opportunity to address it. Kastel contends that she was not “aware of the court process” on the date of trial, and may imply that I should overlook forfeiture or other procedural deficiencies because of her status as a pro se litigant. However,

pro se parties are generally held to the same procedural requirements as represented parties. *See Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Kastel offers no compelling reason why I should address her forfeited First Amendment argument, and I decline to do so.⁴

Kastel also cites provisions of the Sixth Amendment for certain rights applicable to defendants in criminal proceedings. However, in her appellant’s brief, she makes no argument as to how these provisions entitle her to relief or in any way apply to the facts of this case. In her reply brief, Kastel for the first time develops arguments based on these constitutional provisions. This court generally does not address arguments made for the first time in a reply brief because it “prevents the opposing party from having an adequate opportunity to respond.” *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998). Additionally, Kastel’s Sixth Amendment arguments are deficient because they are based on the faulty premise that this is a criminal case. For this premise, Kastel cites language in Wisconsin’s disorderly conduct statute providing that a violation of that statute is a “Class B misdemeanor.” WIS. STAT. § 947.01(1). However, Kastel was not charged with a violation of § 947.01(1). Rather, she was cited for a violation of an Adams County Ordinance adopting that statute. A proceeding to enforce a municipal ordinance is necessarily civil, rather than criminal, because a Wisconsin municipality cannot impose criminal punishment. *See State v. Kramsvogel*, 124 Wis. 2d 101, 117, 369 N.W.2d 145 (1985).

⁴ In any event, the officer testified not only that Kastel used profane speech, but also that she did so loudly in a formal setting, causing a disturbance. *See State v. Douglas D.*, 2001 WI 47, ¶24, 243 Wis. 2d 204, 626 N.W.2d 725 (excessive volume of speech may be a “nonspeech element[]” proscribable as disorderly conduct). Kastel makes no argument as to how this nonspeech element falls under First Amendment protections.

Despite these shortcomings, I briefly address Kastel’s Sixth Amendment arguments. Kastel contends that she was denied her Sixth Amendment right to a jury trial. Because this is a civil action, the Sixth Amendment’s jury trial right does not apply. *See Layton Sch. of Art & Design v. WERC*, 82 Wis. 2d 324, 360, 262 N.W.2d 218 (1978). Kastel did have a statutory right to a jury upon a timely request and payment of a jury fee. *See* WIS. STAT. § 799.01(1)(b) (civil forfeiture actions are governed by the small claims rules set forth in WIS. STAT. ch. 799); WIS. STAT. § 799.21(3) (under small claims rules, a party may demand a jury trial by making a timely written demand and paying the jury fee). However, she waived this right because she made no jury demand. *See* § 799.21(3) (“If no party demands a trial by jury, the right to trial by jury is waived forever.”).

Kastel also argues that she was denied her Sixth Amendment right to confront witnesses against her, contending that the chairperson and other individuals present at the board meeting “were not in court to confront.” Again, this Sixth Amendment right does not apply in civil cases. *See Town of Geneva v. Tills*, 129 Wis. 2d 167, 176, 384 N.W.2d 701 (1986). Kastel may intend to argue that the County’s case was based on inadmissible hearsay because the County’s sole witness—the officer who issued the citation—was not present at the board meeting and offered only secondhand accounts of the conduct alleged. *See* WIS. STAT. § 908.01(3) (“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”); WIS. STAT. § 908.02 (hearsay is inadmissible unless an exception applies). However, the rules of evidence generally do not apply in proceedings subject to small claims rules. *See* WIS. STAT. § 799.209(2). In any event, Kastel made no hearsay objection and therefore forfeited her right to challenge the officer’s testimony as hearsay. *See State v. Edwards*, 2002 WI App 66, ¶9, 251 Wis. 2d 651, 642 N.W.2d 537.

Finally, Kastel states that the circuit court denied her request for a continuance to permit her additional time to prepare for trial. Kastel makes no express argument that the court erred by denying her continuance request, but to the extent she intends to make such an argument, it is unavailing. “The decision to grant or deny a continuance is a matter within the discretion of the [circuit] court.” *State v. Wedgeworth*, 100 Wis. 2d 514, 520, 302 N.W.2d 810 (1981). A circuit court properly exercises its discretion if it “examine[s] the relevant facts, applie[s] a proper legal standard, and, using a demonstrated rational process, reache[s] a reasonable conclusion.” *Martindale v. Ripp*, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. In denying Kastel’s continuance request, the court noted that Kastel had received proper notice of the trial date, that the County and its witness were prepared to proceed and would be inconvenienced by delay, and that Kastel’s “ignorance of the law is not an excuse” for her failure to prepare. Under the circumstances, I conclude that the court examined the relevant facts and reached a reasonable decision denying Kastel’s request.

For all of these reasons, I reject Kastel’s arguments and affirm.

IT IS ORDERED that the circuit court judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals