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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 III

August 13, 2024

To:

Hon. Jay N. Conley
Circuit Court Judge
Electronic Notice

Trisha LeFebre
Clerk of Circuit Court
Oconto County Courthouse
Electronic Notice

Justin J. Bates
Electronic Notice

Armor of God Trust
6482 Fust Road
Gillett, WI 54124

Nikki Mehlhorn
Electronic Notice

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

2023AP2187 N.E.W. Credit Union v. Nikki Mehlhorn
(L. C. No. 2023CV9)

Before Stark, P.J., Hruz and Gill, JJ.

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).

Nikki Mehlhorn, pro se, appeals a judgment of foreclosure. Mehlhorn argues that the circuit court erred by granting summary judgment to N.E.W. Credit Union ("the Credit Union") on its foreclosure claim. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[1] For the reasons explained below, we summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The Credit Union filed the instant foreclosure action against Mehlhorn, Armor of God Trust, and Mehlhorn's "Unknown Spouse" in January 2023.[2] The complaint alleged that the Credit Union had loaned money to Mehlhorn pursuant to a note, which was secured by a mortgage on property located in Gillett, Wisconsin. Copies of the note and mortgage—both dated July 18, 2017—were attached to the complaint. The complaint alleged that the note matured on July 18, 2022, and that Mehlhorn had defaulted on the note by failing to make the final lump sum payment required upon the note's maturity.

Mehlhorn filed an answer to the Credit Union's complaint, along with various counterclaims. The Credit Union then moved for summary judgment on both its foreclosure claim and Mehlhorn's counterclaims. Following briefing by the parties, the circuit court granted the Credit Union's motion for summary judgment in its entirety. The court subsequently entered a foreclosure judgment in favor of the Credit Union, and Mehlhorn now appeals from that judgment.

As an initial matter, we note that Mehlhorn's appellate briefs are deficient in multiple respects. First, Mehlhorn's brief-in-chief does not comply with WIS. STAT. RULE 809.19(8)(bm), which states that "[a] brief … must have page numbers centered in the bottom margin using Arabic numerals with sequential numbering starting at '1' on the cover."[3] Second, Mehlhorn's

[2] On June 17, 2022, a quit claim deed was recorded that transferred the property at issue in this case from Mehlhorn to "Armor Of God Trust with Nikki Mehlhorn acting as the Trustee." The Credit Union's foreclosure complaint named Mehlhorn, Armor of God Trust, and Mehlhorn's unknown spouse as defendants. Only Mehlhorn has appealed the circuit court's foreclosure judgment. For ease of reading, we refer to the defendants collectively as "Mehlhorn" throughout the remainder of this summary disposition order.

[3] The Credit Union's brief also suffers from this deficiency.

briefs refer to the parties by their party designations, rather than by name, contrary to RULE 809.19(1)(i).

Third—and more importantly—Mehlhorn's brief-in-chief contains no citations to the appellate record, as required by WIS. STAT. RULE 809.19(1)(d) and (e). In her reply brief, Mehlhorn provides what appear to be two citations to her reply brief's appendix. An appendix, however, is not the appellate record, and citations to a party's appendix are therefore insufficient to comply with RULE 809.19(1)(d) and (e). *See* ***United Rentals, Inc. v. City of Madison***, 2007 WI App 131, ¶1 n.2, 302 Wis. 2d 245, 733 N.W.2d 322.

Fourth—and most importantly—a party must support its arguments on appeal with references to legal authority. *See* WIS. STAT. RULE 809.19(1)(e); *see also* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (explaining that this court need not address arguments that are unsupported by references to legal authority). In her brief-in-chief, Mehlhorn provides what appear to be citations to six cases. Based on our research, however, it appears that only one of those cases actually exists. At the very least, the case names in Mehlhorn's brief do not correspond to the public domain citations or to the Wisconsin and North Western Reporter citations that Mehlhorn provides.

In its brief, the Credit Union points out that the cases cited by Mehlhorn do not exist and speculates that Mehlhorn used an artificial intelligence program to draft her brief-in-chief. In her reply brief, Mehlhorn does not respond to this assertion. Instead, she cites eight new cases, none of which were referenced in her brief-in-chief. It appears, however, that four of those cases are also fictitious. At a minimum, this court cannot locate those cases using the citations provided.

We strongly admonish Mehlhorn for her violations of the Rules of Appellate procedure, and particularly for her citations to what appear to be fictitious cases. Although Mehlhorn is self-represented, pro se appellants "are bound by the same rules that apply to attorneys on appeal." *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). We could summarily dismiss this appeal as a sanction for Mehlhorn's multiple and egregious rule violations. *See* WIS. STAT. RULE 809.83(2). Nevertheless, we choose to address the merits of Mehlhorn's arguments as best as we are able, given the deficiencies in her briefing.

As noted above, on appeal, Mehlhorn argues that the circuit court erred by granting the Credit Union's motion for summary judgment. We independently review a grant of summary judgment, using the same methodology as the circuit court. ***Hardy v. Hoefferle***, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. Summary judgment is appropriate where "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).

In her brief-in-chief, Mehlhorn essentially argues that the Credit Union failed to make a prima facie case for summary judgment on its foreclosure claim. Specifically, Mehlhorn asserts that the Credit Union failed to prove that it loaned money to her, as claimed in its complaint. She also asserts that the Credit Union failed "to provide sufficient documentation of [her] full payment history and the amount allegedly in default, as required by Wisconsin law." In addition, Mehlhorn claims that the Credit Union "failed to establish clear proof of ownership of the note and mortgage" and that "inconsistencies" in the information that the Credit Union provided "call into serious question whether [the Credit Union] has accurately identified and can prove the existence of the specific loan that forms the basis of its claims."

We reject these arguments and conclude that the Credit Union made a prima facie case for summary judgment. First, the Credit Union made a prima facie showing that it loaned Mehlhorn money. In support of its summary judgment motion, the Credit Union submitted an affidavit of Debbie Rhode, the Credit Union's vice president of lending. Rhode averred, based upon her personal knowledge and her familiarity with the Credit Union's business records, that on July 18, 2017, the Credit Union advanced "the original principal sum of $136,761.84" to Mehlhorn, and in exchange, Mehlhorn granted the Credit Union a mortgage on the property described in the Credit Union's complaint. Rhode further averred that the copies of the note and mortgage attached to the complaint were "true, correct and authentic copies of the original versions" of those documents. In addition, Rhode averred that a "true, correct and authentic copy" of Mehlhorn's loan file was attached to her affidavit. The loan file includes Mehlhorn's payment history, showing that she made payments to the Credit Union on the loan. There would have been no reason for Mehlhorn to make those payments if the Credit Union had not, in fact, loaned her money. This evidence was sufficient to make a prima facie showing that the Credit Union loaned money to Mehlhorn.

As for Mehlhorn's complaint that the Credit Union failed to provide sufficient documentation of her full payment history, she cites no legal authority in support of her claim that the Credit Union was required to do so. *See* ***Pettit***, 171 Wis. 2d at 646. And while Mehlhorn claims that the Credit Union did not provide sufficient evidence of the amount allegedly in default, Rhode averred that as of August 7, 2023, Mehlhorn owed the Credit Union $141,720.15, comprised of a principal balance of $123,515.59, accrued interest of $4,687.36, attorney fees of $12,120, and costs totaling $1,397.20. Again, Mehlhorn does not develop any

argument or cite any legal authority in support of the proposition that Rhode's affidavit was insufficient to establish the amount due under the note.

Mehlhorn's argument that the Credit Union failed to prove its ownership of the note and mortgage similarly fails. A "holder" of an instrument is entitled to enforce that instrument. *See* WIS. STAT. § 403.301; *see also* ***PNC Bank, N.A. v. Bierbrauer***, 2013 WI App 11, ¶10, 346 Wis. 2d 1, 827 N.W.2d 124. As relevant here, the term "holder" includes "[t]he person in possession of a negotiable instrument that is payable … to an identified person that is the person in possession." *See* WIS. STAT. § 401.201(2)(km)1. Rhode averred that the Credit Union is "in actual possession of the physical, original Note containing [Mehlhorn's] 'wet ink' signature, and has been in such possession since the date of the execution of said Note." The copy of the note attached to the Credit Union's complaint shows that the note is payable to the Credit Union. Moreover, the Credit Union made the original note available for Mehlhorn's inspection during the summary judgment hearing. On this record, the Credit Union made a prima facie showing of its entitlement to enforce the note.

Mehlhorn's argument about "inconsistencies" in the "information" provided by the Credit Union also falls flat. Mehlhorn emphasizes that two allegations in Rhode's affidavit do not "match" the allegations in the complaint. Specifically, the complaint alleged that the note was signed "on or about August 18, 2017," and that the amount loaned to Mehlhorn was $126,347.91. In contrast, Rhode's affidavit stated that the note was dated July 18, 2017, and that the amount of the loan was $136,761.84. These discrepancies are of no moment, however, because a copy of the note was attached to the complaint. As such, any confusion about the date the note was signed and the amount of the loan can be resolved by reviewing the note itself, which is dated July 18, 2017, and shows a loan amount of $136,761.84.

For these reasons, we reject Mehlhorn's arguments that the Credit Union failed to make a prima facie case for summary judgment. We further agree with the Credit Union that, in response to its prima facie case, Mehlhorn failed to submit any evidence raising a genuine issue of material fact that would require a trial. "[P]arties against whom a properly supported motion for summary judgment is made may not rest on mere denials in their pleadings but must counter the movants' evidentiary submissions with similar proofs of their own." ***Dawson v. Goldammer***, 2006 WI App 158, ¶30, 295 Wis. 2d 728, 722 N.W.2d 106. In response to the Credit Union's summary judgment motion, Mehlhorn did not submit any evidence to dispute the allegations in Rhode's affidavit regarding the existence of the note and mortgage, the Credit Union's entitlement to enforce the note, Mehlhorn's default, or the amount due.[4] Under these circumstances, the circuit court properly determined that the Credit Union was entitled to summary judgment.

The final argument in Mehlhorn's brief-in-chief pertains to judicial grievances that she has allegedly filed against the circuit court judge who presided over this case. In this section of her brief, Mehlhorn appears to object to the judge's rulings on various motions other than the Credit Union's motion for summary judgment. It is not clear, however, whether Mehlhorn is asking this court to review the circuit court's rulings on those motions. Furthermore, to the extent Mehlhorn did intend to ask us to review those rulings, she has not presented a developed argument explaining why the circuit court erred. Mehlhorn has also failed to develop any argument—or cite any legal authority—in support of the proposition that her filing of grievances

[4] In opposition to the summary judgment motion, Mehlhorn submitted an affidavit of "Bert Falls, Mortgage Fraud Examiner." Falls' affidavit, however, contained only general averments regarding his knowledge and qualifications and did not contain any specific allegations regarding the facts of this case.

against the circuit court judge has any relevance to our review of the circuit court's summary judgment ruling, particularly given our de novo standard of review. We need not address arguments that are undeveloped or unsupported by references to legal authority, *see* ***Pettit***, 171 Wis. 2d at 646-47, and we decline to do so here.

We additionally note that Mehlhorn raises additional arguments in her reply brief, many of which appear to pertain to her counterclaims. Because these arguments were raised for the first time in Mehlhorn's reply brief, we will not address them. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998).

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. 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