COURT OF APPEALS
DECISION
DATED AND RELEASED

July 9, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2232

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

BERSCH & COMPANY, S.C.,

Plaintiff-Appellant,

v.

DAIRYLAND GREYHOUND, INC.,

Defendant,

HAROLD W. RIPPS and
FRANCIS R. CROAK,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN B. DANFORTH, Reserve Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Bersch & Company, S.C., an accounting firm, appeals from summary judgment dismissing its complaint against Harold W.

Ripps, an officer of Dairyland Greyhound Park, Inc., and Francis R. Croak, an outside attorney for Dairyland.[1] We affirm.

This case was here once before. *See* ***Bersch & Company, S.C. v. Dairyland Greyhound Park, Inc.***, No. 92-2288, 1994 WL 185996, unpublished slip op. (Wis Ct. App. May 17, 1994). As we noted in that decision, Bersch & Company alleges that it helped Dairyland get its dog-racing-track license, and, essentially in return for that help, was promised auditing work if the track was licensed. *See* ch. 562, STATS. Bersch & Company claims that Dairyland breached several alleged contracts, agreements and prospective business relationships, and that Ripps and Croak tortiously interfered with Bersch & Company's alleged rights *vis a vis* those contracts, agreements and alleged prospective business relationships. In ***Bersch & Company, S.C.***, No. 92-2288, we reversed the trial court's judgment dismissing Bersch & Company's complaint, and noted that the decision left unresolved the question of whether Bersch & Company's tortious-interference-with-contract claims were affected by § 562.02(1)(d), STATS., and the rules promulgated thereunder. *See* ***Bersch & Company, S.C.***, No. 92-2288, 1994 WL 185996 at ***13 n.7, unpublished slip op. at 20 n.7. We resolve that question now.

Summary judgment is used to determine whether there are any disputed issues for trial. ***U.S. Oil Co., Inc. v. Midwest Auto Care Services Inc.***, 150 Wis.2d 80, 86, 440 N.W.2d 825, 827 (Ct. App. 1989). Appellate courts and trial courts follow the same methodology. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). First, the pleadings are examined to determine whether the complaint states a claim for relief. ***Id.*** In this case, we have already determined that Bersch & Company's complaint passed muster. ***Bersch & Company, S.C.***, No. 92-2288, 1994 WL 185996, unpublished slip op. The second stage of the summary-judgment analysis is to examine the depositions, answers to interrogatories, admissions on file, and affidavits, if any. ***Green Spring Farms,*** 136 Wis.2d at 315, 401 N.W.2d at 820. If these do not indicate that there is a genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, summary judgment must be entered. RULE 802.08(2), STATS. "[I]t is the burden of the party asserting a claim on which it bears the burden of proof at trial `to make a showing sufficient to establish the

[1] The trial court also dismissed all claims against Dairyland Greyhound Park, Inc., except Bersch & Company's claim for a *quantum meruit* recovery. Dairyland is not a party to this appeal.

existence of an element essential to that party's case.'" ***Transportation Ins. Co. v. Hunzinger Constr. Co.***, 179 Wis.2d 281, 291–292, 507 N.W.2d 136, 140 (Ct. App. 1993) (quoting ***Celotex Corp. v. Catrett***, 477 U.S. 317, 322 (1986)).

Here, rather than submit evidentiary material in the usual form, such as affidavits and deposition transcripts, Bersch & Company has submitted a three-paragraph affidavit by Dennis Bersch, whom the affidavit describes as "agent for the plaintiff, Bersch & Company, S.C." Bersch's affidavit attests that he has "personal knowledge of all the facts set forth in this affidavit," and that the "factual allegations" in paragraphs 1, 2, 5, 8–14, and 16–62 of the complaint "are true and correct to the best of my knowledge and belief."

As we noted in our earlier decision in this case:

> A claim for intentional interference with a contract must allege that: (1) the plaintiff had a contract or prospective contractual relationship with a third party; (2) the defendant interfered with the relationship; (3) the interference was intentional; (4) a causal connection exists between the interference and the damages; and (5) the defendant was not justified or privileged to interfere.

Bersch & Company, S.C., No. 92-2288, 1994 WL 185996 at ***9, unpublished slip op. at 22 (citing ***Cudd v. Crownhart***, 122 Wis.2d 656, 659–660, 364 N.W.2d 158, 160 (Ct. App. 1985)). The underlying "contract" or business relationship must not, however, be against public policy. ***Behnke v. Hertz Corp.***, 70 Wis.2d 818, 824, 235 N.W.2d 690, 694 (1975); RESTATEMENT (SECOND) OF TORTS § 774 (1977).

Section 562.02(1)(d), STATS. (1989-90), directed the then-existing Racing Board to: "Require by rule that any contract in excess of $10,000 for the provision of goods and services ... entered into by any [dog racing] licensee, be subject to the approval of the board and that all contracts for $10,000 or less

shall be filed with the board."[2] Pursuant to this direction, the following rule was promulgated:

> Any contract in excess of $10,000 for any goods or services or both shall be subject to approval by the board and submitted to the board by the licensee. Such contract shall not, as a matter of public policy, become effective and binding on the parties to the contract unless and until it has been approved by the board. Any contract not so approved shall be considered void as against public policy.

Former WIS. ADM. CODE § RACE 4.05(2)(a).[3] Briefs submitted by both Ripps and Croak argue, with supporting references to evidentiary material in the record, that none of the alleged contracts, agreements, or prospective business relationships that underlie Bersch & Company's tortious-interference-with-contract claims complied with WIS. ADM. CODE § RACE 4.05. Further, Dairyland's license required that summaries of all oral agreements by Dairyland be submitted to the then Racing Board. No oral contracts at issue here were so disclosed. Bersch & Company's reply brief does not dispute any of this. Accordingly, the factual bases underlying Ripps's and Croak's arguments are admitted. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.***, 90 Wis.2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (arguments that are not refuted are deemed to be admitted). Bersch & Company does, however, argue in reply, in cursory fashion without citation to any authority or citation to the record: (1) that the viability of its tortious-interference-with-contract claims does not depend on whether the underlying contracts or agreements complied with WIS. ADM. CODE § RACE 4.05; and (2) that the failure by Dairyland to have the various alleged underlying agreements, contracts, or prospective business relationships comply with WIS. ADM. CODE § RACE 4.05 is further evidence of

[2] Gambling activities in Wisconsin are now regulated by the Wisconsin Gaming Commission. Section 561.02, STATS. Current § 562.02(1)(d), STATS., merely reflects this change in administrative structure.

[3] WIS. ADM. CODE RACE was restyled as WIS. ADM. CODE WGC in March of 1995. Preface to WIS. ADM. CODE WGC; Wisconsin Administrative Register No. 471 (March 1995). The current rule is WIS. ADM. CODE § WGC 4.05. The Racing Board is now the Racing Division of the Wisconsin Gaming Commission.

Ripps's and Croak's nefarious interference with Bersch & Company's rights. Arguments in appellate briefs must be supported by authority and references to the record, RULE 809.19(1)(e) & (3)(a), STATS., and we need not consider arguments that do not comply, ***Murphy v. Droessler***, 188 Wis.2d 420, 432, 525 N.W.2d 117, 122 (Ct. App. 1994). We will not develop Bersch & Company's argument for it. *See* ***Barakat v. DHSS***, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently developed" arguments). Moreover, the short affidavit submitted by Bersch does not reference any evidentiary material in support of his contention that Ripps and Croak deliberately saw to it that Bersch & Company's alleged contracts, agreements, and business relationships did not comply with WIS. ADM. CODE § RACE 4.05. Accordingly, Bersch & Company has not satisfied its burden to demonstrate that there are genuine issues of material fact that require a trial. *See* ***Transportation Ins. Co.***, 179 Wis.2d at 292, 507 N.W.2d at 140.

By the Court.—Judgment affirmed.

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