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DISTRICT IV

January 21, 2014

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Scott A. Heimermann

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

2012AP712

Scott A. Heimermann v. Scott Walker (L.C. # 2011CV5468)

Before Higginbotham, Sherman and Kloppenburg, JJ.

Scott Heimermann appeals a series of circuit court orders. 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 (2011-12).¹ We dismiss and affirm.

In our order of May 14, 2012, we concluded that Heimermann's appeal is untimely from the December 16, 2011, order that initially dismissed his complaint. We directed the parties to address in their briefs whether we have jurisdiction as to the orders that followed that decision.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

For the reasons described in our May 14 order, we have jurisdiction over denial of reconsideration only to the extent that the motion did not present the same issues as those determined in the order sought to be reconsidered.

Heimermann argues that each of his reconsideration motions presented a new issue because in them he relied on a different legal theory. Heimermann refers to his original theory as a “due process” theory, and his theory on reconsideration as a “takings clause” claim. In response, the respondent argues that on reconsideration Heimermann “simply raises brand new claims,” yet also argues that Heimermann “does not present a new issue.” We do not see a way that both can be true as to any specific order. If a motion for reconsideration relies on a new legal theory not previously presented to the circuit court, then the motion presents a different issue than was determined in the original order. We address the several orders individually.

Heimermann’s first motion for reconsideration was filed on January 9, 2012, relied on the reconsideration statute WIS. STAT. § 805.17(3) as procedural authority, and was denied in an order the following day. Our review of that motion shows that Heimermann did not raise his takings clause theory there. Therefore, because that motion did not present a new issue, we lack jurisdiction to review that order.

Heimermann next filed a “motion for relief from judgment” on February 13, 2012, which was presented as a motion under WIS. STAT. § 806.07. The circuit court denied it by order on February 24, 2012. Because § 806.07 provides its own specific legal theories that are available for potential relief, a motion under that section is not merely a motion for reconsideration, and therefore is not subject to the jurisdictional requirement that it raise new issues. Therefore, we have jurisdiction to review this order.

Heimermann's motion was based on WIS. STAT. § 806.07(1)(h), which is the catch-all provision allowing relief from a judgment for "[a]ny other reasons." On appeal, however, Heimermann does not address the applicable legal standards under § 806.07. As far as we can see from the motion, Heimermann's basis for seeking relief was simply that the original decision was wrong. However, he cited no basis to conclude that this is a basis for relief under § 806.07(1)(h), and we are not aware of any. Therefore, we affirm as to this order.

Heimermann next submitted letters dated March 2 and March 6, 2012. These letters appear to be the first time that his takings clause theory was argued, and Heimermann's brief on appeal appears to state as much. The circuit court's response to those letters came in its letter of March 14, 2012. There, the court noted its previous denials of reconsideration, and acknowledged the "two additional letters" seeking further reconsideration. The court then stated: "This court declines to take such action since the grounds of this request have already been rejected in your previous filings."

Although Heimermann argues on appeal that the court erred because his takings clause theory states a claim for relief, we see a more fundamental threshold question, which is whether the circuit court had any obligation to *decide* a new claim on reconsideration that was not previously alleged in the complaint. Heimermann has not persuaded us that reconsideration can be used as a device to compel the circuit court to decide a new legal claim not previously presented in the case. Therefore, we conclude that the court did not err in declining to decide this issue on reconsideration.

When the circuit court initially dismissed Heimermann's action, it did so following the initial review of the complaint that the court was required to perform before an answer was filed.

See WIS. STAT. § 802.05(4). Heimermann argues that instead of dismissing the complaint, the court should have acted on its own motion and allowed him to amend the complaint to allege his takings clause theory. However, it does not appear that Heimermann ever asked the circuit court for that opportunity, and he has not cited any authority requiring the court to make that offer on its own motion. Therefore, we conclude that the court did not err by not permitting amendment of the complaint.

IT IS ORDERED that, as to the circuit court order entered January 10, 2012, this appeal is dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that, as to the orders of February 24 and March 14, 2012, the orders appealed are summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals