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DISTRICT IV

March 4, 2014

To:

Hon. Mark T. Slate
Circuit Court Judge
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Clerk of Circuit Court
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Superior Roofing of Portage County
2209 Dixon Street
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You are hereby notified that the Court has entered the following opinion and order:

2013AP1325

Joshua Baumgarten v. Superior Roofing of Portage County
(L.C. #2012SC481)

Before Kloppenburg, J.¹

Joshua Baumgarten, pro se, appeals an order dismissing his complaint. Based upon my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. I summarily affirm.

The record indicates that through the CAP Services, Inc. Housing Rehabilitation Program, Baumgarten contracted with Superior Roofing of Portage County to perform specific repairs to Baumgarten's home. After the repairs had been completed, Baumgarten filed a small claims complaint alleging that Superior Roofing breached the contract by failing to install a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

kitchen door and by failing to properly repair the roof. The circuit court held a bench trial, at which four witnesses testified. What follows is a summary of the testimony pertinent to the issues on appeal.

Regarding the kitchen door installation, Baumgarten testified that he had a disagreement with Superior Roofing's representative, Jay Servis. As a result, Superior Roofing tore out and boarded up the kitchen door without Baumgarten's consent, instead of replacing the door as provided in the contract. As to the roof, Baumgarten testified that Superior Roofing failed to properly complete the repairs. However, Baumgarten also testified that CAP Services inspected the roof, and that it passed the inspection.

Jay Servis testified that Baumgarten asked Superior Roofing to drywall the upstairs instead of replacing the kitchen door. According to Servis, Superior Roofing boarded up the door at Baumgarten's request. Servis also testified regarding the roof repairs that Superior Roofing completed. Kristine Pethick, a CAP Services, Inc. housing quality standards inspector who participated in the inspection of Baumgarten's house after Superior Roofing completed the repairs, testified that "the work that [Superior Roofing] was paid to do [was] done correctly."

After hearing this testimony, the circuit court dismissed the complaint, concluding that Baumgarten failed to prove his claims at trial. Baumgarten appeals.

Baumgarten first argues on appeal that the circuit court failed to enforce his contract with Superior Roofing which, he contends, "was clearly breached by Superior Roofing." Essentially, Baumgarten asks this court to review the transcript of the bench trial and reach the opposite conclusion from the circuit court.

The circuit court's conclusion that Baumgarten failed to prove his case was driven by an implicit determination that Servis and Pethick were more credible than Baumgarten. A circuit court acting as the finder of fact is the ultimate arbiter of witness credibility. *Johnson v. Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). This court defers to the circuit court in both its express and implicit credibility determinations, *Jacobson v. American Tool Cos., Inc.*, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998), and cannot reweigh the testimony of the witnesses and reach a conclusion regarding credibility contrary to that reached by the circuit court. For this reason, I reject Baumgarten's first argument.

Baumgarten next argues that the circuit court erred in the following respects: (1) by giving legal advice to Servis throughout the trial; (2) by relabeling Baumgarten's exhibits so as to destroy "the rhythm" of Baumgarten's case; (3) by failing to hold a pre-trial conference at which Baumgarten could have addressed the fact that a witness whom Baumgarten subpoenaed refused to comply with the subpoena; and (4) by denying Baumgarten's motions to reschedule the trial.

Baumgarten's argument regarding the errors that he alleges the circuit court made is inadequately developed, as it is not supported by citation to the record or to legal authority, or by any legal reasoning. This court generally declines to review such arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not consider inadequately developed arguments).

Baumgarten is pro se on appeal, and while it is true that this court may give leeway to a pro se party, pro se parties must still comply with relevant rules of procedural and substantive law. *Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). This court

generally will not overlook failures to comply with the rules when a brief is “so lacking” that the court would have to first develop an appellant’s argument before addressing its merits. *Pettit*, 171 Wis. 2d at 647. That is the situation here. Accordingly, I do not address Baumgarten’s argument regarding the errors that he alleges the circuit court made.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals