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DISTRICT IV

April 4, 2014

To:

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

2012AP2740 Theodore Fleisner and Brenda Fleisner v. Michael Kelley and Roslyn Kelley (L.C. #2010CV660)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Michael and Roslyn Kelley appeal an order of the circuit court, which ordered the Kelleys to remove poplar trees on the eastern side of their property. 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 summarily affirm.

This case involves a property dispute between neighbors. The eastern edge of the Kelleys' property borders property owned by the respondents, Theodore and Brenda Fleisner. The Kelleys planted a row of poplar trees on what the parties believed was the boundary line

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

between the two properties. The Kelleys had the line surveyed, and the parties learned that the legally described property line was actually about twenty feet farther east, in the midst of a landscaped area on the Fleisners' property. The Fleisners filed an adverse possession action in circuit court. The parties eventually entered into a settlement agreement that stated, in relevant part, that the Kelleys would remove the poplar trees within two months at their own expense. Michael Kelley removed only some of the trees and replanted them in a location that was not satisfactory to the Fleisners. The Fleisners filed a motion in the circuit court to enforce the settlement agreement. After an evidentiary hearing, the court ordered that the Kelleys remove all poplar trees on the eastern side of their property. The Kelleys now appeal.

The Kelleys' brief contains numerous complaints about the circuit court proceedings in this matter. The brief fails, however, to develop coherent arguments that apply relevant legal authority to the facts of record, and instead relies largely on conclusory assertions.[2] "A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories." ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Consequently, this court need not consider arguments that either are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See* ***Dieck v. Unified Sch. Dist. of Antigo***, 157 Wis. 2d

[2] The Kelleys' brief also contains two deficiencies that, although not dispositive, we think are worth noting. First, we note that the Kelleys include two per curiam opinions in the appendix, at pages 134 to 139. Citations to these per curiam opinions appear within the text of the brief at pages fifteen and twenty-two. Unpublished per curiam opinions of the court of appeals may not be cited as precedent or authority in any court of this state, except to support claims of issue preclusion, claim preclusion, or law of the case, none of which are at issue here. *See* WIS. STAT. RULE 809.23(3)(a)-(b). Second, the Kelleys failed to follow WIS. STAT. RULE 809.19(1)i., which requires parties to reference parties by name in briefing rather than by party designation. The Kelleys' failure to follow this rule contributed to our difficulty in following the arguments in their briefs.

134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (unsupported factual assertions); ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). Here, the Kelleys have failed to provide this court with developed legal arguments on appeal. Therefore, we affirm the circuit court on that basis.

Although we affirm the circuit court for the reason stated above, we choose to briefly explain why some of the Kelleys' arguments, as we understand them, have no merit. First, as we understand it, the Kelleys attempt to create a legal distinction between the terms "borderline" and "boundary line" that is frivolous. The Kelleys also argue, as best we can discern, that the language in paragraph three of the settlement agreement, requiring the Kelleys to remove the poplar trees from the "boundary line," could only have been referring to the line established by the Fleisners' survey. The Kelleys do not develop this argument further or attempt to explain what the survey shows. From our own review of the copy of the Fleisners' survey included in the appendix to the Kelleys' brief, it appears that the survey shows a boundary line that does not pass through any of the poplar trees. Without further explanation of what the survey depicts and how we can derive from the survey the meaning of paragraph three of the settlement agreement, the Kelleys have not presented us with a coherent legal argument to address.

The Kelleys also attempt to assert that the circuit court erred in its determination of where the new boundary line should lie. However, the argument is so unclear that we cannot understand what specific error the Kelleys allege to have been committed by the court. We cannot tell from the Kelleys' brief whether the alleged error was a legal error, a factual misunderstanding, or both. Accordingly,

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

Diane M. Fremgen
Clerk of Court of Appeals