



OFFICE OF THE CLERK
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 IV

June 20, 2014

To:

Hon. Maryann Sumi
Circuit Court Judge
Dane County Courthouse
215 South Hamilton, Br 2, Rm 7105
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Mark Hazelbaker
Kasieta Legal Group, LLC
7818 Big Sky Drive
Madison, WI 53719

Greg Griswold
3488 County Road J
Cross Plains, WI 53528

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

| | |
|------------|--|
| 2012AP1551 | Greg Griswold v. Town of Cross Plains, Town of Cross Plains 2011 Board of Review, Greg Hyer, Jeff Baylis, Vera Riley, Greg Haack, Terry Kurth, Nancy Meinholz and Mark Hazelbaker (L.C. #2011CV4923) |
| 2012AP2146 | Greg Griswold v. Town of Cross Plains, Town of Cross Plains 2011 Board of Review, Greg Hyer, Jeff Baylis, Vera Riley, Greg Haack, Terry Kurth, Nancy Meinholz and Mark Hazelbaker (L.C. #2011CV4923) |

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

Greg Griswold appeals a judgment and orders of the circuit court dismissing this action for lack of standing and granting the respondents' motion for monetary and non-monetary sanctions against him. The respondents, collectively referred to hereafter as the Town, have filed a cross-appeal, arguing that the circuit court erroneously exercised its discretion by granting a fee waiver to Griswold on the basis of indigency, where his petition failed to state a claim upon which relief may be granted. 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 is one of several actions that Griswold has initiated against the Town and various of the Town's officials regarding tax assessments of a parcel of real property located in the Town of Cross Plains. This particular action concerns the 2011 assessment of that property. The circuit court dismissed the action on the basis that Griswold lacked standing to sue because he could not demonstrate that he owned the property during the relevant time period, and denied Griswold's motion for reconsideration of its decision. Griswold now appeals.

The circuit court found that the action was frivolous and imposed monetary sanctions against Griswold in the amount of \$17,612.25 for the Town's reasonable attorney's fees. The court further imposed non-monetary sanctions against Griswold, ordering that Griswold be barred from initiating any further legal action again against the Town, any of the named defendants, any future elected officials of the Town, the Town's assessor or assessor's personnel, or the town's legal counsel as parties, unless Griswold certifies, under oath, that he has not previously filed the same claim against that party, or unless the claim is reviewed by a court and approved as having arguable merit. Griswold now challenges the monetary and non-monetary sanctions on appeal.

We turn first to the issue of standing. Griswold argues that he has an ownership interest in the property at issue and, therefore, has standing to challenge the assessment. He previously

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

made this same argument with respect to the same property in two prior appeals, 2011AP881 and 2012AP433. We rejected the argument then and we reject it now without repeating our reasoning here, except to say that Griswold has once again failed to identify any evidence in the record to support his contention that he had an ownership interest in the property for any of the time periods relevant to the assessment at issue.

We turn next to the circuit court's judgment and order for sanctions. The Town relied on two separate statutes in its motion for sanctions, WIS. STAT. §§ 895.044 and 802.05(3). Griswold and the Town disagree in their briefs about whether the Town complied with the notice requirements of § 895.044. We need not address the notice issue because the other relevant statute upon which the Town relied, § 802.05(3), provides an independent basis for the sanctions imposed by the circuit court.

Our review of a circuit court's decision that an action was commenced frivolously pursuant to WIS. STAT. § 802.05 is deferential. *Keller v. Patterson*, 2012 WI App 78, ¶21, 343 Wis. 2d 569, 819 N.W.2d 841. Considering the adverse rulings that already had been entered against Griswold with respect to the same property by the time he filed the petition in this matter, we are satisfied that the circuit court properly exercised its discretion in concluding that the petition was frivolous and that sanctions were warranted in the amount imposed.

We also are satisfied that the circuit court properly exercised its discretion when it imposed a non-monetary sanction in the form of an order limiting future filings by Griswold. A court may issue sanctions under WIS. STAT. § 802.05(3)(b) in the form of directives of a nonmonetary nature, so long as the sanctions are "limited to what is sufficient to deter repetition"

of the conduct for which the sanctions are being issued. In this case, the limitation on future filings by Griswold was narrowly tailored to strike a balance among Griswold's interest in access to the courts, the Town's interest in not having frivolous litigation become an unwarranted drain on its resources, and the public interest in maintaining the integrity of the judicial system. *See Minniecheske v. Griesbach*, 161 Wis. 2d 743, 749, 468 N.W.2d 760 (Ct. App. 1991). Griswold's challenge to the sanctions order is, therefore, without merit.

Griswold also argues on appeal that the circuit court erred in denying his motion for the recusal of Judge Maryann Sumi. This argument is also without merit. In his recusal motion, Griswold relied upon WIS. STAT. § 757.19(2)(g) in support of his argument. Section 757.19(2)(g) states that a judge shall be disqualified when that judge "determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner." Because the basis for disqualification under § 757.19(2)(g) is subjective, there is no standard to apply on review other than an objective one, limited to establishing whether the judge made a determination requiring disqualification. *State v. American TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 186, 443 N.W.2d 662 (1989). Here, the record reflects that Judge Sumi considered the recusal motion and made a determination that recusal was not warranted. There is nothing left for this court to consider with respect to that issue.

Finally, we reject as undeveloped Griswold's argument that the circuit court erred in denying his request to allow him to make his own recording of a motion hearing. 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 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). While we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *Pettit*, 171 Wis. 2d at 647, and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf, *see State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999).

Turning to the Town’s cross-appeal, the sole issue raised is whether the circuit court erred by granting a fee waiver without first reviewing Griswold’s claims to determine whether they were frivolous. However, the Town does not make a clear request for relief. The Town appears to be seeking a declarative statement or advisory opinion as to what obligation the circuit court was under to inquire into the merits of Griswold’s action when he filed a petition for fee waiver. We decline to issue any such statement or opinion.

IT IS ORDERED that the judgment and orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals