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**DISTRICT IV**

October 21, 2015

To:

Hon. William F. Hue  
Circuit Court Judge  
Jefferson County Courthouse  
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Clerk of Circuit Court  
Jefferson County Courthouse  
311 South Center Avenue  
Jefferson, WI 53549

Owen S. Durigan  
21475 Mary Lynn Drive  
Brookfield, WI 53045

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

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2014AP549

Owen S. Durigan v. Randal Podratz, Paul S. Milbrath, and County  
of Jefferson (L.C. # 2006CV595)

Before Lundsten, Sherman, and Blanchard, JJ.

Owen Durigan appeals an order denying several motions. 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 (2013-14).<sup>1</sup> We affirm.

We will not attempt to recite the long history of this case in any detail. Durigan's complaint was dismissed and we affirmed that dismissal on appeal. We also concluded that the appeal was frivolous and remanded for determination of attorney fees. On remand, the circuit court entered a judgment for attorney fees. Over time, after entry of that judgment, Durigan filed

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

various additional motions, such as a motion for relief from judgment. They were denied in the order that Durigan now appeals.

Before turning to the merits of the appeal, we address Durigan's motion to transfer this appeal to District III of this court. The motion is based in part on his disagreement with the previous decision by a panel in this district. That is not a proper basis to transfer a case. Durigan also asserts that there is a conspiracy between this district's judges and the defense attorneys in this case. There is no conspiracy. We deny the motion.

Durigan's first arguments seek changes to decisions we made in the first appeal. He cites no legal authority that allows us to reconsider those decisions now. Our jurisdiction over the first appeal ended with remittitur. *State ex rel. Fuentes v. Court of Appeals*, 225 Wis. 2d 446, ¶11, 593 N.W.2d 48 (1999).

Durigan next argues that the circuit court has the authority to reverse this court's prior appellate decision if our decision was based on an error of fact. He relies on *Mullen v. Coolong*, 153 Wis. 2d 401, 451 N.W.2d 412 (1990). In *Mullen*, the supreme court held that a circuit court properly granted relief under WIS. STAT. § 806.07(1)(h) so as to make its decision conform to a supreme court opinion that was issued after our own decision in the *Mullen* case, which was inconsistent with the later supreme court opinion. *Mullen* does not apply in the current case because there has been no intervening change in law since our decision in Durigan's first appeal. Beyond that, we see nothing extraordinary about this case that would justify relief under § 806.07(1)(h).

Durigan next argues that after the first appeal the circuit court had discretion to award attorney fees of zero or one dollar based on what he alleges is a factual error in our decision.

And, he at least implicitly argues that the circuit court erroneously exercised its discretion by awarding more than one dollar. However, Durigan has not persuaded us that such a low award was the only reasonable decision. Therefore, we affirm the award.

Durigan next argues that the clerk of the circuit court did not evaluate his objections to costs individually and did not provide any analysis. However, Durigan does not argue that any specific cost item was incorrect, and therefore he fails to establish that he is entitled to any relief.

Durigan next argues that the first appeal was not frivolous. This issue was decided in the first appeal and is not before us now.

Durigan provides a list of various additional claimed errors by the circuit court. However, none of these arguments are sufficiently developed to require a response. Finally, Durigan again argues that there is a conspiracy between judges on this court and defense counsel, but, as we stated above, there is no conspiracy.

The respondents move for a finding that this appeal is frivolous. Based on our above discussion, we find that the appeal is frivolous under WIS. STAT. RULE 809.25(3) on the ground that it lacks any reasonable basis in fact or law.

IT IS ORDERED that the motion to transfer to District III is denied.

IT IS FURTHER ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the motion to find the appeal frivolous is granted.  
After remittitur the circuit court shall award the respondents attorney fees for this appeal.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*