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DISTRICT I

April 11, 2016

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

2015AP1267 Wauwatosa Savings Bank v. Larry N. Scruggs
(L.C. #2007CV7035)

Before Curley, P.J., Kessler and Brennan, JJ.

Larry N. Scruggs, Jr., *pro se*, appeals a trial court order entered on June 1, 2015, establishing the costs and fees he must pay to Wauwatosa Savings Bank, Inc., n/k/a/ Waterstone Bank, SSB (the Bank), following our determination that his prior appeal in this matter was frivolous. Upon our review of the briefs and record, we conclude at conference that this matter

is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] We affirm the order. We also conclude that the instant appeal challenging the sanctions is frivolous within the meaning of WIS. STAT. RULE 809.25(3). Pursuant to that conclusion, we remand for a determination of the costs and fees Scruggs must pay to the Bank, and we enter an additional order limiting Scruggs's future appellate litigation against the Bank. Finally, we deny Scruggs's motion to sanction the Bank under WIS. STAT. § 802.05.

This is Scruggs's third appeal in this matter. *See* ***Wauwatosa Savings Bank v. Scruggs***, Nos. 2010AP1271 & 2010AP1858, unpublished slip op. (WI App Sept. 27, 2011) (***Scruggs I***); ***Wauwatosa Savings Bank v. Scruggs***, No. 2013AP2635, unpublished slip op. (WI App Nov. 12, 2014) (***Scruggs II***). A brief review of the two prior appeals is required.

In ***Scruggs I***, Scruggs challenged a 2010 order denying his motion to reopen a default judgment of foreclosure entered on September 24, 2007, in Milwaukee County circuit court case No. 2007CV7035.[2] *See* ***Scruggs I***, unpublished slip op., ¶3. Because Scruggs did not hold title to the foreclosed property, and because the trial court dismissed him from the case before entry of an order confirming the sheriff's sale of the property, we held that he lacked standing both to bring a motion to reopen the judgment and to appeal the decision denying that motion. ***Id.***, ¶5.

In ***Scruggs II***, Scruggs appealed a 2013 order denying his motion to "reopen void default judgment, vacate and di[s]miss." *See* ***Scruggs II***, unpublished slip op., ¶5. Scruggs offered

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] Some aspects of ***Wauwatosa Savings Bank v. Scruggs***, Nos. 2010AP1271 & 2010AP1858, unpublished slip op. (WI App Sept. 27, 2011) (***Scruggs I***), involve a circuit court case in addition to the case underlying the instant appeal and are not material to our discussion here.

various reasons that he believed the 2007 default judgment should be reopened but we rejected his claims, stating: "[o]nce again, we conclude that Scruggs lacks standing." ***Id.***, ¶9. Citing ***Scruggs I***, we explained: "'[a]s a non-party to the order confirming the sheriff's sale, Scruggs had no right to bring a motion to reopen and, by extension, no right to file an appeal from the order denying the motion to reopen.'" ***Scruggs II***, unpublished slip op., ¶9.

We went on to conclude that ***Scruggs II*** was a frivolous appeal under Wis. STAT. RULE 809.25(3). The rule provides, in pertinent part, that an appeal may be deemed frivolous if the appellant "knew, or should have known, that the appeal ... was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." *See* RULE 809.25(3)(c)2. We determined ***Scruggs II*** was frivolous within the meaning of that provision because Scruggs failed to offer a legitimate reason for raising again the same issues he raised in ***Scruggs I***. *See* ***Scruggs II***, unpublished slip op., ¶16. Therefore, pursuant to RULE 809.25(3)(a), we remanded the matter to the trial court for the assessment of costs and fees. *See* ***Scruggs II***, unpublished slip op., ¶16.

The foregoing brings us to the trial court proceedings immediately underlying this appeal. Pursuant to our order for sanctions in ***Scruggs II***, the Bank submitted affidavits and billing records to support its claim for $19,071.21 in costs and fees. Scruggs filed a response largely devoted to an argument that the 2007 default judgment is void, and therefore no sanctions should be awarded. Following a hearing, the trial court rejected that argument. The trial court also rejected Scruggs's complaint that the Bank's submissions contained redactions, finding the Bank adequately explained that the redacted material was shielded by attorney-client privilege. The trial court entered an order awarding the Bank $19,071.21, and Scruggs appeals.

We review the award of costs and fees to determine whether the trial court properly exercised its discretion. *See* ***Lucareli v. Vilas Cty.***, 2000 WI App 157, ¶¶1, 13, 238 Wis. 2d 84, 616 N.W.2d 153. We will uphold a discretionary determination "'if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision.'" ***Steinbach v. Gustafson***, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993) (citation omitted). Moreover, '"we generally look for reasons to sustain discretionary determinations.'" ***Id.*** (citation omitted).

Here, Scruggs does not dispute that the Bank incurred $19,071.21 in costs and attorney fees for defense of the appeal in ***Scruggs II***. Rather, in an argument that consumes only a few lines of his forty-five page opening brief, he renews his complaint that the Bank's billing records are partially redacted and asserts he "is entitled to non-redacted copies." Scruggs fails to offer any legal citation in support of this assertion. We observe that a trial court generally has the expertise to evaluate the reasonableness of legal fees and is not required to permit a fishing expedition to troll for reasons that a lawyer's fees are unreasonable. *See* ***Lucareli***, 238 Wis. 2d 84, ¶¶12-13. In light of Scruggs's failure to develop his argument opposing redactions and his failure to support that argument with citations to relevant authority, we conclude that any complaint he may have about the amount of the award lacks merit and warrants no further attention. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (appellate court does not consider arguments inadequately briefed and unsupported by citations to legal authority).

We also reject Scruggs's remaining bases for avoiding sanctions, all of which turn on arguments asserting the invalidity of the September 2007 default judgment and the later orders denying Scruggs's motions to reopen that judgment. Relying on the theory that the judgment

and orders are void, Scruggs maintains that any sanctions under WIS. STAT. RULE 809.25(3)(a) are improper because "without a valid judgment there can be no sanctions." The arguments lack merit because, as has been firmly established for many years, RULE 809.25(3)(a) is mandatory. *See* ***Jackson v. Benson***, 2002 WI 90, ¶6, 255 Wis. 2d 24, 647 N.W.2d 815 (*per curiam*). When an appeal is deemed frivolous, "the court shall award to the successful party costs, fees and reasonable attorney fees." ***Id.*** (citing § 809.25(3)(a)). Here, we concluded that Scruggs pursued a frivolous appeal in ***Scruggs II***, a conclusion that required awarding costs and fees to the Bank. *See* ***Jackson***, 255 Wis. 2d 24, ¶6. Therefore, the trial court properly rejected Scruggs's claim that "there can be no sanctions."

We turn to the parties' new requests for sanctions. The Bank filed a motion with its respondent's brief asking this court to conclude that Scruggs's current appeal is frivolous and to sanction Scruggs under WIS. STAT. RULE 809.25(3) and WIS. STAT. § 802.05(3). Scruggs responded by filing a motion stating that he "moves this court to deny [the Bank's] motion and grant Scruggs's motion for sanctions pursuant to [§]802.05."

We reject Scruggs's motion for sanctions because it is untimely and procedurally defective. A party is precluded from serving a postjudgment motion for sanctions under WIS. STAT. § 802.05. *See* ***Trinity Petroleum, Inc. v. Scott Oil Co.***, 2006 WI App 219, ¶2, 296 Wis. 2d 666, 724 N.W.2d 259 (***Trinity I***), *rev'd on other grounds by* ***Trinity Petroleum, Inc. v. Scott Oil Co.***, 2007 WI 88, ¶¶7-8, 302 Wis. 2d 299, 735 N.W.2d 1 (***Trinity II***); *see also* ***Ten Mile Investments, LLC v. Sherman***, 2007 WI App 253, ¶¶13-16, 306 Wis. 2d 799, 743 N.W.2d 442 (confirming the ongoing precedential effect of our holding in ***Trinity I*** barring postjudgment motions for sanctions under § 802.05). Moreover, pursuant to § 802.05(3)(a), "[a] motion for sanctions under th[e] rule shall be made separately from other motions or requests." Scruggs's

motion under § 802.05 is made in conjunction with a second "motion to deny [the Bank's] motion." Accordingly, Scruggs's motion for sanctions under § 802.05 cannot be granted, and we consider it no further.

As to the Bank's motion for sanctions against Scruggs, we first observe that, although it is captioned as a motion under both WIS. STAT. § 802.05 and WIS. STAT. RULE 809.25, the supporting memorandum is limited to arguments "in support of [the] motion for sanctions for filing a frivolous appeal pursuant to WIS. STAT. [RULE] 809.25." We conclude that the Bank abandoned its request for sanctions under § 802.05, and we consider only the motion to impose sanctions for a frivolous appeal under RULE 809.25.

We may declare Scruggs's instant appeal frivolous if we conclude that Scruggs "knew, or should have known, that the appeal ... was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." *See* WIS. STAT. RULE 809.25(3)(c)2. We review the merits of Scruggs's appeal from the sanctions order in light of that provision, keeping in mind that to conclude an appeal is frivolous, we must determine it is frivolous in its entirety. ***Howell v. Denomie***, 2005 WI 81, ¶9, 282 Wis. 2d 130, 698 N.W.2d 621.

As we have seen, Scruggs argues the 2007 default judgment along with the subsequent orders denying his motion to reopen that judgment are void, and he says, "without a valid judgment there can be no sanctions." Scruggs knew or should have known that the basis for sanctions was not the trial court's judgment and orders. Rather, the basis for sanctions was this court's holding that Scruggs pursued a frivolous appeal in ***Scruggs II*** because he failed to offer "an adequate basis in the law to raise the[] same issues" that we had rejected in ***Scruggs I***. *See*

Scruggs II, unpublished slip op., ¶16. Scruggs additionally knew, or should have known, that he could not use the post-remand proceedings as a platform for challenging either the 2007 default judgment or the subsequent orders denying his motion to reopen that judgment because he also knew, or should have known, that our decisions in ***Scruggs I*** and ***Scruggs II*** establish that he lacks standing to mount such challenges. *See* ***Scruggs I***, unpublished slip op., ¶5; ***Scruggs II***, unpublished slip op., ¶¶1, 9. Moreover, Scruggs knew or should have known that "'[a] decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.'" *See* ***State v. CGIP Lake Partners, LLP***, 2013 WI App 122, ¶32, 351 Wis. 2d 100, 839 N.W.2d 136 (citation omitted). Therefore, he also knew or should have known that if he wished to challenge our holdings in ***Scruggs I*** and ***Scruggs II***, his remedy was to persuade the supreme court to grant review, not to pursue an appeal asserting positions we had rejected. *Cf.* ***Scruggs II***, unpublished slip op, ¶15 n.4; *see also* WIS. STAT. § 808.10(1).

Scruggs further rests his current appeal on claims that the trial court lacked jurisdiction to enter the sanctions order mandated by ***Scruggs II***. To the extent Scruggs argues that the trial court lacked subject matter jurisdiction, he knew or should have known that "[i]t is axiomatic that a [trial] court is never without subject matter jurisdiction."[3] ***In re Ambac Assur. Corp.***, 2012 WI 22, ¶28, 339 Wis. 2d 48, 810 N.W.2d 450. To the extent Scruggs argues that the trial court lacked personal jurisdiction or competency to proceed, he knew or should have known that

[3] An exception to the rule that the trial court never lacks subject matter jurisdiction exists only for an action premised upon a statute that is unconstitutional on its face. *See* ***State v. Bush***, 2005 WI 103, ¶¶15–17, 283 Wis. 2d 90, 699 N.W.2d 80. Nothing in Scruggs's submissions would support a meritorious claim that the proceedings in this case fit within the ***Bush*** exception.

after this court remitted its decision in ***Scruggs II***, the trial court had jurisdiction to act, *see* ***State ex rel. Blackdeer v. Township of Levis***, 176 Wis. 2d 252, 262, 500 N.W.2d 339 (Ct. App. 1993), and was required to follow our mandate, *see* WIS. STAT. § 808.09.

We will not discuss in detail any of the other arguments Scruggs presents. An appellate court is not required to address issues that lack sufficient merit to warrant individual attention. *See* ***Libertarian Party v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996). Here, each of the issues Scruggs identifies in his statement of issues concludes with the phrase "is judgment void[?]" We are satisfied that the crux of all of his contentions is a challenge to the validity of the default judgment, a challenge he lacks standing to pursue and that is therefore meritless. In short, his appeal is entirely frivolous.

We normally do not excuse the decision to pursue a frivolous appeal merely because an appellant is a *pro se* party. The purpose of sanctions is to deter litigants and attorneys alike from commencing or continuing frivolous actions. ***Holz v. Busy Bees Contracting, Inc.***, 223 Wis. 2d 598, 609, 589 N.W.2d 633 (Ct. App. 1998). As we noted in ***Holz***, it makes no difference to a respondent whether an appellant commences a frivolous appeal on his or her own behalf or with the assistance of a lawyer because the harm to the respondent is "the same—unnecessary and burdensome" litigation. *See* ***id.*** This rationale is particularly apt here, where the record reflects that Scruggs has a law degree and was formerly licensed to practice law in this state.[4]

[4] In response to the trial court's inquiry, Scruggs explained that his Wisconsin law license was suspended in 1991 "because there was [sic] issues in reference to [his] veracity."

Because Scruggs filed a frivolous appeal, we will, as we must, remand pursuant to WIS. STAT. RULE 809.25(3)(a) for the assessment of costs and fees, including reasonable appellate attorney fees. *See* ***Jackson***, 255 Wis. 2d 24, ¶6. The Bank asks us also to impose limits on Scruggs's future activity in this court, and we will grant that request. "A court faced with a litigant who brings frivolous litigation has the authority to limit that litigant's access to the court." ***Puchner v. Hepperla***, 2001 WI App 50, ¶7, 241 Wis. 2d 545, 625 N.W.2d 609. Scruggs's repeated presentation of arguments we have rejected signals his willingness to consume limited judicial resources in pursuit of frivolous claims, harming not only the Bank but also other litigants who seek the court's timely assistance in matters that are not frivolous. *See* ***id.*** Absent a restriction on his activities, Scruggs "may be undeterred from bringing frivolous litigation." *See* ***id***. Accordingly, to aid the effective and efficient administration of justice, we will exercise our inherent authority to impose limitations on Scruggs's litigation against the Bank.

IT IS ORDERED that the trial court's order of June 1, 2015, is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this matter is remanded to the trial court for assessment against Scruggs of costs and fees, including reasonable appellate attorney fees, pursuant to WIS. STAT. RULE 809.25(3).

IT IS FURTHER ORDERED that Scruggs may not, without first obtaining leave of this court, pursue any motion in this court or any civil appeal in which Wauwatosa Savings Bank or Waterstone Bank, SSB, is a respondent. At the time of filing any such motion or appeal, Scruggs must submit a copy of this decision and a sworn statement that he has paid the sanctions imposed

upon him for his frivolous appeal in ***State v. Scruggs***, 2013AP2635, unpublished slip op. (WI App Nov. 12, 2014) (***Scruggs II***). He must also aver that his proposed motion or appeal does not directly or tangentially challenge the default judgment entered on September 24, 2007, or the orders denying his motions to vacate that judgment. Further, he must include an explanation of why the proposed motion or appeal has merit, and he must state that the motion or appeal does not raise issues that this court previously decided. The Bank will not be required to respond to any motion in this court or any appeal that Scruggs files unless and until this court has granted him leave to proceed.

IT IS FURTHER ORDERED that Scruggs's motion for sanctions against Wauwatosa Savings Bank, n/k/a/ Waterstone Bank, SSB, is denied.

Diane M. Fremgen
Clerk of Court of Appeals