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DISTRICT IV

July 14, 2017

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

2016AP2276

Michael W. Ionetz v. Labor and Industry Review Commission
(L.C. # 2015CV347)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Michael Ionetz appeals a circuit court decision that affirmed in part and reversed in part a Labor and Industry Review Commission decision on his claim that his employer, DolgenCorp, LLC (Dollar General), had discriminated against him based on his conviction record when it terminated his employment as a store manager. The Labor and Industry Review Commission

ruled in favor of Ionetz on his conviction record discrimination claim and awarded him his attorney's fees and costs, but declined to award him reinstatement and back pay. Ionetz and Dollar General petitioned for judicial review of the Commission's decision. The circuit court reversed the Commission's determination that Dollar General discriminated based on Ionetz's conviction record, reversed the Commission's award of attorney's fees and costs, and affirmed the Commission's determination not to award reinstatement and back pay. Ionetz appeals. 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 (2015-16).¹ We affirm because Ionetz fails on appeal to develop any coherent legal arguments.

Ionetz worked as a store manager for Dollar General from May to November 2010. Store customers included persons under the age of eighteen, and Ionetz was required to work alone at the store at least once a week. In June 2010, Ionetz was charged with twenty-two counts of possession of child pornography. After his initial appearance in that case, Ionetz was released on bond with a condition that he have no contact with persons under the age of eighteen; that condition was in place from July 12 to October 28, 2010. Ionetz did not inform Dollar General of that condition. Pursuant to a plea agreement, Ionetz pleaded no contest to five misdemeanor counts of computer crime—possession of data, with one count of possession of child pornography read in. On October 28, 2010, Ionetz was convicted of the five misdemeanor counts and sentenced to probation. Under the terms of his probation, Ionetz was barred from having unsupervised contact with anyone under the age of eighteen. After learning of Ionetz's conviction and the conditions of his probation on November 5, 2010, Dollar General conducted a

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

background check and terminated Ionetz's employment "because he 'failed his background check.'"

Ionetz filed a complaint with the Equal Rights Division of the Department of Workforce Development, alleging that Dollar General discriminated against him based on his conviction record in violation of the Wisconsin Fair Employment Act. *See* WIS. STAT. §§ 111.31-.395. The Act prohibits an employer from terminating the employment of a person on the basis of conviction record. WIS. STAT. §§ 111.321-.322.² However, under the Act "it is not employment discrimination because of conviction record to ... terminate from employment ... any individual who ... [h]as been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job." WIS. STAT. § 111.335(1)(c)1.

The Administrative Law Judge ruled in favor of Dollar General, concluding that: (1) Ionetz failed to establish a prima facie case of conviction record discrimination because the conditions of his probation rendered him unqualified to perform the essential functions of the store manager position; and (2) Ionetz's conviction record discrimination claim also failed because his probation condition that he could not have unsupervised contact with minors rendered his criminal offenses substantially related to his store manager position.

² Under the Act, conviction record "includes, but is not limited to, information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority." WIS. STAT. § 111.32(3).

Ionetz appealed to the Labor and Industry Review Commission, which reversed the Administrative Law Judge, concluding that: (1) it was not necessary for Ionetz to establish a prima facie case of conviction record discrimination because Dollar General “conceded” that it discharged Ionetz “because of his conviction record” when it stated that he was terminated because he had “failed his background check”; and (2) the probation conditions notwithstanding, the offenses for which Ionetz was convicted were not substantially related to the circumstances of his job. The Commission concluded that Dollar General had terminated Ionetz because of his conviction record, in violation of the Wisconsin Fair Employment Act, and, accordingly, awarded Ionetz his attorney’s fees and costs. However, the Commission declined to award him back pay and reinstatement because “had [Dollar General] not discriminated against [Ionetz] based upon his conviction record he would nonetheless have lost his job with [Dollar General] because of his inability to work alone in the store with minors.”

Both parties petitioned for review in the circuit court. The circuit court ruled that the Commission correctly concluded that Ionetz was not entitled to back pay because “even if the termination was based on the impermissible purpose of conviction record, it would have happened anyway because of Dollar General’s reasonable conclusion that Ionetz could not work for them under his restrictions of probation.” The court also concluded that: (a) the Commission erred in determining that Ionetz was not required to establish a prima facie case of conviction record discrimination; and (b) Ionetz failed to establish a prima facie case “because he was not qualified for the job inasmuch as he was unable to perform the job without violating” his probation conditions. Accordingly, the court reversed the Commission’s conclusion that Dollar General discriminated on the basis of conviction record and reversed the Commission’s attorney’s fee award.

Ionetz appeals the circuit court's decision, but his sole brief on appeal fails to present any coherent legal arguments supported by citations either to the record or to relevant legal authority.³ The argument section of the brief consists of a series of unsupported and disjointed assertions, and we are not provided with explanations as to why any of the assertions are significant under a plainly stated legal standard. While leeway may be given to Ionetz due to his pro se status, significant aspects of a legal argument are missing from his assertions, and we are therefore unable to accept or reject any of the reasoning of the three prior tribunals that have adjudicated his claim or to adopt another mode of reasoning altogether.

We decline to consider Ionetz's insufficiently developed arguments and will not undertake to develop arguments for him. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (issues inadequately briefed and unsupported by legal authority will not be considered); *Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (this court is not required to abandon its neutrality and develop arguments for the parties). Moreover, in failing to file a reply brief, Ionetz has failed to respond to Dollar General's arguments supporting the circuit court's decision. Therefore, we deem him to have conceded the merits of those arguments. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (failure to refute respondent's arguments in a reply brief can be taken as a concession to those arguments).

³ Separately, we note that the citations of Dollar General to its appendix are not accompanied by citations to the record and remind counsel of WIS. STAT. RULE 809.19(1)(e) ("the argument ... is to contain ... citations to the authorities, statutes and parts of the record relied on").

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals