



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 I/IV

October 13, 2017

To:

Hon. Clare L. Fiorenza
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233-1425

John Barrett
Clerk of Circuit Court
Room G-8
901 N. 9th Street
Milwaukee, WI 53233

Zach Whitney
Kohner, Mann & Kailas, S.C.
4650 N. Port Washington Road
Milwaukee, WI 53212-1059

Jeanine L. Jackson
3712 N 14th St
Milwaukee, WI 53206

Olem Shoe Corporation
800 NW 21st St
Miami, FL 33127

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

2016AP2070

Jeanine L. Jackson v. Kohner Mann & Kailas S.C., Olem Shoe Corporation and John Doe (L.C. # 2016CV3984)

Before Lundsten, P.J., Sherman, 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).

Jeanine Jackson, pro se, appeals the circuit court's decision to grant a motion to dismiss her complaint against defendants Olem Shoe Corporation and the Kohner, Mann & Kailas law firm (collectively "defendants"). 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 reject Jackson's arguments and affirm the order of dismissal.

Jackson alleges that Olem Shoe Corporation shipped her \$8,400 worth of sandals without her prior approval. Jackson also alleges that Kohner, Mann & Kailas improperly pursued collection efforts on this debt. Jackson filed a civil complaint against the defendants alleging negligence and violations of the Wisconsin Consumer Act.

The defendants moved to dismiss her complaint for lack of standing, because Jackson had filed for bankruptcy three days before filing her complaint. Defendants also moved to dismiss on the ground that Jackson had failed to state a claim on which relief could be granted. Jackson filed a brief opposing the motion. On the day before the hearing, Jackson filed a request to appear by telephone.² Jackson also filed a copy of a letter to the bankruptcy court asking for her bankruptcy petition to be dismissed. At the circuit court hearing, the court stated that it had not granted Jackson leave to appear by phone and that the clerk had contacted Jackson earlier that day to tell her that she needed to appear in person. The court proceeded with the hearing and ultimately dismissed the complaint on both grounds set forth in the motion to dismiss.

Jackson filed this appeal, arguing that the circuit court erred in granting the motion to dismiss. We begin with Jackson's contention that the circuit court erred in proceeding with the

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

² Jackson's request to appear by telephone was dated five days earlier, and her request states that she mailed it on that date as well. Jackson has filed additional materials in her appendix and has made various factual assertions in her brief to this court regarding when she mailed the request and how the circuit court responded to it. However, our review is limited to record facts. *See Van Deurzen v. Yamaha Motor Corp.*, 2004 WI App 194, ¶6, 276 Wis. 2d 815, 688 N.W.2d 777 ("We do not normally consider evidence presented for the first time on appeal.").

hearing on the motion to dismiss despite the fact that she was not present. She has not developed any legal argument in her brief, nor does she cite any record facts. See *Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (“[a]rguments unsupported by legal authority will not be considered”); *Dieck v. Unified Sch. Dist. of Antigo*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (we need not address arguments unsupported by record citations). Pro se litigants are not excused from basic procedural requirements. See *Waushara Cty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (all litigants are required to comply with procedural standards). We therefore reject Jackson’s contention that the circuit court erred when it proceeded with the motion hearing. See *Industrial Risk Insurers*, 318 Wis. 2d 148, ¶25 (this court is not required to abandon its neutrality and develop arguments for the parties).

We now turn to the merits of the circuit court’s decision to dismiss this action. Jackson argues that the circuit court erred in concluding that she lacked capacity to file her complaint due to her Chapter 13 bankruptcy petition. Jackson cites no authority to support the proposition that she has capacity to file a civil complaint in state court based on pre-petition claims while her bankruptcy petition is pending. Instead, Jackson contends that the defendants’ only recourse was to remove this matter to federal court.³ Her contention is apparently based on her past experience with filing a simultaneous circuit court complaint and bankruptcy petition. Jackson argues that in that prior case, the defendant opted to remove the matter to federal court.

³ Jackson cites 11 U.S.C. § 1452 as the provision of federal law governing removal to bankruptcy court. However, the correct provision is 28 U.S.C. § 1452.

However, Jackson's past experience is not relevant to the present case, in which the defendants have opted to pursue a different strategy.

In their responsive brief, the defendants argue that published decisions from this court require dismissal under the facts of this case. *See Williamson v. Hi-Lighter Graphics, LLC*, 2012 WI App 37, ¶1, 340 Wis.2d 485, 811 N.W.2d 866 (“Because Williamson’s financial interest in the misrepresentation claim arose prior to the filing of his bankruptcy petition, it is the property of his bankruptcy estate and he has no standing to sue.”); *see also Lakewood Credit Union v. Goodrich*, 2016 WI App 77, ¶15, 372 Wis. 2d 84, 887 N.W.2d 342 (“When a debtor later brings an action based on an undisclosed claim that has not been abandoned, the debtor ‘appears to be an interloper, trying to prosecute a claim that belongs to his estate in bankruptcy.’”) (quoted source omitted). Jackson declined to file a reply brief to address these arguments.

We agree with the defendants that this court’s precedent supports the circuit court’s decision to dismiss this action. Moreover, our decision in *Lakewood Credit Union* is particularly instructive. In that case, we explained that any pre-bankruptcy cause of action belongs to the bankruptcy trustee, unless the trustee has abandoned it. *See id.* However, we did not decide whether the circuit court was required to dismiss the debtor-plaintiff’s claim for lack of standing. *See id.*, ¶16. Instead, we concluded that the appellant’s failure to file a reply brief, or strike a preemptive blow in the opening brief, meant that the appellant had conceded the argument. *See id.* (citing *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed conceded)). It is the same situation here. Jackson’s failure to preemptively distinguish this precedent in her opening brief

coupled with her failure to file a reply brief means that Jackson has conceded the defendants' argument that she lacked standing to sue.⁴ See *Williamson*, 340 Wis. 2d 485, ¶1.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order of dismissal is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals

⁴ Because we affirm on this ground, we do not address the circuit court's alternate ground for dismissal, namely, that Jackson failed to state a claim on which relief can be granted. See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (appellate courts need only address dispositive issues). We also do not address Jackson's argument that Kohner, Mann & Kailas created a conflict of interest by representing co-defendant Olem Shoe Corporation. This argument might be relevant to us if we were reviewing a decision on a motion to disqualify the law firm from a pending case, but is not relevant to whether her complaint was properly dismissed for lack of standing. For the benefit of the pro se appellant, we note that the Office of Lawyer Regulation is an available forum for her if she believes there was a conflict of interest.