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November 7, 2017

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

2016AP1850

Rodney J. Hopkins v. Milwaukee County Transit and Robert G. Mitchem (L.C. # 2015CV3716)

Before Lundsten, P.J., Blanchard and Fitzpatrick, 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).

Rodney J. Hopkins appeals an order granting judgment in favor of Milwaukee County Transit and Robert G. Mitchem (collectively, MTS),¹ and dismissing Hopkins' complaint. Based

¹ The respondent's brief states that its proper designation is the "Milwaukee Transport Service." We use the initials MTS to avoid confusion.

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).² We affirm.

On January 4, 2013, Hopkins was a passenger on an MTS bus driven by Mitchem. It is undisputed that Hopkins pulled out a pocket knife, and was charged with and convicted of second-degree recklessly endangering safety. Hopkins was sentenced to imprisonment. At some point, it was discovered that the video equipment on the bus had malfunctioned and did not record the incident.

Hopkins filed a civil suit against MTS alleging several negligence claims, including that Mitchem was negligent by failing to (1) inspect the video surveillance equipment to make sure it was functioning, (2) render aid to Hopkins, and (3) give a statement to police about the incident.³ Hopkins' complaint alleged that he was attacked by another passenger, which "provoked and forced [Hopkins] to pull out his pocket knife to ward off the attack." Hopkins asserted that the malfunctioning video equipment compromised his ability to argue self-defense at his criminal trial. Alleging that it is the culture of bus drivers to check their equipment before starting a work shift, Hopkins claimed that Mitchem's negligent omissions caused Hopkins' incarceration and other damages.

MTS filed a motion for judgment on the pleadings requesting that matters outside of the pleadings not be excluded, that the motion be treated as a request for summary judgment, and

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

³ This third claim was added, apparently, at the summary judgment hearing and was addressed by the circuit court. Although Hopkins originally alleged a violation of Wisconsin's safe place statute, which the circuit court denied, this claim is not mentioned or argued on appeal.

that Hopkins' complaint be disposed of under WIS. STAT. § 802.08. The parties filed briefs in support of their respective positions and, following a hearing, the circuit court granted judgment on the pleadings and dismissed Hopkins' action. In so deciding, the circuit court accepted as true the allegations in Hopkins' complaint, but determined that Hopkins was not entitled to relief as a matter of law. The circuit court explained that Hopkins failed to establish any of the requisite parts of his negligence claims (i.e., duty, breach, damages, or proximate cause). The circuit court denied Hopkins' motions to compel and for sanctions. Hopkins appeals.

Hopkins' brief fails to develop coherent arguments that apply relevant legal authority to the facts of record, and instead relies largely on conclusory assertions. "A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories." *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Consequently, 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 arguments for an appellant, see *Jackson*, 229 Wis. 2d at 337.

We observe that Hopkins' opening brief lacks any citation to the record in violation of WIS. STAT. RULE 809.19(1)(e) (brief must contain "citations to the ... parts of the record relied on"). For example, Hopkins' brief asserts without citation that he "was attacked on the bus, pulled a knife and was taken away in an Ambulance." Further, as MTS points out in its brief,

certain of Hopkins' factual assertions, such as his being "taken away in an Ambulance," are not in the record and were not presented to or considered by the circuit court. We cannot consider factual assertions that are not part of the record. See *Nelson v. Schreiner*, 161 Wis. 2d 798, 804, 469 N.W.2d 214 (Ct. App. 1991).

In addition, Hopkins' legal arguments are undeveloped and unsupported by citation to relevant legal authority. Although Hopkins' brief asserts that the circuit court determined that Mitchem did not have a duty to check his video equipment, give a statement to the police, or render aid, the brief utterly fails to set forth Hopkins' legal causes of action or to explain how they were supported by the facts alleged in his complaint and submissions. To the extent Hopkins cites legal authority for the proposition that Mitchem owed him various duties, that authority does not remotely apply to the circumstances in this case. Additionally, Hopkins fails to address the circuit court's rulings that Hopkins did not show that Mitchem breached any duty, that Hopkins suffered cognizable damages, or that a causal nexus between the two exists. Hopkins omits any discussion of how the facts alleged in his circuit court submissions, if true, established all of the requisite elements of his claims.

Finally, to the extent Hopkins argues that the circuit court failed to address his petition seeking sanctions for discovery and open records violations, he is wrong. As MTS points out in its brief, the circuit court squarely addressed and denied Hopkins' motions. Hopkins has not filed a reply brief, and we deem MTS's assertions admitted. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (a proposition asserted by a respondent on appeal and not disputed in the appellant's reply is taken as admitted).

Here, Hopkins has failed to develop his arguments legally or to support them factually. Therefore, we affirm the circuit court on that basis.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court 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