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DISTRICT IV

November 7, 2017

To:

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

2016AP2449

Jeffrey T. Ziegler v. Eugene N. Theis (L.C. # 2015CV3143)

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).

Jeffrey Ziegler appeals a decision denying him transcripts at county expense. 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, but deny the respondent's motion for sanctions.

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

Ziegler is appealing a decision in a letter from the circuit court. We have construed the letter as an order for purposes of appeal. In that order, the court stated that it was aware that Ziegler had requested a transcript of the trial for his appeal from the court reporter, and the court stated that Ziegler would have to pay for the transcript himself. The court stated that any appeal would be “entirely without merit,” and therefore the county would not be required to pay for the transcript.

The court cited *State ex rel. Girouard v. Circuit Court for Jackson County*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990). That opinion, applying WIS. STAT. § 814.29(1), held that a circuit court may deny an indigent appellant’s request for a transcript if the appeal is not arguably meritorious. *Id.* at 159.

Ziegler argues that here the circuit court erred by deciding that his appeal lacked arguable merit before Ziegler even made such a request to the court or attempted to specify any issue for appeal. We agree that the better practice is for the circuit court to allow an appellant the opportunity to identify specific proposed issues before determining that an appeal lacks arguable merit. And, for purposes of this summary order, we assume, without deciding, that the court committed a legal error by reaching that decision before being told any specific issues.

However, we conclude that such an error is not, by itself, a basis to reverse the circuit court’s decision. For Ziegler to be entitled to reversal of the order denying him a transcript at county expense, Ziegler must also establish that he *does* have an arguably meritorious issue for appeal. In other words, he must explain what issues he would have identified for the circuit court if that court had given him an opportunity to state issues for appeal. *See* WIS. STAT.

§ 805.18(2) (court may not reverse due to procedural error unless substantial rights of party are affected).

Here, Ziegler provides only a vague and cursory description of the issues he would raise on appeal. The amount of information and argument he provides is not enough for us to make a meaningful evaluation of whether the issues have arguable merit.

We need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *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,” *id.* at 647, and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf, see *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Therefore, we conclude that Ziegler has failed to establish that he is entitled to reversal of the order denying him a transcript at county expense.

Respondent Eugene Theis moves for sanctions based on a finding that this appeal is frivolous under WIS. STAT. RULE 809.25(3). Theis argues that the appeal was filed in bad faith, solely to harass him. The argument is based on what Theis claims are false allegations against him in Ziegler’s brief. However, even if Theis is correct that these allegations are false, that would not establish that the appeal was filed solely to harass Theis.

Theis also argues that the appeal is frivolous because it lacks a reasonable basis in law. While we have concluded that Ziegler failed to develop his argument about potential issues for appeal, we decline to conclude that the appeal itself lacked a reasonable basis in law, given the circuit court’s arguably premature decision on the transcript issue.

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

IT IS FURTHER ORDERED that the motion for sanctions is denied.

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

Diane M. Fremgen
Clerk of Court of Appeals