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DISTRICT II

December 13, 2017

To:

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

2016AP1944

Susan M. Smith v. Mumm Real Estate LLC (L.C. #2015CV417)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Susan M. Smith appeals pro se from an order granting Auto-Owners Insurance Company's motion for declaratory and summary judgment. The circuit court concluded that Auto-Owners' policies of insurance did not provide coverage for any of Smith's claims. 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 summarily affirm the order of the circuit court.

Smith filed suit against Marcus Mumm and Mumm Real Estate LLC, as well as property managers Patricia and Thomas Bates (collectively “the Mumms”), alleging Smith suffered injuries and damages as a result of her tenancy in a mold-infested property rented to her by Mumm Real Estate LLC. Having issued several relevant policies of insurance to Marcus Mumm and Mumm Real Estate LLC, Auto-Owners filed a motion for summary judgment and declaratory relief seeking a determination that it had no duty to defend or indemnify the Mumms because its policies excluded mold-related injuries and damages. The circuit court granted Auto-Owners’ motion.

On appeal, Smith asks us to “reverse the trial court’s conclusion that the Auto Owners Insurance Policies do not provide coverage.” Her entire “argument” consists of the following two sentences: “I have little knowledge of insurance and rely on the arguments my attorney, who has withdrawn from the case, made on my behalf before Judge English. For these reasons, I request the court of appeals review the briefs filed in the trial court and Judge English’s decision to see if he made any mistakes on any of the coverage issues.” Smith’s reliance on the circuit court briefing is impermissible. *See Bank of Am. NA v. Neis*, 2013 WI App 89, ¶11 n.8, 349 Wis. 2d 461, 835 N.W.2d 527; *State v. Flynn*, 190 Wis. 2d 31, 58, 527 N.W.2d 343 (Ct. App. 1994).

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

“[I]t is the burden of the appellant to demonstrate that the [circuit] court erred.” *Seltrecht v. Bremer*, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). Smith has failed to meet this burden. She cannot prevail on appeal as she has not identified any errors the circuit court may have made much less developed any arguments supporting her appeal or justifying reversal of the order. See *Flynn*, 190 Wis. 2d at 39 n.2 (“We will not decide issues that are not, or inadequately, briefed.”). An appellate judge cannot properly serve as both advocate and judge. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). While we recognize Smith is pro se and we may afford her some leniency on that basis, see *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992), it is nonetheless inappropriate for us to “abandon our neutrality to develop arguments” for her, see *Industrial Risk Insurers v. American Engineering Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82. Simply put, by failing to make any arguments to convince us the circuit court erred, Smith’s appeal fails.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed. See 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