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DISTRICT I

June 19, 2018

To:

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

2017AP1602

Tony Hernandez v. Darlene S. Sims (L.C. # 2015CV7845)

Before Kessler, P.J., Brennan and Brash, 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).

Tony Hernandez, *pro se*, appeals from a circuit court order denying his motion “to reopen” a civil lawsuit that was previously dismissed without prejudice.¹ We conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2015-16).² We summarily affirm the order.

¹ Hernandez has represented himself throughout the proceedings in the circuit court and on appeal.

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

In September 2015, Hernandez filed a civil lawsuit against nine parties including the Vel R. Phillips Juvenile Justice Center. Hernandez alleged that he was injured when a woman attacked him as he was reporting for work at the Justice Center. Hernandez's complaint also expressed displeasure with the way the criminal case against his attacker was handled by the Milwaukee County District Attorney's Office.

Three defendants who were represented by the Milwaukee County Corporation Counsel's Office moved to dismiss the suit on numerous grounds, alleging that Hernandez:

(1) has improperly attempted to sue his employer for work-related injuries contrary to the exclusive remedy provisions of [WIS. STAT. ch. 102]; (2) has failed to exhaust his administrative remedies regarding any discrimination, retaliation, failure to accommodate, or denial of medical leave claims; (3) has improperly attempted to sue criminal prosecutor(s) over decisions made within their discretion; (4) has failed to comply with the notice requirements of [WIS. STAT.] § 893.80; and (5) has failed to properly serve the Defendants.

The circuit court held a hearing on the motion to dismiss.³ On February 15, 2016, the circuit court entered an order dismissing the lawsuit "without prejudice." Hernandez did not appeal.

On February 1, 2017, Hernandez filed a fifteen-page document entitled "Notice of Motion for Extension of time to reopen this case with a Jury trial & 12 Jurors." (Bolding omitted.) The motion indicated that Hernandez wanted to reopen his case and also sought a four-month extension of time to delay the reopening so that his worker's compensation case could be completed.

Once again, three County defendants opposed the motion. They noted that Hernandez could not pursue an extension of time in the case unless the case were to be reopened, and they opposed reopening the case under WIS. STAT. § 806.07. The circuit court held a hearing on

³ The Honorable Pedro A. Colon presided over the hearing and granted the motion to dismiss.

Hernandez's motion at which it gave Hernandez an opportunity to explain why the case should be reopened pursuant to § 806.07.⁴ At the hearing, Hernandez also asked the circuit court to move the case to federal court based on "a conflict of interest."

The circuit court concluded that Hernandez had not shown a basis to reopen the case under WIS. STAT. § 806.07 and denied Hernandez's motion. In doing so, it explained to Hernandez that he could "start all over with a new action" but noted that Hernandez's February 1, 2017 filing was not a new action because it sought to reopen the prior lawsuit. The circuit court also said that it lacked authority to move the case to federal court. A written order denying Hernandez's motion was entered on July 3, 2017. This appeal follows.

On appeal, Hernandez repeats many of the allegations he made in his original complaint.⁵ He asks this court to reverse the circuit court's July 3, 2017 order, stay the case until his worker's compensation case is completed, and enter discovery orders. Hernandez also continues to suggest that his case should be moved to federal court. Hernandez's opening brief does not cite WIS. STAT. § 806.07 or offer argument concerning the circuit court's determination that Hernandez failed to show he was entitled to relief under that statute.⁶

⁴ The Honorable Marshall B. Murray presided over the hearing and denied Hernandez's motion to reopen his case.

⁵ The Defendants-Respondents argue that Hernandez's briefs do not comply with WIS. STAT. RULE 809.19 in numerous ways and that this court should affirm on that basis. We decline to do so. Instead, as we explain in this decision, we affirm on grounds that Hernandez has not offered any argument—much less a persuasive argument—that the circuit court erroneously exercised its discretion when it denied Hernandez relief from the February 2016 order under WIS. STAT. § 806.07.

⁶ Hernandez's reply brief offers one reference to WIS. STAT. § 806.07 when he suggests that the circuit court erred at the hearing on Hernandez's motion to reopen when it indicated that the motion may be untimely under the statute. However, after both Hernandez and a lawyer for the defendants corrected the circuit court concerning the relevant dates, the circuit court proceeded to consider the merits of whether there was a basis to relieve Hernandez from the February 2016 order.

WISCONSIN STAT. § 806.07 authorizes a court to relieve a party from an order or judgment on numerous grounds. Section 806.07(1) provides:

On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);
- (c) Fraud, misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released or discharged;
- (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
- (g) It is no longer equitable that the judgment should have prospective application; or
- (h) Any other reasons justifying relief from the operation of the judgment.

Section 806.07(2) requires the motion to be brought “within a reasonable time” and, if the motion is based on § 806.07(1)(a) or (c), within one year after the order was entered. *See* § 806.07(2). Granting relief for any of the reasons under the statute is within the circuit court’s discretion, and on appeal our review is limited to whether the circuit court erroneously exercised that discretion. *See Franke v. Franke*, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832.

Applying those standards here, we are not persuaded that the circuit court erroneously exercised its discretion. Hernandez has not offered any argument demonstrating that there is a basis under WIS. STAT. § 806.07 to afford him relief from the February 2016 order dismissing his case without prejudice, and he has not explained how the circuit court’s application of § 806.07 was an erroneous exercise of discretion. We will not abandon our neutrality to develop

arguments for a litigant. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Because Hernandez has not shown that the circuit court erroneously exercised its discretion when it denied his request to reopen the case, we will not reverse the circuit court's order. *See Franke*, 268 Wis. 2d 360, ¶54.

We are also unconvinced that Hernandez has provided a sufficient legal basis for this court to stay the case, impose a discovery order, or move the case to federal court. Finally, we decline to address other arguments Hernandez raises concerning the merits of potential claims against any of the defendants. Hernandez's lawsuit was dismissed in February 2016, and the case has not been reopened. The merits of any potential claims Hernandez may have against various defendants are not properly before the court at this time.

For 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.

Sheila T. Reiff
Clerk of Court of Appeals