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**DISTRICT II**

September 12, 2018

To:

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

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2017AP2010

Thomas Lechnir v. UW-Oshkosh (L.C. #2013CV1104)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).**

Thomas Lechnir appeals pro se the circuit court's denial of his motion to reopen the judgment in this case pursuant to WIS. STAT. § 806.07 (2015-16).<sup>1</sup> Based upon our review of the

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

briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21. We affirm.

In 2013, Lechnir sought judicial review of the decision of the University of Wisconsin-Oshkosh (UWO) to not renew his contract as head baseball coach, in part due to his “fundraising shortcoming” with regard to the expansion and renovation of the baseball stadium. As is relevant here, Lechnir disputed any fundraising shortcomings and questioned the commingling of funds relating to the baseball stadium and the Oshkosh Sports Complex (OSC). The circuit court affirmed the UWO decision, and Lechnir’s appeal to us was unsuccessful.

In January 2017, the Board of Regents of the University of Wisconsin System filed a civil complaint alleging wrongdoing by the former chancellor of UWO, who had been involved in the decision to not renew Lechnir’s contract. The complaint alleges that the former chancellor, along with the former vice-chancellor, “caused the transfer of [University] funds to the [UWO] Foundation for renovation of the [OSC]” thereby converting property of the Board of Regents in violation of WIS. STAT. §§ 895.446 and 943.20(1)(a) and (b).<sup>2</sup> Based upon this complaint and a Board of Regents Audit Committee report that led to it, Lechnir moved the circuit court to reopen the judgment in his case. The circuit court denied the motion to reopen. Lechnir now appeals to us.

On appeal, the appellant bears the burden of demonstrating the circuit court erred. *Seltrecht v. Bremer*, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). We will not

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<sup>2</sup> The baseball stadium was “financially independent of the OSC.” *See Lechnir v. University of Wisconsin-Oshkosh*, No. 2014AP1114, unpublished slip op. (WI App Mar. 11, 2015).

reverse a circuit court's order denying a motion for relief under WIS. STAT. § 806.07 unless the court erroneously exercised its discretion. *Winkler v. Winkler*, 2005 WI App 100, ¶14, 282 Wis. 2d 746, 699 N.W.2d 652.

Lechnir seeks to reopen the judgment in his case pursuant to WIS. STAT. § 806.07(1)(b), which provides that a court may relieve a party from a judgment or order if there is “[n]ewly-discovered evidence which entitles a party to a new trial under [WIS. STAT. §] 805.15(3).” Section 805.15(3) provides that “a new trial shall be ordered on the grounds of newly-discovered evidence if the court finds that:”

(a) The evidence has come to the moving party's notice after trial; and

(b) The moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; and

(c) The evidence is material and not cumulative; *and*

(d) The new evidence would probably change the result.

(Emphasis added.) Lechnir's appeal does not get out of the gate for he fails to develop any argument that the “new evidence” he relies upon “would probably change the result” in his case.<sup>3</sup>

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<sup>3</sup> In its response brief, UWO states with regard to the Board of Regents' complaint: “Notably, there is no reference in the . . . complaint to the baseball stadium in particular, the debt associated with the baseball stadium, [Lechnir], [UW-Oshkosh's] baseball program and/or its facilities, or the gifts/donations at issue during [Lechnir's] contract non-renewal proceedings.” With regard to the audit report, UWO writes that the report “concerned various financial dealings of [UWO]. While critical of [the chancellor], the report made no mention of [Lechnir], the baseball stadium debt or any other discernable matter related to [Lechnir].” UWO further writes: “This was essentially the sum of the ‘newly discovered evidence’ that [Lechnir] relied on in urging the circuit court to reopen this case.” Lechnir has not filed a reply brief.

Of note, UWO devotes no less than ten pages of its response brief to detailing why the new “evidence” Lechnir relies upon would not change the result. Lechnir has filed no reply brief indicating to the contrary, and in his brief-in-chief he makes only the conclusory assertion that “[i]t is rather obvious that the committee’s decision regarding fundraising *may* be affected based on the clear and unambiguous admissions [in the Board of Regents’ complaint] that Chancellor Richard Wells intentionally converted \$806,561 for renovation of the Oshkosh Sports Complex.” (Emphasis added.) To begin, this assertion is undeveloped, so we do not consider it. *See ABKA Ltd. P’ship v. Board of Review*, 231 Wis. 2d 328, 349 n.9, 603 N.W.2d 217 (1999) (stating we do not address undeveloped arguments). Furthermore, even the assertion that the committee’s decision “may be affected” does not meet the standard that the new evidence “would probably change the result.” With no argument that the new evidence would probably change the result, Lechnir cannot prevail.

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.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*