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DISTRICT IV

November 26, 2018

To:

Hon. Thomas J. Vale
Circuit Court Judge
Green County Justice Center
2841 6th St.
Monroe, WI 53566

Barbara Miller
Clerk of Circuit Court
Green County Justice Center
2841 6th Street
Monroe, WI 53566

Patrick D. Brumm
3013 Worthington Ave.
Madison, WI 53714

Transect, LLC
Josh Kuenzi, Agent
P.O. Box 199
Monroe, WI 53566

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

2018AP1617

Patrick D. Brumm v. Transect, LLC
(L.C. # 2018SC259)

Before Sherman, J.¹

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).

Patrick Brumm appeals the dismissal of a small claims action. Based upon my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. I affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16).

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

Unless otherwise noted, the following facts are taken from the clerk's docket in the circuit court, there being no transcript nor other written order. *See* WIS. STAT. § 808.03(1)(b). Brumm was a tenant in two properties owned by Transect, LLC. In October 2017, Transect brought an eviction action. That action was dismissed upon the agreement of the parties that Brumm had vacated the property. Brumm turned his keys to the property over to Transect in open court and agreed that he owed Transect \$675. In the present action, according to the pleadings, Brumm brought suit against Transect seeking damages in the amount of \$1,175. Transect counterclaimed, seeking \$2,575 in damages. The circuit court dismissed both Brumm's claim and Transect's counterclaim on the ground that the matter was previously litigated to settlement and cannot be relitigated.

On appeal, Brumm has failed to develop any argument for this court to address. The bulk of Brumm's brief is comprised of a discussion of the facts. Briefly, Brumm alludes to the circuit court's reason for dismissing this action, and states: "Judge Vale erred in his fractious dismissal. He gave no appearance of wishing to hear me out." However, Brumm has not demonstrated that any factual finding of the circuit court is clearly erroneous, nor has he explained how or why the court erred in dismissing the action.

Accordingly, I reject his argument that the court erred in dismissing the action and affirm. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (the court of appeals does not address undeveloped arguments).

For Brumm's benefit, I will briefly explain some of the appeal process. An appeal is not simply an opportunity to convince a different judge of what you failed to convince the first

judge. An appeal is an opportunity to address specific errors that you think were made by the circuit court judge. There are several kinds of such errors and each is reviewed differently.

First, a judge on appeal must uphold the circuit court judge's factual findings unless they are clearly erroneous. In order to show that a factual finding is clearly erroneous, you must show the appeals court that the factual finding is not supported by any credible evidence in the record, or any reasonable inferences from that evidence. *See Insurance Co. of N. Am. v. DEC Int'l, Inc.*, 220 Wis. 2d 840, 845, 586 N.W.2d 691 (Ct. App. 1998). You have not done so here, or even attempted to do so. Simply restating the facts from your own point of view is not an attempt to show that the circuit court judge's findings are clearly erroneous.

A challenge to the dismissal of the action with prejudice would be reviewed for an erroneous exercise of discretion. A discretionary decision is the type of decision that an appeals court will uphold if a circuit court judge's decision is based upon a correct legal standard and the facts in the record, and the decision results from a recognized course of reasoning. *See Flottmeyer v. Circuit Ct. for Monroe Cty.*, 2007 WI App 36, ¶17, 300 Wis. 2d 447, 730 N.W.2d 421. In this case, you have not articulated any challenge to the dismissal.

If a challenge had been to the legal standard employed by the circuit court in dismissing the action below, which was that the case previously settled could not be relitigated, this court would review the court's reasoning as a legal issue. An appellate court reviews legal issues de novo, meaning without any deference to the circuit court. *See State v. Wills*, 193 Wis. 2d 273, 277, 533 N.W.2d 165 (1995). In this case, you would have had to explain to this court, with appropriate citation to legal authority, why the circuit court judge applied an incorrect standard of law. You have not done so.

Even taking into account that you are acting *pro se*, that is representing yourself without a lawyer, this court cannot develop issues for you. It is this court's obligation to be a neutral magistrate, not to represent one of the parties. This court cannot depart from that role and still maintain the fairness of the tribunal. *See generally* WIS. STAT. RULE 809.19(1) (setting forth the requirements for briefs), *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 (regarding unsupported arguments), and *State v. Pettit*, 171 Wis. 2d at 646-47 (regarding undeveloped arguments).

Upon the forgoing,

IT IS ORDERED that the order is summarily affirmed pursuant to 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