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DISTRICT IV

April 23, 2020

To:

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

2019AP218

The MRD Group, Inc. v. Tivanov, LLC and Metodi L. Ivanov
(L.C. # 2017CV336)

Before Kloppenburg, Graham and Nashold, 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).

Tivanov LLC and Metodi L. Ivanov (collectively, Ivanov) appeal the circuit court's order that granted a summary judgment of foreclosure to The MRD Group, Inc. 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 (2017-18).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Additionally, we grant a motion by MRD to find this appeal frivolous, and we remand to the circuit court to determine MRD's costs and fees.

In November 2017, MRD initiated this foreclosure action against Ivanov. Ivanov answered and asserted counterclaims. In January 2019, the circuit court granted a summary judgment of foreclosure to MRD.

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Our review of a circuit court's summary judgment order is de novo. *See Cole v. Hubanks*, 2004 WI 74, ¶5, 272 Wis. 2d 539, 681 N.W.2d 147.

Ivanov contends that the circuit court failed to provide any analysis to support its decision and that Ivanov's submissions created issues of material fact. However, Ivanov merely asserts these arguments in conclusory fashion. As to Ivanov's contention that the circuit court failed to explain its analysis in granting summary judgment, we note at the outset that our review of an order granting summary judgment is de novo. *See id.* Moreover, Ivanov fails to acknowledge the circuit court's December 26, 2018 letter explaining its reasoning for granting summary judgment, and makes no attempt to explain why that analysis is insufficient. As to Ivanov's argument that there are disputed issues of material fact, Ivanov makes no attempt to explain what facts are in dispute or why they are material.

In sum, Ivanov fails to develop arguments applying legal authority to the facts in the record under the proper standards of review. This court need not consider arguments that either 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). "We cannot serve as both

advocate and judge,” *id.* at 647, and we will not develop fact-supported legal arguments for an appellant, *see State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Here, Ivanov has wholly failed to develop his arguments that the circuit court did not adequately explain its decision or that there are factual disputes that preclude summary judgment. We reject Ivanov’s arguments on that basis.

Finally, MRD has moved for costs and attorney fees for a frivolous appeal under WIS. STAT. RULE 809.25(3). We agree that this appeal is frivolous. As explained above, Ivanov’s brief fails to present any developed argument based on the law and facts in the record. *See* RULE 809.25(3)(c)2. (appeal is frivolous if “the party’s attorney knew, or should have known, that the appeal ... was without any reasonable basis in law”). Because nothing in Ivanov’s brief establishes any legal basis for the appeal, we agree with MRD that the appeal is frivolous.

The clerk of this court may make the standard assessment of MRD’s claimed costs and fees on appeal. However, because we are not in a position to make factual findings, we must remand to the circuit court for a determination as to the amount and reasonableness of MRD’s attorney fees on appeal and entry of an additional judgment in MRD’s favor.

Therefore,

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21, and the cause is remanded to the circuit court to determine the amount of costs and reasonable attorney fees to be awarded to MRD pursuant to WIS. STAT. RULE 809.25(3).

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

Sheila T. Reiff
Clerk of Court of Appeals