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**DISTRICT IV**

April 15, 2021

To:

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

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2020AP1162

Cindy L. Hertrampf v. Michael Ostrander (L.C. # 2020CV134)

Before Fitzpatrick, P.J., Kloppenburg, 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).**

Danny R. Hertrampf and Cindy L. Hertrampf, pro se, appeal a circuit court order that dismissed Elaine Ostrander and Grange Insurance from the Hertrampfs' action for damages from a motor vehicle accident. The Hertrampfs argue that Elaine is liable for damages they incurred

when Michael Ostrander<sup>1</sup> struck Cindy Hertrampf's vehicle because: (1) Elaine is married to Michael; and (2) Elaine was a named policy holder on the pertinent insurance policy and was a passenger in the vehicle at the time of the accident. They argue that Grange provides insurance coverage for the accident based on their assertions that: (1) Grange has a partnership with the Ostranders' insurer, Integrity Property & Casualty Insurance Company; (2) Grange at one point took responsibility for the Hertrampfs' claim; and (3) Grange conspired with Integrity to harm the Hertrampfs.<sup>2</sup> 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. We summarily affirm.

The Hertrampfs brought this action against Michael, Elaine, Integrity, and Grange for damages incurred in an accident involving a vehicle driven by Michael. Elaine and Grange moved to dismiss the claims against them, arguing that the complaint contained no factual allegations that would support any cause of action against either of them. The circuit court determined that there were no allegations in the complaint that Elaine had been negligent or that

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<sup>1</sup> For clarity, we refer to Michael Ostrander and Elaine Ostrander by their first names.

<sup>2</sup> By order dated August 10, 2020, we explained that this appeal is limited to issues related to Elaine and Grange because the other defendants remained parties to the pending litigation following the circuit court's order. *See* WIS. STAT. § 808.03(1) (2019-20). Accordingly, the discussion in this opinion is limited to issues related to Elaine and Grange. We do not address the Hertrampfs' arguments related to the other defendants. Additionally, to the extent that we do not specifically address any arguments as to Elaine and Grange in this opinion, we have considered those arguments and deem those insufficiently developed to address. *See Wisconsin Conf. Bd. of Trs. of the United Methodist Church, Inc. v. Culver*, 2001 WI 55, ¶38, 243 Wis. 2d 394, 627 N.W.2d 469 (stating that we do not address arguments that are conclusory and insufficiently developed).

All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Grange had issued a policy of insurance. The circuit court therefore granted the motion to dismiss Elaine and Grange from this case.

Whether the factual allegations in a complaint are sufficient to state a claim against a defendant is a question of law that we review de novo. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. “[W]e accept as true all facts well-pleaded in the complaint and the reasonable inferences therefrom.” *Id.*, ¶19. “Bare legal conclusions set out in a complaint provide no assistance in warding off a motion to dismiss.” *Id.*, ¶21. Rather, “[p]laintiffs must allege facts that, if true, plausibly suggest a violation of applicable law.” *Id.* “Factual assertions are evidenced by statements that describe[] [the] ‘who, what, where, when, why, and how’” of the plaintiff’s claim. *Id.*, ¶21 n.9 (quoted source omitted).

The Hertrampfs argue that Elaine is liable for the damages from the accident and should not have been dismissed. They argue first that Elaine is liable because her husband, Michael, was driving the vehicle. They assert that, under Wisconsin statutes, marriage is a contract that makes each spouse liable for the damages caused by the other. They cite the following statutes in support of their argument: WIS. STAT. §§ 765.01 (“Marriage, so far as its validity at law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife.”); and 766.55(2)(cm) (“An obligation incurred by a spouse during marriage, resulting from a tort committed by the spouse during marriage, may be satisfied from the property of that spouse that is not marital property and from that spouse’s interest in marital property.”). They also argue that Elaine is liable because she was named as a policy holder on the insurance policy she shared with Michael and because she was a passenger in the vehicle that Michael was driving at the time of the accident.

Elaine responds that the Hertrampfs' complaint is devoid of any alleged facts that would entitle them to relief against her. She points out that the complaint alleges that Michael was driving the car at the time of the accident, and that the complaint contains no allegations that Elaine was negligent. She also disputes the Hertrampfs' contention that the Wisconsin statutes governing marriage and marital property support an independent cause of action against her as Michael's wife. Thus, Elaine asserts, the circuit court properly dismissed her from this case based on the complaint's failure to state a claim against her.

We conclude that the circuit court properly granted Elaine's motion to dismiss her from this case. The Hertrampfs do not allege any negligent act by Elaine, asserting only that Elaine is liable by virtue of her marriage to Michael, her name being listed on the Ostrand's insurance policy, and her presence in the vehicle at the time of the accident. However, none of the Hertrampfs' arguments persuade us that their complaint states a claim as to Elaine. First, the Hertrampfs have not established that a party is personally liable for the acts of the party's spouse. Indeed, the statute cited by the Hertrampfs, WIS. STAT. § 766.55, provides the opposite: a spouse's liability for a tort may only be satisfied from property that is *not* marital property or from that *spouse's* own interest in marital property. *See* § 766.55(2)(cm). Second, nothing in the Hertrampfs' briefs establishes that a party is liable for the negligence of any other party on a shared insurance policy, or is liable based on the party's presence as a passenger in a vehicle at the time of an accident.

The Hertrampfs also argue that Grange provides coverage for the accident and should not have been dismissed. They argue that Grange provides coverage on the basis that it is in a partnership with the Ostrand's insurer, Integrity. They also argue that Grange at one point had control over the Hertrampfs' claim and directed the Hertrampfs to communicate directly with

Grange. They argue that, because Grange was an active participant in the Hertrampfs' claim process, Grange is required to provide coverage for the accident. Finally, they contend that Grange and Integrity conspired to prevent the Hertrampfs from being compensated for their damages by repeatedly moving the Hertrampfs' claim from one insurance adjuster to another. They argue that Grange engaged in bad acts with intent to harm by moving the claim among different claim adjusters to prevent the claim from moving forward.

Grange responds that there are no facts alleged in the Hertrampfs' complaint that state a claim against Grange. Grange contends that the Hertrampfs' complaint does not allege that Grange provided insurance coverage to the Ostrandors, and also points out that Integrity has admitted that it is the Ostrandors' insurer. Grange argues that there are no facts alleged in the complaint to support the Hertrampfs' argument that Grange and Integrity have a partnership.

We conclude that the circuit court properly dismissed Grange from this case. The Hertrampfs do not allege that Grange provided any insurance coverage to the Ostrandors at the time of the accident. Instead, they argue that Grange is in a partnership with Integrity; that Grange at one point told the Hertrampfs to communicate with it regarding their claim; and that Grange and Integrity conspired to deny the Hertrampfs' claim by repeatedly changing their claim adjuster. However, the Hertrampfs do not explain what facts support their claim that Grange and Integrity have a legal partnership that would obligate Grange to provide coverage under a policy issued by Integrity. Additionally, nothing in the Hertrampfs' briefs establishes that Grange provides coverage in this case based on its involvement during the claim adjustment process, or based on an alleged agreement between Grange and Integrity to prevent the claim from moving forward by transferring the claim between claim adjusters. In sum, we discern no basis to disturb the circuit court's decision.

Therefore,

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.

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