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DISTRICT IV

May 13, 2021

To:

Hon. Peter Anderson
Circuit Court Judge
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Luanne Marie Kalscheuer
5873 Holscher Road
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You are hereby notified that the Court has entered the following opinion and order:

2019AP2246

Luanne Marie Kalscheuer v. Pick N Save Mega Foods
(L.C. # 2019CV751)

Before Fitzpatrick, P.J., 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).

Luanne Marie Kalscheuer, pro se, argues that the circuit court erroneously dismissed her claims against Pick N Save Mega Foods and related parties,¹ and she appeals an order requiring her to contribute \$500 to the defendants' attorney fees. Based on our review of the record and

¹ Mega Marts LLC, Jeff Norris, and Jessica Offenbacher are also named as defendants in this lawsuit.

briefs, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² We summarily affirm.

By way of background, Pick N Save is Kalscheuer's former employer. In May 2018, Kalscheuer was placed on suspension while Pick N Save investigated accusations that she was not performing her work duties. After an investigation, Pick N Save advised Kalscheuer that the allegations were found to be untrue and invited her back to work. Kalscheuer declined the invitation.

Soon thereafter, Kalscheuer filed discrimination and retaliation complaints against Pick N Save with the Department of Workforce Development, Division of Equal Rights and the Equal Employment Opportunities Commission. After participating in a mediation, the parties executed a Confidential Private Settlement Agreement, Waiver, and General Release. For ease of reference, we refer to this document as the "Settlement Agreement" throughout this order.

Kalscheuer then filed for unemployment benefits with the Department of Workforce Development's Unemployment Division. Her application was initially denied because the agency found that Kalscheuer voluntarily quit her job. Kalscheuer filed an administrative appeal, and Pick N Save chose not to appear at the appeal hearing or contest Kalscheuer's entitlement to benefits. An administrative law judge found that Kalscheuer terminated her work for "good cause" as defined in WIS. STAT. § 108.04(7)(b) and reversed the denial of benefits.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Several months later, Kalscheuer filed this action in the circuit court. Her complaint requests compensatory damages on the grounds that Pick N Save engaged in unlawful discrimination, unfair treatment, defamation, libel, slander, and breach of contract, and that it created a hostile work environment and made threats against her life. Pick N Save responded with a safe harbor letter, which informed Kalscheuer that her claims are precluded by the Settlement Agreement. The letter also stated that if Kalscheuer did not dismiss the complaint on her own accord, Pick N Save would seek attorney fees. Kalscheuer did not dismiss the complaint.

Pick N Save filed a motion to dismiss, arguing, among other things, that all of Kalscheuer's claims are precluded by the Settlement Agreement. Pick N Save also filed a motion requesting reasonable attorney fees.

The circuit court determined that Kalscheuer's claims were precluded by the Settlement Agreement, and it dismissed Kalscheuer's lawsuit with prejudice. The court subsequently awarded Pick N Save \$500.00 in attorney fees.

We agree with and affirm both decisions.

First, we conclude that the circuit court correctly dismissed Kalscheuer's complaint on the ground that her claims were precluded by the Settlement Agreement. In exchange for consideration of \$5,000, Kalscheuer agreed to release Pick N Save and related parties from "any and all charges, claims, complaints, liabilities, obligations, promises, agreements, actions, damages, expenses ... or rights of any and every kind or nature, accrued or unaccrued, known or unknown which Kalscheuer may have or claim to have." By using such sweeping language, the

parties unambiguously intended the Settlement Agreement as a global release. *See Huml v. Vlazny*, 2006 WI 87, ¶¶53-55, 293 Wis. 2d 169, 716 N.W.2d 807.

In her appellate briefs, Kalscheuer does not develop any coherent argument that the circuit court erred in interpreting the language of the Settlement Agreement or in upholding its terms. Rather, Kalscheuer asserts that the Settlement Agreement was “reversed” due to Pick N Save’s subsequent failure to appear at the unemployment compensation appeal hearing and the finding that Kalscheuer had good cause to terminate her employment. Kalscheuer fails to identify any legal authority to support this argument, and we are not aware that any such authority exists. An appellate court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See Dieck v. Unified Sch. Dist.*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990), *aff’d*, 165 Wis. 2d 458, 477 N.W.2d 613 (1991) (lack of record citations); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments).³

Second, we conclude that the circuit court did not erroneously exercise its discretion when it ordered Kalscheuer to contribute \$500 to Pick N Save’s attorney fees. The Settlement Agreement unambiguously provided that, if Kalscheuer breached its terms, she would “pay all reasonable attorneys’ fees and all other costs incurred by [Pick N Save] in defending against her claim(s) or otherwise seeking enforcement of the Agreement.” Additionally, under certain circumstances, circuit courts have broad authority to award attorney fees for frivolous filings.

³ Kalscheuer also challenges the circuit court’s order on the basis that two of the defendants, Jeff Norris and Jessica Offenbacher, did not personally appear at the hearing on the motion to dismiss. This argument is baseless; the attorney who represented Pick N Save made an appearance on their behalf.

See WIS. STAT. § 802.05(3). The transcript of the circuit court's oral decision granting attorney fees is not included in the appellate record, and we are unable to determine the court's precise rationale for doing so. Nevertheless, it was Kalscheuer's responsibility to ensure that the appellate record is complete. See *State v. Provo*, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272 (it is the appellant's responsibility to ensure that the record is complete, and this court assumes that any missing transcripts would support the circuit court's decision). In its absence, we assume that the missing transcript would show that the circuit court examined the relevant facts, applied a proper standard of law, and reached a demonstrably reasonable determination of attorney fees.

Finally, we do not consider any of the other issues Kalscheuer attempts to raise on appeal both because they are inadequately briefed, see *Pettit*, 171 Wis. 2d at 646, and because they relate to matters outside of the record on appeal. See *State ex rel. Wolf v. Town of Lisbon*, 75 Wis. 2d 152, 155-56, 248 N.W.2d 450 (1977).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals