



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

June 24, 2021

To:

Hon. Frank D. Remington
Circuit Court Judge
Dane County Courthouse
215 S. Hamilton St., Rm. 4103
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Nicholas Loniello
Loniello & Associates
131 W. Wilson St., Ste. 1201
Madison, WI 53703

Old National Bancorp
1 Main Street
Evansville, IN 47705

Randy L. Paul
P.O. Box 144
Lake Mills, WI 53551

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

2020AP1059

William Conway v. Randy L. Paul (L.C. # 2019CV654)

Before Fitzpatrick, P.J., Blanchard, and Graham, 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).

Randy Paul, pro se appellant, appeals an order entered by the circuit court on June 18, 2020 in this foreclosure matter. 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 (2019-20).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

On October 5, 2016, William Conway and Randy Paul entered into a land contract pertaining to residential property located in Cottage Grove, Wisconsin (the “Property”), with Conway as the vendor and Paul as the purchaser under the terms of the contract. On March 11, 2019, Conway filed a complaint for strict foreclosure of the land contract, alleging that Paul was in default of payment. Paul denied the allegations in the complaint and raised two counterclaims, one for rent as a result of Conway’s alleged use of the Property for storage purposes, and one alleging fraud. On February 6, 2020, the circuit court granted Conway a judgment of strict foreclosure.

On June 11, 2020, the circuit court held a hearing to address whether the Property had been redeemed during the redemption period, as well as several other matters that had been raised by motions of the parties. The court found that no redemption had been made and, among other decisions, awarded Conway \$700 in costs and fees for Paul’s failure to comply with compulsory discovery. Those decisions were formalized in an order entered on June 18, 2020. Paul filed a notice of appeal from “the Final Judgment of February 5 [sic], 2020 as ratified on June 11, 2020.”

Conway filed a motion in this court to dismiss the appeal as untimely because the notice of appeal was filed more than ninety days after the February 6, 2020 judgment. Conway further argued that Paul lacked standing, alleging that Paul assigned his interests under the land contract to a third party one day before expiration of the redemption period. In an order issued August 13, 2020, this court denied the motion to dismiss, but directed the parties to address the following issues in their briefs:

For the appellant, for each issue discussed in his opening brief, he must explain how he is aggrieved by that issue. A person

is aggrieved when the judgment “bears directly and injuriously upon his or her interests; the person must be adversely affected in some appreciable manner.” *Ford Motor Credit Co. v. Mills*, 142 Wis. 2d 215, 217-18, 418 N.W.2d 14 (Ct. App. 1987). The appellant must explain how he meets that standard for each issue, in light of the alleged assignment of his rights.

For the respondent, if Conway argues that the February 6 judgment was final, he must explain how all of Paul’s counterclaims were resolved by then.

In his appellant’s brief, Paul makes numerous complaints about the circuit court proceedings in this matter. The brief fails, however, to develop coherent arguments that apply relevant legal authority to the facts of record, and instead relies largely on conclusory assertions. “A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). The appellant’s brief fails to address in any understandable manner the threshold standing issue that Paul was ordered by this court to address—that is, whether Paul is aggrieved by the decisions he seeks to appeal, in light of the assignment of the Property on the eve of redemption. Paul addresses this threshold issue in some fashion in the reply brief. However, we will not, as a general rule, consider arguments raised for the first time in a reply brief because adverse parties do not have an opportunity to respond to those arguments. See *Willis B. Swartwout v. Robert Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981). We see no reason to depart from that rule in this case and, even if we did, Paul’s argument in the reply brief on the standing issue is woefully underdeveloped. Paul asserts in the reply brief simply that the alleged assignment of rights was rescinded, without further development of the issue.

Paul fails to develop and support his argument on the standing issue, as well as the other issues touched upon in his briefs. This court need not consider arguments that either are

unsupported by adequate factual and legal citations or are otherwise undeveloped. See *Dieck v. Unified Sch. Dist. of Antigo*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (unsupported factual assertions); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). While we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *Pettit*, 171 Wis. 2d at 647, and we will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf, *Jackson*, 229 Wis. 2d at 337. Here, Paul has failed to develop his arguments legally or to support them factually. Therefore, we affirm the circuit court on that basis.

In the respondent’s brief, Conway requests that this court impose sanctions on Paul for maintaining a frivolous appeal. The request is denied. “In order for parties before the court of appeals to have the proper notice and opportunity to be heard, parties wishing to raise frivolousness must do so by making a separate motion to the court[.]” *Howell v. Denomie*, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621. Here, Conway did not file a separate motion. A statement in a brief requesting that an appeal be held frivolous is insufficient notice to raise the issue. *Id.* Accordingly, we deny the request for sanctions on appeal. We note, however, that our decision regarding sanctions on appeal should not be construed as affecting any decision of the circuit court on the issue of sanctions.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that the respondent’s request for sanctions is denied.

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

Sheila T. Reiff
Clerk of Court of Appeals