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DISTRICT IV

September 16, 2021

To:

Hon. Jeffrey Kuglitsch
Circuit Court Judge
Electronic Notice

Joseph M. Mirabella
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Connie Heyerdahl
104 Falling Creek Circle
Janesville, WI 53548

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

2020AP1254

Connie Heyerdahl v. Society Insurance (L.C. # 2019CV297)

Before Kloppenburg, Fitzpatrick, 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).

Connie Heyerdahl, pro se, appeals a circuit court judgment dismissing Heyerdahl's personal injury action against respondents Society Insurance and KK & JJ, Inc., d/b/a Ding-A-Ling Supper Club. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).¹ We affirm.

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

According to Heyerdahl’s complaint, she was entering the Ding-A-Ling Supper Club when she tripped and fell in an area where there was a difference in the height of the floor between the entryway and the inside of the restaurant. Heyerdahl alleged that she suffered serious injuries as a result. The respondents moved for summary judgment. The circuit court granted their motion and dismissed Heyerdahl’s claims.

We affirm the circuit court because Heyerdahl’s brief does not contain any developed argument in which she applies the law to the facts or otherwise explains in any meaningful way why summary judgment in favor of the respondents was not proper.² Although we make some allowances for pro se litigants, “[w]e cannot serve as both advocate and judge” by making arguments for them. See *State ex rel. Harris v. Smith*, 220 Wis. 2d 158, 165, 582 N.W.2d 131 (Ct. App. 1998); see also *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (declining to address arguments that lacked “developed themes reflecting any legal reasoning”); *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (declining to consider an “unexplained and undeveloped” argument).³

Therefore,

² Heyerdahl also has not filed a reply brief. Accordingly, we could affirm the circuit court on the alternative basis that Heyerdahl has conceded one or more of the respondents’ arguments. See *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (taking an appellant’s “lack of reply as a concession”).

³ We note that we do not rely on the respondents’ argument that we should affirm the circuit court based on Heyerdahl’s failure to ensure that the record contains a copy of the summary judgment hearing transcript. The transcript would not have been necessary for this court to review the circuit court’s summary judgment decision. See *Jones v. Baecker*, 2017 WI App 3, ¶23, 373 Wis. 2d 235, 891 N.W.2d 823 (“We review a grant of summary judgment de novo using the same methodology as the circuit court.”).

IT IS ORDERED that the circuit court's judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals