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DISTRICT IV

November 18, 2021

To:

Hon. Jeffrey Kuglitsch
Circuit Court Judge
Electronic Notice

David J. Lang
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Mark A. Sweet
Electronic Notice

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

2020AP1569

Russell Ahrens v. Local 643 Transit AFSCME AFL-CIO
(L.C. # 2019CV1168)

Before Blanchard, P.J., Kloppenburg, 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).

Russell Ahrens appeals a circuit court order dismissing his complaint on the basis that it was barred under the one-year statute of limitations set forth in WIS. STAT. § 111.07(14) (2019-20).¹ 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.

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

BACKGROUND

Ahrens was employed by the City of Beloit as a bus driver, and was a member of a collective bargaining unit, Local #643 Transit, AFSCME AFL-CIO (the “Union”). On or about November 3, 2014, the City terminated Ahrens’s employment for a violation of work rules. The Union and Ahrens filed a grievance under the Union’s collective bargaining agreement (CBA) with the City. The grievance was heard by an arbitrator, who issued a decision on or about November 10, 2015. The arbitrator’s decision stated that Ahrens should be reinstated to his position, but without back pay and seniority. Ahrens wished to appeal the arbitrator’s decision but, according to the complaint he filed in this case, the “Union refused to file an Appeal or hire an Attorney for Ahrens[.]”

Ahrens hired his own attorney to pursue an appeal of the arbitrator’s decision. However, the Union eventually did file an appeal on Ahrens’s behalf, in the form of a Motion to Modify the Award of the Arbitrator, filed on February 8, 2016, in the Rock County Circuit Court. On August 19, 2016, the circuit court entered an order granting the motion in part and denying it in part. The court determined that there was no “just cause” for Ahrens’s termination, but that Ahrens was not entitled to back pay and seniority. The court further determined that the arbitrator had overstepped the terms of the CBA by placing conditions on Ahrens to return to work.

According to the complaint filed in this case, Ahrens informed the Union that he wished to appeal the circuit court’s decision, but did not receive responses to his emails. As he had in connection with his appeal of the arbitration decision, Ahrens again hired his own attorney to pursue an appeal of the circuit court decision. On September 6, 2016, the Union sent a Waiver

of Union Representation and Release of Claims to Ahrens. Ahrens signed the waiver, but alleges that he did so under “coercion.” Ahrens then filed an appeal of the circuit court decision, represented by his own attorney. This court reversed the decision of the circuit court in part and remanded the case. *Local 643 Transit, AFSCME, AFL-CIO v. City of Beloit*, No. 2016AP2156, unpublished slip op. (WI App Oct. 24, 2017). On April 5, 2018, the circuit court determined that Ahrens had not been terminated for just cause, and that he was entitled to his back pay and seniority. In its April 5, 2018 decision, the circuit court also denied Ahrens’s request for attorney fees.

The City of Beloit then drafted a settlement agreement regarding the terms for Ahrens’s back pay and seniority. Because the Union was a party to the CBA, the City notified Ahrens that it would require the Union to sign the agreement. According to the complaint, the Union “refused to sign off on the agreement” unless Ahrens would agree to waive any claims he had against the Union. Ahrens signed the settlement agreement on December 17, 2018, but alleges that he did so under “coercion.”

Ahrens filed the complaint in the instant case on November 18, 2019, alleging that the Union acted arbitrarily and in bad faith and failed to represent him fairly, in violation of WIS. STAT. § 111.06. Ahrens also alleged that the Union breached its contract with him by failing to provide fair representation. Ahrens sought damages based on allegations of emotional distress and mental anguish, pain and suffering, and costs, expenses and attorney fees incurred in his grievance procedures and appeals. The Union moved for dismissal on multiple grounds. After briefing by the parties and an oral ruling, the circuit court entered an order granting the motion to dismiss on the basis that the complaint was barred by the one-year statute of limitations in WIS. STAT. § 111.07(14). Ahrens appeals.

DISCUSSION

Ahrens purports to advance two arguments on appeal. His first argument is that the circuit court erred by barring his claims under the one-year statute of limitations in WIS. STAT. § 111.07(14), rather than applying the six-year statute of limitations for contract actions under WIS. STAT. § 893.43. Ahrens's second argument, which he does not develop with citations to supporting authority, is that the circuit court erred in its determination of what date the statute of limitations for his claims began to run.

We first address Ahrens's claim that the circuit court applied the wrong statute of limitations. In so doing, we apply well-established standards for statutory interpretation. "We apply the language of the statute as written, giving the words their commonly accepted meanings. Statutory context is relevant to the plain meaning of a statute. Previous cases construing a statute also become a part of our understanding of a statute's plain meaning." *Meyers v. Bayer AG, Bayer Corp.*, 2007 WI 99, ¶23, 303 Wis. 2d 295, 735 N.W.2d 448.

In his complaint, Ahrens alleges that the Union engaged in unfair labor practices under WIS. STAT. § 111.06. The statute of limitations for unfair labor practices is set forth plainly in WIS. STAT. § 111.07(14), which states, "The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged."

Ahrens takes the position that the statute of limitations identified in WIS. STAT. § 111.07(14) does not apply when a union member's suit against his or her union is brought in a state court forum, as opposed to the Wisconsin Employment Relations Committee (WERC). However, Ahrens fails to cite any authority in support of his position that would apply under the

facts of his case. In support of his position, Ahrens relies on two cases, *White v. Ruditys*, 117 Wis. 2d 130, 136, 343 N.W.2d 421 (Ct. App. 1983), and *Tully v. Fred Olson Motor Service Co.*, 27 Wis. 2d 476, 482, 134 N.W.2d 393 (1965), both of which are distinguishable from the instant case.

In *White*, the court ruled that the one-year statute of limitations in WIS. STAT. § 111.07(14) did not apply because the question before the court was whether the union had committed a breach of contract by failing to follow its own constitution and bylaws. *White*, 117 Wis. 2d at 136. The union had adopted a resolution singling out members of the union as being in bad standing and imposed fines against them. *Id.* at 133. The plaintiffs in *White* argued that the fines fell outside the confines of the constitution and bylaws of the union. Here, Ahrens does not allege any breach of the Union's bylaws or constitution. Ahrens also does not identify any specific contractual provision that he contends the Union violated. We are not persuaded that the ruling in *White* supports Ahrens's argument in favor of applying the six-year statute of limitations for contract actions.

In *Tully*, a member of a private sector union alleged violation of a collective bargaining agreement arising under Section 301(a) of the federal Labor Management Relations Act (LMRA). *Tully*, 27 Wis. 2d at 481. Our supreme court determined that, because the LMRA did not contain any statute of limitations specifically applicable to Section 301(a), the six-year statute of limitations under state contract law applied. *Id.* at 488-89.

In this case, by contrast, Ahrens alleges that a public sector union breached its duty of representation, and his claim arises under the Municipal Employment Relations Act., WIS. STAT. § 111.70, et seq. Here, unlike in *Tully*, the applicable statutory scheme provides an explicit

statute of limitations. “Chapter 111 is a comprehensive regulatory enactment which has supplanted many previously existing common law remedies.” *Acharya v. AFSCME, Council 24, WSEU, AFL-CIO, Loc. No. 1*, 146 Wis. 2d 693, 699, 432 N.W.2d 140 (Ct. App. 1988). When we interpret statutes, we begin with the plain meaning of the text. *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. Here, the text of WIS. STAT. § 111.07(14) explicitly provides that the right to proceed with a cause of action for unfair labor practice “shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.” There is no need to look beyond the plain language of the statute to settle the question of what statute of limitations should apply. The circuit court correctly determined that, under § 111.07(14), a one-year statute of limitations applied to Ahrens’s claims.

Next, we turn to Ahrens’s assertion that the circuit court erred by determining that April 5, 2018, and not the later date of December 17, 2018, was the date on which the statute of limitations began to run. As a threshold matter, we note that Ahrens’s argument on this point is undeveloped and unsupported, and we reject it on that basis. This court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463, *abrogated on other grounds by Wiley v. M.M.N. Laufer Family Ltd. P’ship*, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236 (lack of record citations); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). Although we affirm the circuit court for this reason, we choose to briefly explain why, if we were to address Ahrens’s argument, as best we understand it, regarding the applicable date for the statute of limitations, we would determine that it has no merit.

The circuit court found that the one-year statute of limitations on Ahrens's claims began to run no later than April 5, 2018. On that date, Ahrens's request for attorney fees was denied by the circuit court in the prior proceedings. However, the record establishes that, even before April 5, 2018, Ahrens was aware that the Union would not be providing him with legal representation on appeal, as evidenced by the Waiver of Union Representation and Release of Claims that he signed on September 6, 2016. If there remained any question of whether the Union would nonetheless pay Ahrens's attorney fees and costs, the answer to that question was resolved on April 5, 2018, when Ahrens's request for attorney fees was denied.

Ahrens appears to argue that the circuit court's finding that the statute of limitations began to run on April 5, 2018, ignores his allegations in the complaint that the Union acted in bad faith and in an arbitrary manner on numerous dates after April 5, 2018. However, as the Union asserts in its brief, it has long been held that discovery of the act, not the alleged wrongful nature of the act, serves as a date for the running of the limitations period. *See Johnson v. AFSCME Council 24*, Dec. No. 21980-C (WERC, Feb. 1990). Ahrens asserts that the date of December 17, 2018, should be used as the starting point for the statute of limitations, but he does not limit his claims for relief only to events that occurred on or after that date. He alleges many acts and omissions of the Union that pre-date December 17, 2018, arguing that he is entitled to recover damages for them all. Ahrens appears to argue that it was not until December 17, 2018, when he signed the settlement agreement with the Union under alleged coercion, that he discovered the full scope of the Union's wrongdoings against him. However, Ahrens fails to cite any authority suggesting that such an approach is permissible under applicable legal precedent. Therefore, we would reject his argument, as best we understand it, on that basis.

IT IS ORDERED that the order is summarily affirmed under 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