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**DISTRICT I**

January 11, 2022

To:

Hon. Jeffrey A. Conen  
Circuit Court Judge  
Electronic Notice

John Barrett  
Clerk of Circuit Court  
Milwaukee County  
Electronic Notice

Mark P. Broderick  
Electronic Notice

Matthew Nicholas Kees  
Electronic Notice

Beverly Ann Gladney  
4330 N. 36th St.  
Milwaukee, WI 53216

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

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2020AP900

Beverly Ann Gladney v. LaQuinta Inns & Suites  
(L.C. # 2018CV5197)

Before Brash, C.J., Donald, P.J., and Dugan, J.

**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).**

Beverly Ann Gladney, *pro se*, appeals an order granting summary judgment to LaQuinta Inns and Suites (LaQuinta) and dismissing her personal injury claims against the company. Upon review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> Accordingly, we affirm.

Gladney stayed at a LaQuinta hotel in Glendale from March 15, 2018, through May 23, 2018. During the course of her stay, she complained about the condition of her room on several

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

occasions, and the hotel management twice moved her to a different room in response. Shortly after the second such move, she vacated the hotel.

On June 19, 2018, Gladney filed a complaint in circuit court alleging that LaQuinta had breached its duty to maintain the Glendale premises in a safe and sanitary condition. She subsequently filed an amended complaint indicating that she was exposed to bed bugs and toxic black mold in the rooms that she occupied. The amended complaint alleged that, following these exposures, she initially experienced “frequent urination, nausea, [and] heart palpitations,” and that she later experienced additional symptoms, namely: “dizziness, visual disturbances, increased nausea, neurological problems, swollen puffy eyes, hair thinning/loss, coughing, swelling, extreme fatigue, feverish[ness], problems with memory (remembering things), foggy thinking, shortness of breath, [and] joint pain.”

In October 2019, a few days before the close of discovery and after the deadline for naming witnesses had passed, LaQuinta filed a motion requesting both dismissal for failure to prosecute and summary judgment. In support, LaQuinta alleged that Gladney had not responded adequately to its discovery demands, or provided necessary information about her allegations, or named any expert witnesses although an expert witness was required to support her claims. Gladney did not file a response to the motion.

The circuit court docket reflects that on February 13, 2020, the circuit court held a hearing to address LaQuinta’s motion. Later that day, the circuit court entered a written order dismissing Gladney’s case with prejudice. The order provided that, for the reasons set forth in

LaQuinta's motion, no genuine issues of material fact existed, and LaQuinta was entitled to judgment as a matter of law.<sup>2</sup> Gladney appeals.

Gladney asserts in her brief-in-chief that the circuit court was biased against her and that counsel for LaQuinta engaged in unethical conduct. Although she quotes portions of the American Bar Association's model rules of professional conduct and offers broad statements about judicial obligations of fairness and impartiality, she fails to develop an argument linking these references to a theory that the circuit court improperly dismissed her case. We will not develop her arguments for her. See *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

Moreover, as LaQuinta accurately states, Gladney fails to show that she raised her claims of bias and unethical behavior in response to the motion for summary judgment and dismissal. Indeed, the record is clear that Gladney did not file any response to that motion. We do not address issues raised for the first time on appeal. See *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.

For the sake of completeness, we also observe that the record before this court does not reflect any basis to disturb the circuit court's dispositive order. "[A] circuit court's decision to grant summary judgment is a question of law that th[is] court reviews independently."

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<sup>2</sup> A transcript of the February 13, 2020 hearing is not in the appellate record. Gladney filed a statement on transcript advising that no transcripts were necessary for her appeal, and nothing available to this court suggests that she requested preparation of any transcripts. Gladney did file a motion to supplement the record during the appellate briefing period, and in the motion she stated that the record should include, among other items, a "2/13/2020 – status conference." We denied the motion because she failed to show that any of the items she sought to include in the record had "legal significance regarding the issues" that she planned to raise on appeal.

*Strasser v. Transtech Mobile Fleet Serv., Inc.*, 2000 WI 87, ¶28, 236 Wis. 2d 435, 613 N.W.2d 142. We conduct our review using the same methodology as does the circuit court. *See id.*, ¶30. Summary judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *See* WIS. STAT. § 802.08(2). A court considering a motion for summary judgment construes all facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *See Thomas ex rel. Gramling v. Mallett*, 2005 WI 129, ¶4, 285 Wis. 2d 236, 701 N.W.2d 523.

When the plaintiff’s complaint states a claim for relief, a court examines the moving party’s submissions to determine whether that party made a prima facie case for summary judgment. *See Gross v. Woodman’s Food Mkt., Inc.*, 2002 WI App 295, ¶30, 259 Wis. 2d 181, 655 N.W.2d 718. If so, the court examines the opposing party’s submissions to determine whether material facts are in dispute requiring a trial. *See id.*

In this case, Gladney alleged in her complaint that she suffered a variety of physical symptoms due to exposure to toxic black mold and pests during her stay in a LaQuinta hotel. LaQuinta did not suggest that she failed to state claims for relief. Rather, LaQuinta requested summary judgment dismissing those claims. In support, LaQuinta submitted copies of Gladney’s witness list, answers to interrogatories, responses to demands for production of documents, and excerpts from her deposition. The submissions show that Gladney did not name an expert witness in this matter and did not identify any medical professional who would testify that her symptoms arose from the exposures that she alleged.

A party must present expert testimony when the issues are “so complex or technical that a jury without the assistance of expert testimony would be speculating.” See *Cramer v. Theda Clark Mem’l Hosp.*, 45 Wis. 2d 147, 152, 172 N.W.2d 427 (1969). Citing *Jandrt ex rel. Brueggeman v. Jerome Foods, Inc.*, 227 Wis. 2d 531, 597 N.W.2d 744 (1999), LaQuinta contends on appeal, as it similarly contended in the circuit court, that Gladney’s claims of injury based on exposure to mold and pests are sufficiently complex and technical as to require an expert witness to establish causation. See *id.* at 565-67. Indeed, under *Jandrt*, a party in Wisconsin may not maintain a lawsuit alleging injury caused by toxic exposure absent a qualified physician to support the claim. See *Kolesar v. United Agri Prods., Inc.*, 412 F. Supp. 2d 686, 696 (W.D. Mich. 2006) (discussing Wisconsin law); see also *Ramsden v. AgriBank, FCB*, 63 F. Supp. 2d. 958, 961 (W.D. Wis. 1999), *vacated on other grounds*, 214 F.3d 865 (7th Cir. 2000) (explaining that “Wisconsin law requires expert testimony to establish causation when toxic exposures are involved”). Accordingly, LaQuinta argues that Gladney’s failure to name an expert witness constitutes an insufficiency of proof. See *Cramer*, 45 Wis. 2d at 152; see also *Weiss v. United Fire & Cas. Co.*, 197 Wis. 2d 365, 381, 541 N.W.2d 753 (1995).

Gladney failed to file anything with the circuit court that might refute the foregoing propositions. Her arguments in this court similarly fail to grapple with the authorities that require a plaintiff to offer expert testimony to support complex claims. In the absence of any relevant countervailing arguments, and in light of the facts and the law that LaQuinta presents, we conclude that the circuit court properly granted summary judgment in LaQuinta’s favor and dismissed Gladney’s case. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (explaining that a party may not complain when a proposition is taken as confessed that the party did not undertake to refute). Accordingly, we affirm.

IT IS ORDERED that the circuit court's February 13, 2021 order of dismissal is summarily affirmed. *See* 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*