



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 II

March 16, 2022

To:

Hon. David M. Reddy
Circuit Court Judge
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County
Electronic Notice

Michael J. Meyer
Electronic Notice

Christopher D. Wolske
Electronic Notice

Thomas E. Hanna
Electronic Notice

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

2021AP526

Thomas E. Hanna v. Michael Holden (L.C. #2020CV428)

Before Gundrum, P.J., Grogan and Kornblum, 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).

Thomas E. Hanna appeals pro se from a judgment of the circuit court dismissing this lawsuit. He contends the circuit court “err[ed] in not ordering defendant Holden to answer Hanna’s amended complaint,” “err[ed in] granting defendant Holden’s motion to dismiss based on the original complaint when Hanna had filed an amended complaint before [a February 3, 2021] hearing,” and erred in “grant[ing] [the] motion to dismiss when that dismissal prohibited Hanna’s statutory right to amend his complaint according to [WIS. STAT. §] 802.09(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 (2019-20).¹ We affirm.

Hanna filed a legal malpractice complaint against Michael Holden, and on December 23, 2020, Holden moved for dismissal of the complaint on the ground that it failed to state a claim upon which relief may be granted. On December 29, 2020, the circuit court set the matter for a motion hearing to be held on February 3, 2021.

On January 19, 2021, Hanna filed an amended complaint. The next day, he filed “Plaintiff’s Answer to Defendant Michael Holden[’s] Motion to Dismiss” in which he asserted that

[a] motion to dismiss is not appropriate when that motion is based on an original complaint that has been superseded by an amended ... complaint.

Plaintiff has a right to amend [his] complaint within 6 months of the filing of the original complaint. [*See* WIS. STAT.] § 802.09(1).

Defendant Holden was served the amended summons and complaint by mailing them to the defendant’s attorney of record and then filing the same with the court on 1/19/21.

The circuit court kept the February 3, 2021 hearing on its calendar, and Hanna and counsel for Holden participated in that hearing. On February 9, 2021, the court entered a written order stating that it “rendered an oral ruling” at the February 3 hearing “after reviewing the briefs and affidavits submitted, and after hearing oral argument from the parties, and being fully advised on the issues.” The court granted Holden’s motion to dismiss “[f]or the reasons stated

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

on the record” at that February 3 hearing and ordered that Hanna’s “*lawsuit* and *all* claims and causes of action set forth herein against [Holden] are hereby dismissed in their entirety, on the merits and with prejudice.” (Emphasis added.)²

On appeal, Hanna first contends that the circuit court erred in dismissing his complaint because the court did not “requir[e] [Holden] to answer Hanna’s Amended Complaint.” Hanna claims the “motion to dismiss hearing was in violation of [WIS. STAT.] § 802.09(1) which allowed Hanna to file and serve an amended complaint within 6 months of the filing of the original complaint and that defendant Holden was then required to answer.”

To begin, at the time the court dismissed the complaint, no answer was due by Holden. *See* WIS. STAT. § 802.09(1). Moreover, Hanna cites to no law holding that a circuit court must first wait until an answer is filed to an amended complaint before dismissing that complaint.

Hanna also complains that the circuit court erred in granting Holden’s motion to dismiss because that motion was “based on the original complaint” and Hanna “had filed an amended complaint” before the February 3, 2021 hearing. Although Hanna has not provided us with a transcript of that hearing, he acknowledges that at the hearing, “the [circuit] court was aware that Hanna had filed an amended summons and complaint and served them upon Holden.”

In the circuit court’s February 9, 2021 written order, the court stated that it was dismissing Hanna’s “lawsuit” and “all claims and causes of action set forth herein.” This means

² Following the circuit court’s dismissal of his lawsuit, Hanna also filed various motions to reconsider. Because he has failed to sufficiently develop an argument as to error by the court in relation to these motions, we address them no further. *See ABKA Ltd. P’ship v. Board of Rev.*, 231 Wis. 2d 328, 349 n.9, 603 N.W.2d 217 (1999) (“[We] will not address undeveloped arguments.”).

that, as part of Hanna’s “lawsuit” and “claims and causes of action set forth herein,” the amended complaint was also dismissed. As Holden notes, Hanna has failed to provide us “with anything to suggest that the circuit court did not address the claims set forth in Hanna’s amended complaint when dismissing all of Hanna’s claims with prejudice.”³ (Emphasis omitted.) The reasons for dismissal of the entire lawsuit, including the amended complaint, were “stated on the record” at the February 3, 2021 hearing.

As the appellant, it is Hanna’s burden “to demonstrate that the [circuit] court erred.” *See Seltrecht v. Bremer*, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). It is also his “responsibility to ensure completion of the appellate record and ‘when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the [circuit] court’s ruling.’” *State v. McAttee*, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774 (citation omitted). If the circuit court’s reasons for dismissing Hanna’s entire lawsuit were erroneous, it was Hanna’s responsibility to show us what those reasons were—by providing a transcript from the hearing at which the court explained its reasons—and how they were erroneous under the law. Simply put, Hanna is unable to demonstrate that the circuit court erred where the court’s reasons for ruling as it did are not included in the record. *See State v. Grant*, Nos. 2013AP1829-CR and 2013AP1830-CR, unpublished slip op. ¶6 (WI App Sept. 4, 2014), where we said:

Grant has failed to ensure that the record contains a transcript of the circuit court’s oral ruling at the hearing on Grant’s postconviction motions. Because the circuit court’s written order

³ As Holden points out, Hanna “makes no argument that he pled a claim that should have survived a motion to dismiss,” and “[h]e does not contend that the circuit court dismissed his claims without a proper legal basis.”

refers back to the circuit court’s oral reasoning at that hearing, Grant’s failure to include the transcript makes it impossible for this court to review the circuit court’s reasons for denying Grant’s motions.

Lastly, we note Hanna’s grievance that the circuit court’s dismissal of the lawsuit “prohibited Hanna’s statutory right to amend his complaint according to [WIS. STAT. §] 802.09(1).” We do not see how this is so, since Hanna did in fact file his amended complaint, on January 19, 2021, and the court, as Hanna acknowledges, was aware of that amended complaint at the February 3, 2021 hearing.

For the foregoing reasons, we conclude that Hanna has failed to carry his appellant’s burden to demonstrate that the circuit court erred in dismissing his lawsuit.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals