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DISTRICT III

November 22, 2022

To:

Hon. Gregory B. Huber
Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Joshua J. Brady
Electronic Notice

Larry W. Rader
2411 Ridge View Drive
Wausau, WI 54401

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

2021AP840 Ally Capital Corp. d/b/a Ally Bank v. Larry W. Rader
(L. C. No. 2021SC487)

Before Hruz, J.[1]

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).

Larry Rader, pro se, appeals a judgment entered on the pleadings in favor of Ally Capital Corp. in a consumer replevin action. The circuit court ruled that Ally was entitled to possession of a 2018 Toyota Corolla, which was the collateral in an installment agreement that the seller of the vehicle had assigned to Ally. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition, and we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In 2019, Rader purchased a 2018 Toyota Corolla from Ballweg Automotive and signed a "Motor Vehicle Consumer Simple Interest Installment Sale and Security Agreement" to finance his payment for the vehicle. Ballweg then assigned the installment agreement, for value, to Ally, and Ally confirmed that assignment in a letter to Ballweg. Accordingly, Ally took a security interest in the vehicle as the holder of the installment agreement. The purchase price of the vehicle was $12,050, and Rader contracted to make monthly installment payments of $290.15 until the balance was paid in full. Rader never made any payments toward the installment agreement, but he maintained possession of the vehicle.

In March 2021, Ally filed a consumer replevin complaint against Rader in small claims court to recover possession of the vehicle, pursuant to WIS. STAT. § 425.205. The complaint requested the return of the vehicle and the costs of the action due to Rader's alleged default on the installment agreement. In response, Rader filed multiple answers and a counterclaim. In his operative answer, Rader admitted that he had not made any payments on the contract. He further argued that the installment agreement was invalid. Ally promptly filed a motion for judgment on the pleadings and to dismiss Rader's counterclaim. Rader filed a response to the motion, asserting various new claims and argued that, given all his counterclaims, the small claims court lacked jurisdiction over the parties' claims.

On April 20, 2021, Rader filed a new counterclaim, asserting that the circuit court lacked subject matter jurisdiction and alleging abuse of process by Ally. Rader paid the fee required to have the small claims case converted to large claims court, but he did so without filing an associated motion. Ally filed a letter objecting to Rader's attempt to move the case to large claims court, and it requested a hearing under WIS. STAT. § 799.206(3). On May 3, 2021, the court held a hearing on Ally's objection, and it ruled that the replevin case would remain in small

claims court, pursuant to WIS. STAT. § 425.205(1)(e). The court informed the parties that it would provide a written decision on Ally's motion for judgment on the pleadings.

The same day as the hearing on Ally's objection, Rader also filed an "Affidavit on car repair defects 3/5/19 and mileage excess," which referred to alleged warranty repairs performed by Ballweg Automotive. The affidavit also alleged that there was no actual security assignment to Ally and listed Rader's concerns with the vehicle's performance. Two days later, Rader filed a document entitled "Judicial Notice of 2020 SEC 10K can be taken of ALLY corporate excerpts." The document stated that Ally was a foreign (i.e., non-Wisconsin) corporation, that there was no valid assignment of the installment agreement, and that the small claims court lacked jurisdiction. Rader again requested that the replevin case be dismissed. Ally filed a response reasserting that it had a security interest in the vehicle and provided proof of Ally's registration as a corporation allowed to do business in Wisconsin. Within the response, Ally noted that regardless of any potential merit in Rader's alleged affirmative defenses concerning a defective installment agreement or an ineffective assignment of that agreement, the replevin case would still require that the vehicle be returned to Ally as the payer to the dealership.

On May 6, 2021, the circuit court issued a written decision on the motion for judgment on the pleadings, ruling in favor of Ally. The court concluded that Ally set forth a legally sufficient claim for consumer replevin and that Rader's pleadings failed to establish any defense to the claim or create a triable issue of fact. Rader's answer, the court stated, "allege[d] almost no facts at all" and consisted "almost entirely of blanket denials and legal conclusions." The court further found that "[a]t this stage of the proceedings, the only issue that is ripe for judicial determination is the right to possession of the collateral." The court noted that, under WIS. STAT. § 425.205(1)(e), its judgment determined only the right to possession of the collateral (the 2018

Toyota Corolla) and did not bar any separate action for damages or deficiency. The court further concluded that Rader could now move his counterclaims to large claims court, and that the parties could initiate any proceedings with respect to damages or deficiency.

A day after the circuit court issued its written order, Rader filed a document entitled "Objection to Proposed Order," alleging that Ally did not have standing to bring the replevin suit. He then filed this appeal. On appeal, Rader again concedes that he made no payments toward the installment agreement, but he appears to argue he is absolved of that obligation because there was no valid assignment of the security interest, the installment agreement was an illegal contract, Ally lacked standing to enforce the installment agreement, the circuit court and this court lacked "jurisdiction," and there was a violation of due process and use of an "unconstitutional" procedure by virtue of the replevin case staying in small claims court.[2]

As an initial matter, we note that Rader failed to appropriately raise many of these issues before the circuit court. Accordingly, we could deem those arguments forfeited. *See* ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶15, 273 Wis. 2d 76, 681 N.W.2d 190 ("Issues that are not preserved at the circuit court … generally will not be considered on appeal."). Additionally, Rader fails to adequately support his arguments with facts or citations to the record. Furthermore, his arguments on appeal are undeveloped and lack clarity. We will not abandon

[2] Rader's briefing fails to cite to the record. On appeal, a party must include appropriate factual references to the record in its briefing; references to the parties' appendices alone are insufficient. WIS. STAT. RULE 809.19(1)(d)-(e); ***United Rentals, Inc. v. City of Madison***, 2007 WI App 131, ¶1 n.2, 302 Wis. 2d 245, 733 N.W.2d 322. This court has no obligation to scour the record to review arguments unaccompanied by adequate record citation. ***Roy v. St. Lukes Med. Ctr.***, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256. While we understand Rader is a pro se appellant, he was formerly a licensed attorney in Wisconsin, and we warn him that future violations of the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83(2).

our neutrality to develop or enhance Rader's arguments for him. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

As best we can discern Rader's arguments, he fails to contend that there was any error in the circuit court's ruling per se. In particular, he does not dispute any facts that Ally presented in the circuit court or now on appeal. In fact, Rader admits to not making any payments toward the installment agreement. Notably, Rader fails to explain why he believes there was no valid assignment of the security interest. Nor does he deny that he signed the installment agreement. He also does not dispute that Ally paid Ballweg Automotive for the assignment. He provides no factual allegations, much less evidence, as to how the installment agreement was illegal or otherwise invalid. Rader cites only to ***McMullen v. Hoffman***, 174 U.S. 639, 654-56 (1899), in support of his argument that the agreement was illegal. However, he does not explain how ***McMullen*** is relevant, either generally or specifically to this WIS. STAT. ch. 425 consumer replevin action.

Rader also fails to allege any facts, or cite case law with any specificity, in support of his claim that Ally lacked standing in this consumer replevin case. Rader further fails to explain how or why the circuit court or this court lacks "jurisdiction." He does not clarify why either court lacks personal jurisdiction or subject matter jurisdiction; instead, Rader simply states, in an ipse dixit manner, that there is no jurisdiction. To the contrary, this case was properly venued in small claims court under WIS. STAT. § 425.205(1), and it is properly before this court on appeal. Rader does not explain how this case remaining in small claims court for the sole purpose of determining who is the lawful possessor of the vehicle is a "violation of due process and unconstitutional procedure." As such, we decline to address those issues further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

Rather, it is clear that Ally's complaint, including its incorporated exhibits, sets forth a prima facie case for consumer replevin over a good—i.e., the vehicle—subject to a consumer credit transaction. "An order granting judgment on the pleadings presents a question of law that is reviewed de novo." ***Soderlund v. Zibolski***, 2016 WI App 6, ¶21, 366 Wis. 2d 579, 874 N.W.2d 561 (2015). We first "examine the complaint to determine whether a claim has been stated." ***Id.*** Then, we "examine the responsive pleading to ascertain whether an issue of material fact exists." ***McNally v. Capital Cartage, Inc.***, 2018 WI 46, ¶23, 381 Wis. 2d 349, 912 N.W.2d 35. If there are no genuine issues of material fact, judgment on the pleadings is proper. *See* ***Southport Commons, LLC v. DOT***, 2021 WI 52, ¶18, 397 Wis. 2d 362, 960 N.W.2d 17.

Here, the complaint identified the transaction at issue, the collateral, Rader's default (which followed a notice of his right to cure), and the amount owed. The proceedings appropriately determined which party had the right to possess the vehicle. *See* WIS. STAT. § 425.205(1)(e). Given the allegations and admissions in the pleadings, Ally is entitled to a return of the vehicle as a matter of law. As the circuit court correctly noted, Rader's answer sets forth mostly conclusions of law and does not directly dispute any facts alleged by Ally nor does it allege any new facts.

In all, the circuit court did not err in concluding that Ally was entitled to a judgment of replevin for the vehicle based on the pleadings. *See* ***Town of Windsor v. Village of DeForest***, 2003 WI App 114, ¶5, 265 Wis. 2d 591, 666 N.W.2d 31 ("If the complaint is sufficient to state a claim and the responsive pleadings raise no material issues of fact, judgment on the pleadings may be appropriate."). The court also correctly noted that, consistent with WIS. STAT. § 425.205(1)(e), Rader's counterclaims can continue in a separate proceeding. *See*

§ 425.205(1)(e) ("[S]uch judgment shall not bar any subsequent action for damages or deficiency.").

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. 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