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DISTRICT III

January 10, 2023

To:

Hon. Scott M. Corbett
Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Marathon County Courthouse
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Larry W. Rader
2411 Ridgeview Dr.
Wausau, WI 54401

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

2021AP1619 Larry W. Rader v. Pine Ridge Trails Community Services, Inc. (L. C. No. 2021CV58)

Before Stark, P.J., Hruz and Gill, 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).

Larry Rader, pro se, appeals a judgment dismissing his claims against Pine Ridge Trails Community Services, Inc. ("Pine Ridge"), Acuity Insurance Company, Ken Cloutier, Craig Olafsson, Charles MacCarthy, Steve Lammers, Janet Herring, and Mathy Construction Company ("Mathy"). 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 summarily affirm the circuit court's judgment.

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

Pine Ridge is the homeowners' association for the Pine Ridge Trails Addition, which consists of twenty-five lots. Rader owns and resides at one of those lots. By virtue of his lot ownership, Rader is a member of Pine Ridge and is entitled to one of twenty-five equal votes on matters decided by Pine Ridge's membership.

According to an "Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Pine Ridge Trails Addition" from 2015 ("the 2015 Declaration"), Pine Ridge's members own their respective lots and the "[l]iving [u]nits"—i.e., residences—situated on those lots. The driveways between the lots and the road, however, are "[c]ommon [a]rea[s]" or "[l]imited [c]ommon area[s]." Pine Ridge owns the common areas and limited common areas, but each lot owner has an easement for the right of ingress and egress over the driveway servicing his or her lot.

In January 2021, Pine Ridge solicited an estimate from Mathy for the cost to remove and repave the driveways in the Pine Ridge Trails Addition. At a special meeting on January 20, 2021, Pine Ridge's members voted on a resolution to fund the repaving project, which proposed that a special assessment of $4,919 "be levied equally on all Member Owners." The resolution passed by a vote of twenty-two to two. The following day, Rader objected to the resolution in an email, asserting that the assessment amount of $4,919 was a "scam" because Mathy's estimate showed that the cost to repave the driveway servicing Rader's lot would be only $2,475.

Rader filed the instant lawsuit on February 1, 2021. He named as defendants Pine Ridge, Acuity (Pine Ridge's insurer), the five members of Pine Ridge's board of directors, and Mathy. He asserted that the assessment of $4,919 was "in derogation of [his] actual cost of $2475." He further asserted that Pine Ridge's conduct in imposing the assessment was an "intentional

slander of title and an illegal scam and theft of [his] property." He also contended that Pine Ridge's contract with Mathy was based on the "illegal assessment" and was therefore "unenforceable and void." Rader stated that he was seeking "declaratory relief from the illegal assessment on his homestead, compensatory and punitive damages against defendants []for Breach of Privacy, Slander of Title, deemed a Scam-Theft, and removal of the board and officers, or ***Disseverment of the Association***." He also asked the circuit court to clear the title to his property and "vacat[e] the Mathy contract and board resolution and assessment relating thereto." Rader later filed an amended summons and complaint, which modified the summons portion of his earlier pleading but left the complaint portion unchanged.

Mathy moved to dismiss Rader's complaint under WIS. STAT. § 802.06(2)(a)6., arguing that Rader had failed to state a claim upon which relief could be granted. The non-Mathy defendants filed their own motion to dismiss, arguing both that Rader's complaint failed to state a claim upon which relief could be granted and that Rader had failed to properly serve Ken Cloutier, one of Pine Ridge's directors. Rader, in turn, filed a motion for judgment on the pleadings pursuant to § 802.06(3).

Following a scheduling conference, the Honorable Suzanne C. O'Neill set a briefing schedule on the parties' pending motions, which required the parties' final briefs to be filed by May 3, 2021. On March 26, 2021, Rader submitted a proposed judgment to the circuit court, which, if accepted by the court, would have declared the contract between Pine Ridge and Mathy to be void and unenforceable and awarded Rader $2.8 million in damages. Judge O'Neill declined Rader's proposed judgment on April 9, 2021, noting that "[i]ssues remain pending."

In April 2021, Scott M. Corbett was elected to serve as judge in the newly created Branch 6 of the Marathon County Circuit Court. On August 2, 2021, a "Notice of Assignment of Judge" was filed, which reassigned the instant case to Judge Corbett. On September 8, 2021, Judge Corbett issued a written decision denying Rader's motion for judgment on the pleadings and granting the defendants' motions to dismiss. The following day, Rader filed a "Notice of Lack of Authority of Br[.] 6 Circuit Judge to Act as Judge in the Above Case." He asserted that the reassignment of the case to Judge Corbett was "illegal and unconstitutional" and that Judge Corbett was an "interloper" whose actions amounted to "an unlawful appellate review." Rader therefore demanded that Judge Corbett's September 8 decision be vacated. Judge Corbett subsequently entered a final judgment dismissing Rader's complaint in its entirety and awarding costs to the defendants.

Rader now appeals, raising two general arguments. First, Rader argues that Judge Corbett lacked jurisdiction to preside over this case. Second, Rader claims that he is "entitled to relief per his motion for declaratory judgment." At the outset, we note that Rader's appellate briefs are difficult to follow and that his arguments are conclusory and largely undeveloped. We could affirm the circuit court's judgment on this basis alone. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address undeveloped arguments). Nevertheless, we briefly explain why Rader's arguments also fail on the merits.

With respect to Rader's jurisdictional argument, Rader merely asserts that Judge Corbett "is an interloper and is without jurisdiction to rule in the case." In support of this proposition, Rader cites ***United States v. Sineneng-Smith***, 590 U.S. ___, 140 S. Ct. 1575 (2020), and ***Greenlaw v. United States***, 554 U.S. 237 (2008), stating that those cases "condemn[] the use of

the doctrine of 'Hypothetical Jurisdiction' by review [sic] the entire record before deciding jurisdiction." Rader does not, however, provide any pinpoint citations in support of this assertion or explain how the concept of "hypothetical jurisdiction" relates to this case. Rader also cites ***Steel Co. v. Citizens for a Better Environment***, 523 U.S. 83 (1998), for the proposition that a court "cannot proceed" without proper jurisdiction. The mere fact that a court cannot proceed without jurisdiction does nothing to support Rader's claim that Judge Corbett lacked jurisdiction to proceed under the specific circumstances of this case.

Again, we could reject Rader's jurisdictional claim solely on the grounds that it is undeveloped, conclusory, and unsupported by references to relevant legal authority. *See* ***Pettit***, 171 Wis. 2d at 646-47. We note, however, that the defendants aptly explain why Judge Corbett did, in fact, have jurisdiction to preside in this case.[2] Subject matter jurisdiction "refers to the power of a court to decide certain types of actions." ***City of Eau Claire v. Booth***, 2016 WI 65, ¶7, 370 Wis. 2d 595, 882 N.W.2d 738 (citation omitted). As relevant here, article VII, section 8, of the Wisconsin Constitution states: "Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state." Rader has not cited any legal authority—and we are not aware of any authority—showing that the circuit court's subject matter jurisdiction with respect to this case has been abrogated in any way. The court—and Judge Corbett as a sitting Marathon County Circuit Court judge—therefore had subject matter jurisdiction to preside over this case.

[2] Like the defendants, we presume that Rader's jurisdictional argument pertains to subject matter jurisdiction, rather than personal jurisdiction.

To the extent Rader intends to argue that Judge Corbett lacked competency to exercise his subject matter jurisdiction in this case, that argument also fails. *See* ***Booth***, 370 Wis. 2d 595, ¶7 (explaining that competency refers to a circuit court's power to exercise its subject matter jurisdiction in a particular case). It is undisputed that Judge Corbett was duly elected to serve as a circuit court judge in the newly created Branch 6 of the Marathon County Circuit Court. WISCONSIN STAT. § 751.03(3) grants the chief judge of any judicial administrative district authority to "assign any circuit judge within the district to serve in any circuit court within the district." We agree with the defendants that it was not "unreasonable for this power to be used to relieve the burden on Marathon County's other judicial branches by moving cases to the new Branch 6." Moreover, Rader cites no legal authority in support of the proposition that transferring a case from one branch of a circuit court to another branch deprives the second judge of either subject matter jurisdiction or competency to exercise subject matter jurisdiction. On this record, there is no basis to conclude that Judge Corbett lacked either subject matter jurisdiction or competency to preside over this case.[3]

As noted above, Rader also argues that he is "entitled to relief per his motion for declaratory judgment," presumably referring to his motion for judgment on the pleadings. Again, Rader's arguments on this issue are conclusory and undeveloped, and we could reject them on that basis alone. *See* ***Pettit***, 171 Wis. 2d at 646-47. Regardless, we briefly address Rader's claims.

[3] The defendants also argue that Rader forfeited his jurisdictional argument by failing to file a request for judicial substitution after Judge Corbett was assigned to this case. Because we reject Rader's jurisdictional argument on the merits, we need not address the defendants' forfeiture argument. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (court of appeals need not address all issues raised by the parties if one is dispositive).

Rader asserts—in a single sentence without any developed argument—that Judge O'Neill committed "clear error" by declining to enter Rader's proposed judgment filed in March 2021. This assertion is plainly meritless. Before Rader filed his proposed judgment, Judge O'Neill had set a briefing schedule on his motion for judgment on the pleadings and on the defendants' motions to dismiss. The time for the parties to file their final briefs on those motions had not yet elapsed when Rader filed his proposed judgment. Judge O'Neill therefore correctly declined to enter judgment in Rader's favor, noting that "[i]ssues remain[ed] pending."

Thereafter, Judge Corbett properly denied Rader's motion for judgment on the pleadings and granted the defendants' respective motions to dismiss. "A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint." ***Data Key Partners v. Permira Advisers LLC***, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693. Similarly, the first step when addressing a motion for judgment on the pleadings is to determine whether the complaint states a claim upon which relief may be granted. ***Freedom from Religion Found., Inc. v. Thompson***, 164 Wis. 2d 736, 741, 476 N.W.2d 318 (Ct. App. 1991). To state a claim, a complaint "must plead facts, which if true, would entitle the plaintiff to relief." ***Data Key***, 356 Wis. 2d 665, ¶21. "[T]he sufficiency of a complaint depends on substantive law that underlies the claim made because it is the substantive law that drives what facts must be pled." ***Id.***, ¶31.

In his appellate briefing, Rader does not identify the elements of any of the claims alleged in his complaint or explain why the facts pled in the complaint, if true, would satisfy those elements. To the extent Rader sought a declaration that the resolution imposing a $4,919 assessment on his property was "illegal," his complaint fails to state a claim on that basis. Rader's complaint expressly references the 2015 Declaration, which grants Pine Ridge the authority to levy special assessments when approved by "not less than two-thirds of the votes of

the Owners who are voting in person or by proxy at a special meeting duly called for that purpose." The 2015 Declaration further provides that each living unit "shall be assessed at a uniform rate." Documents attached to Rader's complaint show that the resolution at issue in this case was passed at a special meeting by a vote of twenty-two to two—more than the necessary two-thirds majority. Moreover, the resolution required each owner to pay the same amount, $4,919. In other words, a uniform amount was assessed against each living unit. On these facts, there are no grounds to claim that the special assessment was "illegal" under the 2015 Declaration.

Rader's other claims are similarly deficient. To succeed on a slander of title claim, a plaintiff must show "[a] knowingly false, sham or frivolous claim of lien or any other instrument relating to real or personal property [that was] filed, documented or recorded [and] which impairs title." ***Kensington Dev. Corp. v. Israel***, 142 Wis. 2d 894, 902-03, 419 N.W.2d 241 (1988); *see also* WIS. STAT. § 706.13(1). Rader's complaint does not allege that any of the defendants have filed, documented, or recorded any instrument impairing title to his property.

Rader's complaint also fails to allege facts sufficient to state a claim for invasion of privacy. None of the facts set forth in Rader's complaint can be reasonably construed as alleging an "[i]ntrusion upon the privacy of another of a nature highly offensive to a reasonable person"; "[t]he use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person"; "[p]ublicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person"; or "[c]onduct that is prohibited under [WIS. STAT. §] 942.09"—that is, capturing, reproducing, or distributing an unauthorized representation of nudity. *See* WIS. STAT. § 995.50(2)(am)4. Rader's complaint simply challenges the amount of a special assessment levied against his property by his homeowners' association.

With respect to Rader's claim for "theft," it is not clear whether Rader intended to allege a statutory civil theft claim or a common law claim for conversion. *See* ***Estate of Miller v. Storey***, 2017 WI 99, ¶40, 378 Wis. 2d 358, 903 N.W.2d 759. Both claims, however, require the plaintiff to show that the defendant took or used the plaintiff's property without the plaintiff's consent. ***Id.*** Rader's complaint does not allege that any of the defendants took or used any of his property without his consent. In particular, the complaint does not allege that Rader has actually paid any portion of the challenged assessment.

As for Rader's allegation that Pine Ridge's contract with Mathy was "unenforceable and void" because it was based on an "illegal assessment," we have already concluded that the complaint fails to allege sufficient facts to establish that the assessment was illegal. Furthermore, as the circuit court correctly noted, Rader lacks standing to challenge the contract between Pine Ridge and Mathy. Rader has suffered no injury as a result of the contract's existence.

Rader's complaint also requested punitive damages, but "there can be no punitive damages without compensatory damages." ***C & A Invs. v. Kelly***, 2010 WI App 151, ¶10, 330 Wis. 2d 223, 792 N.W.2d 644. In addition, the complaint does not allege a valid basis for a direct action claim against Acuity, as Rader does not seek damages for "the death of any person or for injury to persons or property." *See* WIS. STAT. § 632.24. Furthermore, we agree with the circuit court that the complaint "fails to allege that the individual members of the Pine Ridge … board of directors did anything wrong."

For these reasons, we conclude that the circuit court properly denied Rader's motion for judgment on the pleadings and properly granted the defendants' motions to dismiss. To the

extent Rader intended to raise additional arguments in his reply brief that we have not addressed, we note that we need not address arguments raised for the first time in a reply brief. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998).

Upon the foregoing,

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