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**DISTRICT II**

January 18, 2023

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

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2021AP156

Scott Thiel Builders v. Denise Daley (L.C. #2016CV601)

Before Gundrum, P.J., Neubauer and Grogan, 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).**

Denise Daley, pro se, appeals a judgment, entered after a bench trial, awarding Scott Thiel Builders (Thiel) \$20,896.44 in equitable damages plus statutory costs based on claims of unjust enrichment and quantum merit. On appeal, Daley argues the circuit court erred by dismissing her counterclaim for slander of title. Daley also contends the damage award erroneously included \$8,485.17 in profits. 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).<sup>1</sup> We affirm.

Thiel and Daley entered into a contract to remodel a home. During the course of the project, the scope of work expanded significantly. Daley never approved the changes to the scope of work in writing, which was what the original contract required. When Daley failed to pay for some of the additional work, Thiel brought suit, alleging, as relevant to this appeal, it was entitled to equitable relief for the additional work under theories of unjust enrichment and quantum merit. Daley filed a counterclaim alleging, as material here, slander of title. The circuit court dismissed Daley’s slander-of-title counterclaim. Following a bench trial, the circuit court awarded Thiel \$20,896.44 in equitable damages plus statutory costs.

On appeal, Daley first argues the circuit court erred by dismissing her counterclaim for slander of title. In response, Thiel acknowledges the court’s dismissal of the counterclaim appeared to be an oversight; however, Thiel argues the error is harmless. We agree. An error is harmless if it does not affect the substantial rights of the adverse party. *See* WIS. STAT. § 805.18. An error “affect[s] the substantial rights” of a party if there is “a reasonable possibility that the error contributed to the outcome of the action[.]” *Nommensen v. American Cont’l Ins. Co.*, 2001 WI 112, ¶52, 246 Wis. 2d 132, 629 N.W.2d 301 (citations omitted). Here, the circuit court determined Daley owed Thiel for the additional work it performed. Accordingly, Thiel did not slander her title by placing a lien on the property for the additional work. Moreover, Daley fails to develop any argument explaining how the dismissal of the slander-of-title counterclaim

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

affected her substantial rights. She makes no claim that it impacted the evidence admitted at trial or the arguments that were made. We decline to address undeveloped arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Daley next argues the circuit court's calculation of the damage award was in error. During trial, Thiel, as general contractor, withdrew its request for profits on the additional work. Daley argues the circuit court nevertheless erroneously awarded Thiel \$8,485.17 in profits. This argument is belied by the record. In making the damages calculation, the court reviewed various change orders and invoices and determined which ones it would allow. As for the \$8,485.17 amount, the court observed that this amount included compensation to Thiel for materials it used and carpentry work it actually performed. This amount did not include profits.

In her Reply brief, Daley points out a second purported error made by the circuit court in its damage-award calculation. She contends the damages awarded to reimburse Thiel for what it paid to CGI Glass, Inc. should have been \$200 instead of the \$1,400 awarded by the court. This argument, however, was raised by Daley for the first time in her Reply brief. We decline to address it. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492-93, 588 N.W.2d 285 (Ct. App. 1998) (appellate court will not address arguments raised for first time in reply brief).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is 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*