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DISTRICT II

December 27, 2023

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Todd A. Terry
Electronic Notice

Terri M. Deprinzio
1868 - 22th Ave., Apt. 1103
Kenosha, WI 53140

Tayr Kilaab al Ghashiyah (Khan)
1868 - 22th Ave., Apt. 1103
Kenosha, WI 53140

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

2023AP474

Terri M. Deprinzio v. R & R Automotive LLC (L.C. #2022CV665)

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

Tayr Kilaab al Ghashiyah (Kahn) appeals an order dismissing his claims against R & R Automotive LLC and an order denying his motion for reconsideration. He argues the circuit court erred by denying his motions for default judgment, judicial disqualification and to enforce a settlement offer. He also argues the circuit court erred by granting R & R Automotive's motion to dismiss. 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 (2021-22).¹
We affirm.

Kahn had a dispute with R & R Automotive regarding payment for auto repair services that ultimately escalated to police involvement after Kahn left with the vehicle. Kahn and Terri Deprinzio, his friend and the vehicle owner, then brought this action against R & R Automotive, advancing nine claims that included kidnapping, false imprisonment, defamation, fraud, harassment, and obstruction of justice.²

Kahn served the summons and complaint on July 11, 2022. R & R Automotive filed its answer and affirmative defenses on July 26. Shortly thereafter, Kahn moved for default judgment, asserting that R & R Automotive had not timely served the answer. Meanwhile, R & R Automotive filed a motion to dismiss. Kahn then filed a motion for judicial disqualification and a motion to accept a settlement agreement, contending that R & R Automotive had acquiesced by silence to Kahn's \$50,000 settlement offer.

The circuit court addressed these motions at a hearing, after which it entered an order granting R & R Automotive's motion to dismiss all of Kahn's claims against it. The court also denied Kahn's motions for default judgment, for judicial disqualification, and to accept a settlement offer. Kahn now appeals.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² Deprinzio also brought a contract claim that was subject to further litigation and is not the subject of this appeal.

Kahn first argues the circuit court erred by denying his motion for default judgment, asserting a twenty-day answer period applies following service of the complaint. To the contrary, the time to serve an answer is forty-five days “if any cause of action raised in the original pleading ... is founded in tort.” WIS. STAT. § 802.06(1)(a). R & R Automotive timely served its answer by mail on August 5, 2022. The court properly denied Kahn’s motion for default judgment.

Kahn next argues the circuit court erred by granting R & R Automotive’s motion 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. We accept as true all well-pleaded facts in the complaint, but we do not accept bare legal conclusions. *Id.* Whether a complaint state a claim upon which relief can be granted is a question of law. *Id.*, ¶17.

In this case, we have no reason to second-guess the circuit court’s decision to grant the motion to dismiss. The court’s written order merely states the motion was granted “for reasons as stated on the record,” and Kahn has failed to include a transcript of the hearing in the appellate Record.³ It is the appellant’s responsibility to ensure that we receive a complete appellate Record, and when the 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. *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381.

³ Indeed, Kahn’s statement on transcript indicated that no transcripts were necessary to the prosecution of this appeal. Yet portions of his brief fault the circuit court for failing to more completely describe its rationale for granting the motion to dismiss.

Even reviewing the sufficiency of the complaint de novo, Kahn's pleading falls far short. On appeal, he primarily argues he should be given leeway as a pro se litigant. But his pro se status does not confer carte blanche to make factually unsupported claims. The right to self-representation is not a license to defy rules of procedural and substantive law. *Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

Kahn's various claims (including those for false arrest, obstruction of justice, kidnapping, defamation, and theft) appear unsupported by the factual allegations he makes against R & R Automotive. On appeal, he does not identify the elements of his claims and tie them to specific factual allegations he made. Instead, he discusses other issues that were never pled, including equal protection, substantive due process, and 42 U.S.C. § 1983. This is plainly insufficient briefing. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Given the incomplete appellate Record, the apparent lack of factual allegations supporting Kahn's claims, and his failure to adequately brief the sufficiency of the complaint on appeal, we conclude the circuit court properly granted R & R Automotive's motion to dismiss.

Next, Kahn argues the circuit court should have granted his motion for judicial disqualification. Again, the lack of a transcript requires us to assume that the circuit court made the subjective determination that it could avoid partiality, which is controlling. See *State v. Gudgeon*, 2006 WI App 143, ¶20, 295 Wis. 2d 189, 720 N.W.2d 114. To the extent Kahn argues the court was objectively biased, his argument is premised in part on events that he claims occurred during a hearing for which there is no transcript. His arguments that the circuit court erred by denying his motion for judicial disqualification are unpersuasive.

Finally, Kahn asserts the circuit court was required to grant his motion for acceptance of the settlement proposal. R & R Automotive did not respond to Kahn's offer to settle the case for \$50,000. Kahn contends that the offer was accepted because R & R Automotive acquiesced by silence. There is no statutory mechanism, however, for acceptance of a settlement offer by silence; the defendant must provide notice of acceptance in writing. *See* WIS. STAT. § 807.01(3). Moreover, if the offer is not accepted within the ten-day statutory period, "it must be withdrawn from all consideration of the court and cannot be used in evidence in any way, nor can it be subsequently accepted." *DeWitt Ross & Stevens, S.C. v. Galaxy Gaming & Racing Ltd. P'ship*, 2004 WI 92, ¶33, 273 Wis. 2d 577, 682 N.W.2d 839. Kahn provides us no basis upon which to conclude the circuit court erred when it denied his motion for acceptance of the settlement proposal.

Based on the foregoing,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals